



## 2022 CHAPTER 18

### PART 1

#### Adoption

PROSPECTIVE

#### CHAPTER 6

##### Adoptions with a foreign element

##### *Bringing children into and out of the United Kingdom*

##### **Restriction on bringing children in**

**82.—**(1) This section applies where a person who is habitually resident in the United Kingdom, any of the Channel Islands or the Isle of Man (the “British resident”)—

- (a) brings, or causes another to bring, a child who is habitually resident outside the United Kingdom, any of the Channel Islands or the Isle of Man into the United Kingdom for the purpose of adoption by the British resident; or
- (b) at any time brings, or causes another to bring, into the United Kingdom a child adopted by the British resident under an external adoption effected within the period of twelve months ending with that time.

The references to adoption, or to a child adopted, by the British resident include a reference to adoption, or to a child adopted, by the British resident and another person.

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(2) But this section does not apply if the child is intended to be adopted under a Convention adoption order.

(3) An external adoption means an adoption, other than a Convention adoption, of a child effected under the law of any country or territory outside the United Kingdom, the Channel Islands and the Isle of Man, whether or not the adoption is—

- (a) an adoption within the meaning of Chapter 4; or
- (b) a full adoption (within the meaning of section 91(3)).

(4) Regulations may require a person intending to bring, or to cause another to bring, a child into the United Kingdom in circumstances where this section applies—

- (a) to apply to an adoption agency (including an adoption agency in Great Britain) in the prescribed manner for an assessment of the person's suitability to adopt the child; and
- (b) to give the agency any information it may require for the purpose of the assessment.

(5) Regulations may require prescribed conditions to be met in respect of a child brought into the United Kingdom in circumstances where this section applies.

(6) In relation to a child brought into the United Kingdom for adoption in circumstances where this section applies, regulations may—

- (a) provide for any provision of Chapter 3 to apply with modifications or not to apply;
- (b) if notice of intention to adopt has been given, impose functions in respect of the child on the authority to which the notice was given.

(7) If a person (“P”) brings, or causes another to bring, a child into the United Kingdom at any time in circumstances where this section applies, P is guilty of an offence if—

- (a) P has not complied with any requirement imposed by virtue of subsection (4); or
- (b) any condition required to be met by virtue of subsection (5) is not met,

before that time, or before any later time which may be prescribed.

(8) A person guilty of an offence under this section is liable—

- (a) on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding twelve months, or a fine, or both.

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#### Commencement Information

**II** S. 82 not in operation at Royal Assent, see [s. 160\(1\)](#)

### Giving parental responsibility prior to adoption abroad

**83.**—(1) The High Court may, on an application by persons who the court is satisfied intend to adopt a child under the law of a country or territory outside the United Kingdom, the Channel Islands and the Isle of Man, make an order giving parental responsibility for the child to them.

(2) An order under this section may not give parental responsibility to persons who the court is satisfied meet those requirements as to domicile, or habitual residence, in Northern Ireland which have to be met if an adoption order is to be made in favour of those persons.

(3) An order under this section may not be made unless any prescribed requirements are satisfied.

(4) An application for an order under this section may not be made unless at all times during the preceding ten weeks the child's home was with the applicant or, in the case of an application by two people, both of them.

(5) Section 43(2) to (4) have effect in relation to an order under this section as they have effect in relation to adoption orders.

(6) Regulations may provide for any provision of this Act which refers to adoption orders to apply, with or without modifications, to orders under this section.

#### Commencement Information

**I2** S. 83 not in operation at Royal Assent, see [s. 160\(1\)](#)

### Restriction on taking children out

**84.**—(1) A child who—

- (a) is a Commonwealth citizen; or
- (b) is habitually resident in the United Kingdom,

must not be removed from the United Kingdom to a place outside the United Kingdom, the Channel Islands and the Isle of Man for the purpose of adoption unless the condition in subsection (2) is met.

(2) The condition is that—

- (a) the prospective adopters have parental responsibility for the child by virtue of an order under section 83; or

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(b) the child is removed under the authority of an order under section 84 of the Adoption and Children Act 2002 or section 59 of the Adoption and Children (Scotland) Act 2007.

(3) Removing a child from the United Kingdom includes arranging to do so; and the circumstances in which a person arranges to remove a child from the United Kingdom include those where the person—

- (a) enters into an arrangement for the purpose of facilitating such a removal of the child;
- (b) initiates or takes part in any negotiations of which the purpose is the conclusion of an arrangement within paragraph (a); or
- (c) causes another person to take any step mentioned in paragraph (a) or (b).

An arrangement includes an agreement (whether or not enforceable).

(4) A person who removes a child from the United Kingdom in contravention of subsection (1) is guilty of an offence.

(5) A person is not guilty of an offence under subsection (4) of causing a person to take any step mentioned in paragraph (a) or (b) of subsection (3) unless it is proved that the person knew or had reason to suspect that the step taken would contravene subsection (1).

But this subsection only applies if sufficient evidence is adduced to raise an issue as to whether the person had the knowledge or reason mentioned.

(6) A person guilty of an offence under this section is liable—

- (a) on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding twelve months, or a fine, or both.

(7) In any proceedings under this section—

- (a) a report by a British consular officer or a deposition made before a British consular officer and authenticated under the signature of that officer is admissible, upon proof that the officer or the deponent cannot be found in the United Kingdom, as evidence of the matters stated in it; and
- (b) it is not necessary to prove the signature or official character of the person who appears to have signed any such report or deposition.

#### **Commencement Information**

**I3** S. 84 not in operation at Royal Assent, see [s. 160\(1\)](#)

#### **Power to modify sections 82 and 84**

**85.—**(1) Regulations may provide for section 82 not to apply if—

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- (a) the adopters or (as the case may be) prospective adopters are natural parents, natural relatives or guardians of the child in question (or one of them is); or
  - (b) the British resident in question is a partner of a parent of the child, and any prescribed conditions are met.
- (2) Regulations may provide for section 84(1) to apply with modifications, or not to apply, if—
- (a) the prospective adopters are parents, relatives or guardians of the child in question (or one of them is); or
  - (b) the prospective adopter is a partner of a parent of the child, and any prescribed conditions are met.

#### Commencement Information

**I4** S. 85 not in operation at Royal Assent, see [s. 160\(1\)](#)

### *Adoptions from abroad: special restrictions*

#### **Declaration of special restrictions on adoptions from abroad**

**86.—(1)** This section applies if the Department has reason to believe that, because of practices taking place in a country or territory outside the United Kingdom, the Channel Islands and the Isle of Man, (the “other country”) in connection with the adoption of children, it would be contrary to public policy to further the bringing of children into the United Kingdom in the cases mentioned in subsection (2).

- (2) The cases are that—
- (a) a British resident wishes to bring, or cause another to bring, a child who is not a British resident into the United Kingdom for the purpose of adoption by the British resident, and, in connection with the proposed adoption, there have been, or would have to be, proceedings in the other country or dealings with authorities or agencies there, or
  - (b) a British resident wishes to bring, or cause another to bring, into the United Kingdom a child adopted by the British resident under an adoption effected, within the period of twelve months ending with the date of the bringing in, under the law of the other country.
- (3) The Department may by order declare, in relation to any such country or territory, that special restrictions are to apply for the time being in relation to the bringing in of children in the cases mentioned in subsection (2).

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(4) A country or territory in relation to which such a declaration has effect for the time being is referred to in this section as a “restricted country”.

(5) The Department must publish reasons for making the declaration in relation to each restricted country.

(6) The Department must publish a list of restricted countries (“the restricted list”) and keep the list up to date.

(7) The reasons and the restricted list are to be published in whatever way the Department thinks appropriate for bringing them to the attention of adoption agencies and members of the public.

(8) In this section, “British resident” means a person who is habitually resident in the United Kingdom, the Channel Islands and the Isle of Man, and the reference to adoption by a British resident includes adoption by a British resident and another person.

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#### Commencement Information

**I5** S. 86 not in operation at Royal Assent, see [s. 160\(1\)](#)

#### Review

**87.—(1)** The Department must keep under review, in relation to each restricted country, whether it should continue to be a restricted country.

(2) If the Department determines, in relation to a restricted country, that there is no longer reason to believe what is mentioned in subsection (1) of section 86, the Department must by order revoke the order containing the declaration made in relation to it under subsection (3) of that section.

(3) In this section, “restricted country” has the same meaning as in section 86.

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#### Commencement Information

**I6** S. 87 not in operation at Royal Assent, see [s. 160\(1\)](#)

#### The special restrictions

**88.—(1)** The special restrictions mentioned in section 86(3) are that the Department is not to take any step it might otherwise have taken in connection with furthering the bringing of a child into the United Kingdom in the cases mentioned in section 86(2) (whether or not that step is provided for by or by virtue of any statutory provision), except as mentioned in subsection (2).

(2) Nothing in subsection (1) prevents the Department from taking those steps if, in any particular case, the prospective adopters or, as the case may be,

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the adopters satisfy the Department that it should take those steps despite the special restrictions.

- (3) The Department may make regulations providing for—
  - (a) the procedure to be followed by the Department in determining whether or not it is satisfied as mentioned in subsection (2);
  - (b) matters which the Department is to take into account when making such a determination (whether or not it also takes other matters into account).

#### Commencement Information

**17** S. 88 not in operation at Royal Assent, see [s. 160\(1\)](#)

#### Imposition of extra conditions in certain cases

- 89.**—(1) The Department may make regulations providing—
- (a) for it to specify in the restricted list, in relation to any restricted country, a step which is not otherwise provided for by or by virtue of any statutory provision but which, by virtue of the arrangements between the United Kingdom and that country, the Department normally takes in connection with the bringing in of a child where that country is concerned; and
  - (b) that, if such a step has been so specified in relation to a restricted country, one or more conditions specified in the regulations are to be met in respect of a child brought into the United Kingdom in either of the cases mentioned in section 86(2) (reading the reference there to the “other country” as being to the restricted country in question).
- (2) Those conditions are in addition to any provided for by virtue of—
- (a) section 82; or
  - (b) under or by virtue of any other statutory provision.
- (3) A person who brings, or causes another to bring, a child into the United Kingdom is guilty of an offence if any condition required to be met by virtue of subsection (1)(b) is not met.
- (4) Subsection (3) does not apply if the step specified in the restricted list in relation to any country had already been taken before the publication of the restricted list.
- (5) A person guilty of an offence under this section is liable—
- (a) on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both;
  - (b) on conviction on indictment to imprisonment for a term not exceeding twelve months, or a fine, or both.

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(6) In this section, “restricted country” and “restricted list” have the same meanings as in section 86.

**Commencement Information**

**18** S. 89 not in operation at Royal Assent, see [s. 160\(1\)](#)

*Overseas adoptions*

**Overseas adoptions**

**90.**—(1) In this Act, “overseas adoption”—

- (a) means an adoption of a prescribed description, being a description of adoptions effected under the law of any country or territory outside the United Kingdom, the Channel Islands and the Isle of Man; but
- (b) does not include a Convention adoption.

(2) Regulations may prescribe the requirements that ought to be met by an adoption of any description effected after the commencement of the regulations for it to be an overseas adoption for the purposes of this Act.

(3) At any time when regulations under this section have effect, the Department must exercise its powers under this section so as to secure that subsequently effected adoptions of any description are not overseas adoptions for the purposes of this Act if the Department considers that they are not likely within a reasonable time to meet the prescribed requirements.

(4) In this section references to this Act include the Adoption (Northern Ireland) Order 1987.

(5) Regulations under this section may contain provision as to the manner in which evidence of any overseas adoption may be given.

(6) In this section “adoption” means an adoption of a child or of a person who was a child at the time the adoption was applied for.

**Commencement Information**

**19** S. 90 not in operation at Royal Assent, see [s. 160\(1\)](#)

*Miscellaneous*

**Modification of section 66 for Hague Convention adoptions**

**91.**—(1) If the High Court is satisfied, on an application under this section, that each of the following conditions is met in the case of a Convention



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adoption, it may direct that section 66(3) does not apply, or does not apply to any extent specified in the direction.

(2) The conditions are—

- (a) that under the law of the country in which the adoption was effected, the adoption is not a full adoption;
- (b) that the consents referred to in Article 4(c) and (d) of the Convention have not been given for a full adoption or that the United Kingdom is not the receiving State (within the meaning of Article 2 of the Convention);
- (c) that it would be more favourable to the adopted child for a direction to be given under subsection (1).

(3) A full adoption is an adoption by virtue of which the child is to be treated in law as not being the child of any person other than the adopters or adopter.

(4) In relation to a direction under this section and an application for it, Articles 35 and 36 of the Matrimonial and Family Proceedings (Northern Ireland) Order 1989 (declarations under Part 5 of that Order as to status) apply as they apply in relation to a direction under that Part and an application for such a direction.

#### Commencement Information

**I10** S. 91 not in operation at Royal Assent, see [s. 160\(1\)](#)

### **Annulment etc. of overseas or Hague Convention adoptions**

**92.**—(1) The High Court may, on an application under this subsection, by order annul a Convention adoption or Convention adoption order on the ground that the adoption is contrary to public policy.

(2) The High Court may, on an application under this subsection—

- (a) by order provide for an overseas adoption or a determination under section 94 to cease to be valid on the ground that the adoption or determination is contrary to public policy or that the authority which purported to authorise the adoption or make the determination was not competent to entertain the case; or
- (b) decide the extent, if any, to which a determination under section 94 has been affected by a subsequent determination under that section.

(3) The High Court may, in any proceedings in that court, decide that an overseas adoption or a determination under section 94 is to be treated, for the purposes of those proceedings, as invalid on either of the grounds mentioned in subsection (2)(a).

(4) Subject to subsections (1) to (3), the validity of a Convention adoption, Convention adoption order or overseas adoption or a determination under

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section 94 cannot be called in question in proceedings in any court in Northern Ireland.

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**Commencement Information**

**I11** S. 92 not in operation at Royal Assent, see [s. 160\(1\)](#)

**Section 92: supplementary**

**93.**—(1) Any application for an order under section 92 or a decision under subsection (2)(b) or (3) of that section must be made in the manner, and within any period, prescribed by rules of court.

(2) No application may be made under section 92(1) in respect of an adoption unless immediately before the application is made—

- (a) the person adopted; or
- (b) the adopters or adopter,

habitually reside in Northern Ireland.

(3) In deciding in pursuance of section 92 whether such an authority as is mentioned in section 94 was competent to entertain a particular case, a court is bound by any finding of fact made by the authority and stated by the authority to be so made for the purpose of determining whether the authority was competent to entertain the case.

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**Commencement Information**

**I12** S. 93 not in operation at Royal Assent, see [s. 160\(1\)](#)

**Overseas determinations and orders**

**94.**—(1) Subsection (2) applies where any authority of a Convention country (other than the United Kingdom) or of the Channel Islands, the Isle of Man or any British overseas territory has power under the law of that country or territory—

- (a) to authorise, or review the authorisation of, an adoption order made in that country or territory; or
- (b) to give or review a decision revoking or annulling such an order or a Convention adoption.

(2) If the authority makes a determination in the exercise of that power, the determination is to have effect for the purpose of effecting, confirming or terminating the adoption in question or, as the case may be, confirming its termination.

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(3) Subsection (2) is subject to section 92 and to any subsequent determination having effect under that subsection.

**Commencement Information**

**I13** S. 94 not in operation at Royal Assent, see [s. 160\(1\)](#)

**Power to charge**

**95.**—(1) This section applies to adoptions to which—

- (a) section 82 applies; or
- (b) regulations made under section 1 of the Adoption (Intercountry Aspects) Act (Northern Ireland) 2001 apply.

(2) The Department may charge a fee to adopters for services provided or to be provided by the Department in relation to adoptions to which this section applies.

(3) The Department may determine the level of fee as it sees fit, and may in particular—

- (a) charge a flat fee; and
- (b) waive a fee.

(4) But the Department must secure that, taking one financial year with another, the income from fees under this section does not exceed the total cost to the Department of providing the services in relation to which the fees are imposed.

(5) In this section references to adoptions and adopters include prospective adoptions and prospective adopters.

**Commencement Information**

**I14** S. 95 not in operation at Royal Assent, see [s. 160\(1\)](#)

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