



Adoption (Scotland) Act 1978

1978 CHAPTER 28

PART IV

STATUS OF ADOPTED CHILDREN

38 Meaning of " adoption order " in Part IV

- (1) In this Part " adoption order " means—
- (a) an adoption order within the meaning of section 65(1);
 - (b) an adoption order under the Children Act 1975, the Adoption Act 1958, the Adoption Act 1950 or any enactment repealed by the Adoption Act 1950;
 - (c) an order effecting an adoption made in England, Wales, Northern Ireland, the Isle of Man or any of the Channel Islands;
 - (d) an " overseas adoption " within the meaning of section 65(2); or
 - (e) any other adoption recognised by the law of Scotland ;
- and cognate expressions shall be construed accordingly.
- (2) The definition of adoption order includes, where the context admits, an adoption order which took effect before the commencement of the Children Act 1975.

39 Status conferred by adoption

- (1) A child who is the subject of an adoption order shall be treated in law—
- (a) where the adopters are a married couple, as if he had been born as a legitimate child of the marriage (whether or not he was in fact born after the marriage was constituted);
 - (b) in any other case, as if he had been born as a legitimate child of the adopter (but not as a child of any actual marriage of the adopter);
- and as if he were not the child of any person other than the adopters or adopter.
- (2) Where an illegitimate child has been adopted by one of his natural parents as sole adoptive parent and the adopter thereafter marries the other natural parent,

Status: This is the original version (as it was originally enacted).

subsection (1) shall not affect any enactment or rule of law whereby, by virtue of the marriage, the child is rendered the legitimate child of both natural parents.

- (3) This section has effect—
- (a) in the case of an adoption before 1st January 1976, from that date, and
 - (b) in the case of any other adoption, from the date of the adoption.
- (4) Subject to the provisions of this Part, this section—
- (a) applies for the construction of enactments or instruments passed or made before or after the commencement of this Act so far as the context admits; and
 - (b) does not affect things done or events occurring before the adoption or, where the adoption took place before 1st January 1976, before that date.
- (5) This section has effect subject to the provisions of section 44.

40 Citizenship

- (1) Where an adoption order is made in relation to a child who is not a citizen of the United Kingdom and Colonies, but the adopter or, in the case of a joint adoption, the adoptive father is a citizen of the United Kingdom and Colonies, the child shall be a citizen of the United Kingdom and Colonies as from the date of the adoption.
- (2) In subsection (1) the reference to an adoption order includes a reference to an order authorising the adoption of a child in England or Wales, Northern Ireland, the Isle of Man or in any of the Channel Islands.
- (3) Where a Convention adoption order, or a specified order ceases to have effect, either on annulment or otherwise, the cesser shall not affect the status as a citizen of the United Kingdom and Colonies of any person who, by virtue of this section or section 19 of the Adoption Act 1958, became such a citizen in consequence of the order.

41 Miscellaneous enactments

- (1) Section 39 does not apply in determining the forbidden degrees of consanguinity and affinity in respect of the law relating to marriage or in respect of the crime of incest, except that, on the making of an adoption order, the adopter and the child shall be deemed, for all time coming, to be within the said forbidden degrees in respect of the law relating to marriage.
- (2) Without prejudice to section 40, section 39 does not apply for the purposes of any provision of—
- (a) the British Nationality Acts 1948 to 1965,
 - (b) the Immigration Act 1971,
 - (c) any instrument having effect under an enactment within paragraph (a) or (b),
or
 - (d) any other law for the time being in force which determines citizenship of the United Kingdom and Colonies.
- (3) Section 39 shall not prevent a person being treated as a near relative of a deceased person for the purposes of section 32 of the Social Security Act 1975 (payment of death grant), if apart from section 39 he would be so treated.

- (4) Section 39 does not apply for the purposes of section 70(3)(b) or section 73(2) of the Social Security Act 1975 (payment of industrial death benefit to or in respect of an illegitimate child of the deceased and the child's mother).
- (5) Subject to regulations made under section 72 of the Social Security Act 1975 (entitlement of certain relatives of deceased to industrial death benefit), section 39 shall not affect the entitlement to an industrial death benefit of a person who would, apart from section 39, be treated as a relative of a deceased person for the purposes of the said section 72.

42 Pensions

Section 39(1) does not affect entitlement to a pension which is payable to or for the benefit of a child and is in payment at the time of his adoption.

43 Insurance

Where a child is adopted whose natural parent has effected an insurance with a friendly society or a collecting society or an industrial insurance company for the payment on the death of the child of money for funeral expenses, the rights and liabilities under the policy shall by virtue of the adoption be transferred to the adoptive parents who shall for the purposes of the enactments relating to such societies and companies be treated as the person who took out the policy.

44 Effect of s. 39 on succession and inter vivos deed

Section 39 (status conferred by adoption) does not affect the existing law relating to adopted persons in respect of—

- (a) the succession to a deceased person (whether testate or intestate), and
- (b) the disposal of property by virtue of any inter vivos deed.