

*Status: Point in time view as at 09/09/1991.*

*Changes to legislation: Adoption Act 1976 is up to date with all changes known to be in force on or before 28 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*



# Adoption Act 1976

1976 CHAPTER 36

**E+W**

An Act to consolidate the enactments having effect in England and Wales in relation to adoption. [22nd July 1976]

## Modifications etc. (not altering text)

- C1** Power to amend Act conferred (5.7.1994) by [Human Fertilisation and Embryology Act 1990](#) (c. 37, SIF 83:1), **ss. 30(9)(10)**, 39(3), 43(2); S.I. 1994/1776, **art. 2(1)**
- C2** By [Criminal Justice Act 1991](#) (c. 53, SIF 39:1), s. 101(1), **Sch. 12 para. 23**; S.I. 1991/2208, art. 2(1), **Sch.1** it is provided (14.10.1991) that in relation to any time before the commencement of s. 70 of that 1991 Act (which came into force on 1.10.1992 by S.I. 1992/333, art. 2(2), **Sch. 2**) references in any enactment amended by that 1991 act, to youth courts shall be construed as references to juvenile courts.
- C3** Act applied (with modifications) (1.11.1994) by S.I. 1994/2767, **reg. 2**  
Act: modified (*prosp.*) by 1999 c. 18, **ss. 17**, 18(3)

## PART I **E+W**

### THE ADOPTION SERVICE

#### *The Adoption Service*

## 1 **Establishment of Adoption Service.** **E+W**

- (1) It is the duty of every local authority to establish and maintain within their area a service designed to meet the needs, in relation to adoption, of—
- (a) children who have been or may be adopted,
  - (b) parents and guardians of such children, and
  - (c) persons who have adopted or may adopt a child,

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and for that purpose to provide the requisite facilities, or secure that they are provided by approved adoption societies.

- (2) The facilities to be provided as part of the service maintained under subsection (1) include—
- (a) temporary board and lodging where needed by pregnant women, mothers or children;
  - (b) arrangements for assessing children and prospective adopters, and placing children for adoption;
  - (c) counselling for persons with problems relating to adoption.
- (3) The facilities of the service maintained under subsection (1) shall be provided in conjunction with the local authority's other social services and with approved adoption societies in their area, so that help may be given in a co-ordinated manner without duplication, omission or avoidable delay.
- (4) The services maintained by local authorities under subsection (1) may be collectively referred to as “the Adoption Service”, and a local authority or approved adoption society may be referred to as an adoption agency.

## 2 Local authorities' social services. **E+W**

The social services referred to in section 1(3) are the functions of a local authority which stand referred to the authority's social services committee, including, in particular but without prejudice to the generality of the foregoing, a local authority's functions [<sup>F1</sup>relating to—

- (a) the promotion of the welfare of children by diminishing the need to receive children into care or keep them in care, including (in exceptional circumstances) the giving of assistance in cash;
- (b) the welfare of children in the care of a local authority;]
- [<sup>F1</sup>(a) under the Children Act 1989, relating to family assistance orders, local authority support for children and families, care and supervision and emergency protection of children, community homes, voluntary homes and organisations, registered children's homes, private arrangements for fostering children, child minding and day care for young children and children accommodated by health authorities [<sup>F2</sup>National Health Service trusts] and local education authorities or in residential care, nursing or mental nursing homes or in independent schools; and
- (b) under the <sup>M1</sup>National Health Service Act <sup>M2</sup>1977, relating to the provision of care for expectant and nursing mothers.]
- [<sup>F1</sup>(c) the welfare of children who are foster children within the meaning of [<sup>F3</sup>the <sup>M3</sup>Foster Children Act 1980]];]
- (d) children who are subject to supervision orders made in matrimonial proceedings;
- (e) the provision of residential accommodation for expectant mothers and young children and of day-care facilities;
- (f) the regulation and inspection of nurseries and child minders;
- (g) care and other treatment of children through court proceedings.

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#### Textual Amendments

- F1** S. 2(a)(b) commencing “(a) under the Children Act 1989” substituted (*prosp.*) for words in s. 2 commencing “relating to” by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, Sch. 10 para. 1 (with **Sch. 14 para. 1(1)**)
- F2** Words inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 17**
- F3** Words substituted by Foster Children Act 1980 (c. 6, SIF 20), s. 23(2), **Sch. 2 Pt. I**

#### Marginal Citations

- M1** 1977 c.49(113:2).  
**M2** 1977 c.49(113:2).  
**M3** 1980 c. 6(20).

### *Adoption societies*

## **3 Approval of adoption societies. E+W**

- (1) Subject to regulations under section 9(1), a body [<sup>F4</sup>which is a voluntary organisation and desires] to act as an adoption society or, if it is already an adoption society, [<sup>F5</sup>desires] to continue to act as such may, in the manner specified by regulations made by the Secretary of State, apply to the Secretary of State for his approval to its doing so.
- (2) On an application under subsection (1), the Secretary of State shall take into account the matters relating to the applicant specified in subsections (3) to (5) and any other relevant considerations, and if, but only if, he is satisfied that the applicant is likely to make, or, if the applicant is an approved adoption society, is making, an effective contribution to the Adoption Service he shall by notice to the applicant give his approval, which shall be operative from a date specified in the notice or, in the case of a renewal of approval, from the date of the notice.
- (3) In considering the application, the Secretary of State shall have regard, in relation to the period for which approval is sought, to the following—
  - (a) the applicant’s adoption programme, including, in particular, its ability to make provision for children who are free for adoption,
  - (b) the number and qualifications of its staff,
  - (c) its financial resources, and
  - (d) the organisation and control of its operations.
- (4) Where it appears to the Secretary of State that the applicant is likely to operate extensively within the area of a particular local authority he shall ask the authority whether they support the application, and shall take account of any views about it put to him by the authority.
- (5) Where the applicant is already an approved adoption society or, whether before or after the passing of this Act, previously acted as an adoption society, the Secretary of State, in considering the application, shall also have regard to the record and reputation of the applicant in the adoption field, and the areas within which and the scale on which it is currently operating or has operated in the past.
- (6) If after considering the application the Secretary of State is not satisfied that the applicant is likely to make or, as the case may be, is making an effective contribution

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to the Adoption Service, the Secretary of State shall, subject to section 5(1) and (2), by notice inform the applicant that its application is refused.

- (7) If not withdrawn earlier under section 4, approval given under this section shall last for a period of three years from the date on which it becomes operative, and shall then expire or, in the case of an approved adoption society whose further application for approval is pending at that time, shall expire on the date that application is granted or, as the case may be, refused.

#### Textual Amendments

- F4** Words substituted by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113:3\)](#), s. 9, [Sch. 2 para. 29](#)
- F5** Word substituted by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113:3\)](#), s. 9, [Sch. 2 para. 29](#)

#### Modifications etc. (not altering text)

- C4** S. 3: transfer of functions (W) (1.7.1999) by [S.I. 1999/672, art. 2, Sch. 1](#)

## 4 Withdrawal of approval. **E+W**

- (1) If, while approval of a body under section 3 is operative, it appears to the Secretary of State that the body is not making an effective contribution to the Adoption Service he shall, subject to section 5(3) and (4), by notice to the body withdraw the approval from a date specified in the notice.
- (2) If an approved adoption society fails to provide the Secretary of State with information required by him for the purpose of carrying out his functions under subsection (1), or fails to verify such information in the manner required by him, he may by notice to the society withdraw the approval from a date specified in the notice.
- (3) Where approval is withdrawn under subsection (1) or (2) or expires the Secretary of State may direct the body concerned to make such arrangements as to children who are in its care and other transitional matters as seem to him expedient.

#### Modifications etc. (not altering text)

- C5** S. 4: transfer of functions (W) (1.7.1999) by [S.I. 1999/672, art. 2, Sch. 1](#)

## 5 Procedure on refusal to approve, or withdrawal of approval from, adoption societies. **E+W**

- (1) Before notifying a body which has applied for approval that the application is refused in accordance with section 3(6) the Secretary of State shall serve on the applicant a notice—
- setting out the reasons why he proposes to refuse the application;
  - informing the applicant that it may make representations in writing to the Secretary of State within 28 days of the date of service of the notice.
- (2) If any representations are made by the applicant in accordance with subsection (1), the Secretary of State shall give further consideration to the application taking into account those representations.

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- (3) The Secretary of State shall, before withdrawing approval of an adoption society in accordance with section 4(1), serve on the society a notice—
  - (a) setting out the reasons why he proposes to withdraw the approval; and
  - (b) informing the society that it may make representations in writing to the Secretary of State within 28 days of the date of service of the notice.
- (4) If any representations are made by the society in accordance with subsection (3), the Secretary of State shall give further consideration to the withdrawal of approval under section 4(1) taking into account those representations.
- (5) This section does not apply where the Secretary of State, after having considered any representations made by the applicant in accordance with this section, proposes to refuse approval or, as the case may be, to withdraw approval for reasons which have already been communicated to the applicant in a notice under this section.

**Modifications etc. (not altering text)**

C6 S. 5: transfer of functions (W) (1.7.1999) by S.I. 1999/672, art. 2, Sch. 1

*Welfare of children*

**6 Duty to promote welfare of child. E+W**

In reaching any decision relating to the adoption of a child a court or adoption agency shall have regard to all the circumstances, first consideration being given to the need to safeguard and promote the welfare of the child throughout his childhood; and shall so far as practicable ascertain the wishes and feelings of the child regarding the decision and give due consideration to them, having regard to his age and understanding.

**7 Religious upbringing of adopted child. E+W**

An adoption agency shall in placing a child for adoption have regard (so far as is practicable) to any wishes of a child's parents and guardians as to the religious upbringing of the child.

*Supplemental*

**8 Inactive or defunct adoption societies. E+W**

- (1) If it appears to the Secretary of State that an approved adoption society, or one in relation to which approval has been withdrawn under section 4 or has expired, is inactive or defunct he may, in relation to any child who is or was in the care of the society, direct what appears to him to be the appropriate local authority to take any such action as might have been taken by the society or by the society jointly with the authority; and if apart from this section the authority would not be entitled to take that action, or would not be entitled to take it without joining the society in the action, it shall be entitled to do so.
- (2) Before giving a direction under subsection (1) the Secretary of State shall, if practicable, consult both the society and the authority.

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**Modifications etc. (not altering text)**

C7 S. 8: transfer of functions (W) (1.7.1999) by S.I. 1999/672, art. 2, Sch. 1

**9 Regulation of adoption agencies. E+W**

- (1) The Secretary of State may by regulations prohibit unincorporated bodies from applying for approval under section 3; and he shall not approve any unincorporated body whose application is contrary to regulations made under this subsection.
- (2) The Secretary of State may make regulations for any purpose relating to the exercise of its functions by an approved adoption society.
- (3) The Secretary of State may make regulations with respect to the exercise by local authorities of their functions of making or participating in arrangements for the adoption of children.
- (4) Any person who contravenes or fails to comply with regulations made under subsection (2) shall be guilty of an offence and liable on summary conviction to a fine not exceeding [<sup>F6</sup>level 5 on the standard scale].

**Textual Amendments**

F6 Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), ss. 38, 46

**Modifications etc. (not altering text)**

C8 S. 9: transfer of functions (W) (1.7.1999) by S.I. 1999/672, art. 2, Sch. 1

**10 .....<sup>F7</sup> E+W**

**Textual Amendments**

F7 S. 10 repealed by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), ss. 9, 30, Sch. 2 para. 30, Sch. 10 Pt. 1

**11 Restriction on arranging adoptions and placing of children. E+W**

- (1) A person other than an adoption agency shall not make arrangements for the adoption of a child, or place a child for adoption, unless—
  - (a) the proposed adopter is a relative of the child, or
  - (b) he is acting in pursuance of an order of the High Court.
- [<sup>X1</sup>(2) An adoption society approved as respects Scotland under section 4 of the <sup>M4</sup>Children Act 1975, but which is not approved under section 3 of this Act, shall not act as an adoption society in England and Wales except to the extent that the society considers it necessary to do so in the interests of a person mentioned in section 1 of that Act.]
- [<sup>F8</sup>(2) An adoption society which is—
  - (a) approved as respects Scotland under section 3 of the Adoption (Scotland) Act <sup>M5</sup>1978; or

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- (b) registered as respects Northern Ireland under Article 4 of the Adoption (Northern Ireland) Order <sup>M6</sup>1987,  
but which is not approved under section 3 of this Act, shall not act as an adoption society in England and Wales except to the extent that the society considers it necessary to do so in the interests of a person mentioned in section 1 of the Act of 1978 or Article 3 of the Order of 1987.]
- (3) A person who—
- (a) takes part in the management or control of a body of persons which exists wholly or partly for the purpose of making arrangements for the adoption of children and which is not an adoption agency; or
  - (b) contravenes subsection (1); or
  - (c) receives a child placed with him in contravention of subsection (1),
- shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding [<sup>F9</sup>level 5 on the standard scale] or to both.
- (4) In any proceedings for an offence under paragraph (a) of subsection (3), proof of things done or of words written, spoken or published (whether or not in the presence of any party to the proceedings) by any person taking part in the management or control of a body of persons, or in making arrangements for the adoption of children on behalf of the body, shall be admissible as evidence of the purpose for which that body exists.
- [<sup>F10</sup>(5) Section 26 shall apply where a person is convicted of a contravention of subsection (1) as it applies where an application for an adoption order is refused.]

#### Editorial Information

- X1** S. 11(2) commencing “An adoption society which is” substituted (*prosp.*) for subsection (2) commencing “An adoption society approved” by [Children Act 1989 \(c. 41, SIF 20\)](#), ss. 88, 108, Sch. 10 para. 2 (with [Sch. 14 para. 1\(1\)](#))

#### Textual Amendments

- F8** S. 11(2) commencing “An adoption society which is” substituted (*prosp.*) for subsection (2) commencing “An adoption society approved” by [Children Act 1989 \(c. 41, SIF 20\)](#), ss. 88, 108, Sch. 10 para. 2 (with [Sch. 14 para. 1\(1\)](#))
- F9** Words substituted by virtue of [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), ss. 38, 46
- F10** S. 11(5) repealed (*prosp.*) by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108, Sch. 15 (with Sch. 14 paras. 1(1), 27(4))

#### Marginal Citations

- M4** 1975 c. 72(49:9, 10).  
**M5** 1978 c.28(49:11).  
**M6** S.I. 1987/2203 (N.I. 22).

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## PART II **E+W**

### ADOPTION ORDERS

#### *The making of adoption orders*

## 12 Adoption orders. **E+W**

- (1) An adoption order is an order [<sup>F11</sup>vesting the parental rights and duties relating to a child in][<sup>F11</sup>giving parental responsibility for a child to] the adopters, made on their application by an authorised court.
- (2) The order does not affect [<sup>F12</sup>the parental rights and duties so far as they relate][<sup>F12</sup>parental responsibility so far as it relates] to any period before the making of the order.
- (3) The making of an adoption order operates to extinguish—
  - [<sup>X2</sup>(a) any parental right or duty relating to the child which—
    - (i) is vested in a person (not being one of the adopters) who was the parent or guardian of the child immediately before the making of the order, or
    - (ii) is vested in any other person by virtue of the order of any court; and]
  - [<sup>F13</sup>(a) the parental responsibility which any person has for the child immediately before the making of the order;
    - (aa) any order under the Children Act 1989]
    - (b) any duty arising by virtue of an agreement or the order of a court to make payments, so far as the payments are in respect of the child’s maintenance [<sup>F14</sup>for any period after the making of the order or any other matter comprised in the parental duties and relating to such a period.][<sup>F14</sup>or upbringing for any period after the making of the order.]
- (4) Subsection (3)(b) does not apply to a duty arising by virtue of an agreement—
  - (a) which constitutes a trust, or
  - (b) which expressly provides that the duty is not to be extinguished by the making of an adoption order.
- (5) An adoption order may not be made in relation to a child who is or has been married.
- (6) An adoption order may contain such terms and conditions as the court thinks fit.
- (7) An adoption order may be made notwithstanding that the child is already an adopted child.

#### Editorial Information

- X2** S. 12(3)(a)(aa) commencing “(a) the parental responsibility” substituted (*prosp.*) for para. (a) commencing “any parental right” by [Children Act 1989 \(c. 41, SIF 20\)](#), ss. 88, 108, [Sch. 10 para. 3\(3\)](#) (with [Sch. 14 para. 1\(1\)](#))



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### Textual Amendments

- F11** Words commencing “giving parental responsibility” substituted (*prosp.*) for words commencing “vesting the parental” by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, Sch. 10 para. 3(1) (with Sch. 14 para. 1(1))
- F12** Words commencing “parental responsibility” substituted (*prosp.*) for words commencing “the parental rights” by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, Sch. 10 para. 3(2) (with Sch. 14 para. 1(1))
- F13** S. 12(3)(a)(aa) commencing “(a) the parental responsibility” substituted (*prosp.*) for para. (a) commencing “any parental right” by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, Sch. 10 para. 3(3) (with Sch. 14 para. 1(1))
- F14** Words commencing “or upbringing” substituted (*prosp.*) for words commencing “for any period” by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, Sch. 10 para. 3(3) (with Sch. 14 para. 1(1))

## 13 Child to live with adopters before order made. **E+W**

- (1) Where—
- (a) the applicant, or one of the applicants, is a parent, step-parent or relative of the child, or
  - (b) the child was placed with the applicants by an adoption agency or in pursuance of an order of the High Court,
- an adoption order shall not be made unless the child is at least 19 weeks old and at all times during the preceding 13 weeks had his home with the applicants or one of them.
- (2) Where subsection (1) does not apply, an adoption order shall not be made unless the child is at least 12 months old and at all times during the preceding 12 months had his home with the applicants or one of them.
- (3) An adoption order shall not be made unless the court is satisfied that sufficient opportunities to see the child with the applicant, or, in the case of an application by a married couple, both applicants together in the home environment have been afforded—
- (a) where the child was placed with the applicant by an adoption agency, to that agency, or
  - (b) in any other case, to the local authority within whose area the home is.

## 14 Adoption by married couple. **E+W**

[<sup>X3</sup>(1) Subject to section 37(1) of the <sup>M7</sup>Children Act 1975 (which provides for the making of a custodianship order instead of an adoption order in certain cases) an adoption order may be made on the application of a married couple where each has attained the age of 21 years but an adoption order shall not otherwise be made on the application of more than one person.]

[<sup>F15</sup>(1) An adoption order shall not be made on the application of more than one person except in the circumstances specified in subsections (1A) and (1B).

(1A) An adoption order may be made on the application of a married couple where both the husband and the wife have attained the age of 21 years.

(1B) An adoption order may be made on the application of a married couple where—

- (a) the husband or the wife—
  - (i) is the father or mother of the child; and
  - (ii) has attained the age of 18 years:

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- and
- (b) his or her spouse has attained the age of 21 years.]
- (2) An adoption order shall not be made on the application of a married couple unless—
- (a) at least one of them is domiciled in a part of the United Kingdom, or in the Channel Islands or the Isle of Man, or
- (b) the application is for a Convention adoption order and section 17 is complied with.
- [<sup>F16</sup>(3) If the married couple consist of a parent and step-parent of the child, the court shall dismiss the application if it considers the matter would be better dealt with under section 42 (orders for custody etc.) of the <sup>M8</sup>Matrimonial Causes Act 1973.]

#### Editorial Information

**X3** S. 14(1)–(1B) commencing “(1) An adoption order” substituted (*prosp.*) for s. 14(1) commencing “Subject to section 37(1)” by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, Sch. 10 para. 4 (with Sch. 14 para. 1(1))

#### Textual Amendments

**F15** S. 14(1)–(1B) commencing “(1) An adoption order” substituted (*prosp.*) for s. 14(1) commencing “Subject to section 37(1)” by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, Sch. 10 para. 4 (with Sch. 14 para. 1(1))

**F16** S. 14(3) repealed (*prosp.*) by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 15 (with Sch. 14 paras. 1(1), 27(4))

#### Marginal Citations

**M7** 1975 c. 72(49:9, 10).

**M8** 1973 c. 18(49:3).

## 15 Adoption by one person. **E+W**

- (1) [<sup>F17</sup>Subject to section 37(1) of the <sup>M9</sup>Children Act 1975 (which provides for the making of a custodianship order instead of an adoption order in certain cases)] an adoption order may be made on the application of one person where he has attained the age of 21 years and—
- (a) is not married, or
- (b) is married and the court is satisfied that—
- (i) his spouse cannot be found, or
- (ii) the spouses have separated and are living apart, and the separation is likely to be permanent, or
- (iii) his spouse is by reason of ill-health, whether physical or mental, incapable of making an application for an adoption order.
- (2) An adoption order shall not be made on the application of one person unless—
- (a) he is domiciled in a part of the United Kingdom, or in the Channel Islands or the Isle of Man, or
- (b) the application is for a Convention adoption order and section 17 is complied with.

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- (3) An adoption order shall not be made on the application of the mother or father of the child alone unless the court is satisfied that—
- (a) the other natural parent is dead or cannot be found [<sup>F18</sup>or, by virtue of section 28 of the Human Fertilisation and Embryology Act 1990, there is no other parent], or
  - (b) there is some other reason justifying the exclusion of the other natural parent, and where such an order is made the reason justifying the exclusion of the other natural parent shall be recorded by the court.
- [<sup>F19</sup>(4) If the applicant is a step-parent of the child, the court shall dismiss the application if it considers the matter would be better dealt with under section 42 (orders for custody etc.) of the <sup>M10</sup>Matrimonial Causes Act 1973.]

#### Textual Amendments

- F17** Words repealed (*prosp.*) by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 15 (with Sch. 14 paras. 1(1), 27(4))
- F18** Words inserted (1.8.1991) by Human Fertilisation and Embryology Act 1990 (c. 37, SIF 83:1), ss. 39(3), 43(2), 49(5), **Sch. 4 para. 4**; S.I. 1991/1400, **art. 2(2)**
- F19** S. 15(4) repealed (*prosp.*) by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 15 (with Sch. 14 paras. 1(1), 27(4))

#### Marginal Citations

- M9** 1975 c. 72(49:3).
- M10** 1973 c. 18(49:3).

## 16 Parental agreement. **E+W**

- (1) An adoption order shall not be made unless—
- (a) the child is free for adoption by virtue of an order made [<sup>F20</sup>in England and Wales under section 18 or made in Scotland under section 14 of the <sup>M11</sup>Children Act 1975 (freeing children for adoption in Scotland)]
    - [<sup>F20</sup>(i) in England and Wales, under section 18;
    - (ii) in Scotland, under section 18 of the Adoption (Scotland) <sup>M12</sup>Act 1978; or
    - (iii) in Northern Ireland, under Article 17(1) or 18(1) of the Adoption (Northern Ireland) Order <sup>M13</sup>1987.]; or
  - (b) in the case of each parent or guardian of the child the court is satisfied that—
    - (i) he freely, and with full understanding of what is involved, agrees unconditionally to the making of an adoption order (whether or not he knows the identity of the applicants), or
    - (ii) his agreement to the making of the adoption order should be dispensed with on a ground specified in subsection (2).
- (2) The grounds mentioned in subsection (1)(b)(ii) are that the parent or guardian—
- (a) cannot be found or is incapable of giving agreement;
  - (b) is withholding his agreement unreasonably;
  - (c) has persistently failed without reasonable cause [<sup>F21</sup>the parental duties in relation to][<sup>F21</sup>his parental responsibility for] the child;

*Status: Point in time view as at 09/09/1991.*

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- (d) has abandoned or neglected the child;
  - (e) has persistently ill-treated the child;
  - (f) has seriously ill-treated the child (subject to subsection (5)).
- (3) Subsection (1) does not apply in any case where the child is not a United Kingdom national and the application for the adoption order is for a Convention adoption order.
- (4) Agreement is ineffective for the purposes of subsection (1)(b)(i) if given by the mother less than six weeks after the child’s birth.
- (5) Subsection (2)(f) does not apply unless (because of the ill-treatment or for other reasons) the rehabilitation of the child within the household of the parent or guardian is unlikely.

#### Textual Amendments

- F20** S. 16(1)(i)–(iii) substituted (*prosp.*) for words commencing “in England and Wales under section 18 or made in” by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, Sch. 10 para. 5(1) (with **Sch. 14 para. 1(1)**)
- F21** Words “his parental responsibility for” substituted (*prosp.*) for “the parental duties in relation to” by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, Sch. 10 para. 5(2) (with **Sch. 14 para. 1(1)**)

#### Marginal Citations

- M11** 1975 c. 72(49:3).
- M12** 1978 c.28(49:11).
- M13** S.I. 1987/2203 (N.I. 22).

## 17 Convention adoption orders. **E+W**

- (1) An adoption order shall be made as a Convention adoption order if the application is for a Convention adoption order and the following conditions are satisfied both at the time of the application and when the order is made.
- (2) The child—
- (a) must be a United Kingdom national or a national of a Convention country, and
  - (b) must habitually reside in British territory or a Convention country.
- (3) The applicant or applicants and the child must not all be United Kingdom nationals living in British territory.
- (4) If the application is by a married couple, either—
- (a) each must be a United Kingdom national or a national of a Convention country, and both must habitually reside in Great Britain, or
  - (b) both must be United Kingdom nationals, and each must habitually reside in British territory or a Convention country,
- and if the applicants are nationals of the same Convention country the adoption must not be prohibited by a specified provision (as defined in subsection (8) of the internal law of that country.
- (5) If the application is by one person, either—
- (a) he must be a national of a Convention country, and must habitually reside in Great Britain, or

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- (b) he must be a United Kingdom national and must habitually reside in British territory or a Convention country,  
and if he is a national of a Convention country the the adoption must not be prohibited by a specified provision (as defined in subsection (8) of the internal law of that country.
- (6) If the child is not a United Kingdom national the order shall not be made—
- (a) except in accordance with the provisions, if any, relating to consents and consultations of the internal law relating to adoption of the Convention country of which the child is a national, and
- (b) unless the court is satisfied that each person who consents to the order in accordance with that internal law does so with full understanding of what is involved.
- (7) The reference to consents and consultations in subsection (6) does not include a reference to consent by and consultation with the applicant and members of the applicant’s family (including his or her spouse), and for the purposes of subsection (6) consents may be proved in the manner prescribed by rules and the court shall be treated as the authority by whom, under the law mentioned in subsection (6), consents may be dispensed with and the adoption in question may be effected; and where the provisions there mentioned require the attendance before that authority of any person who does not reside in Great Britain, that requirement shall be treated as satisfied for the purposes of subsection (6) if—
- (a) that person has been given a reasonable opportunity of communicating his opinion on the adoption in question to the proper officer or clerk of the court, or to an appropriate authority of the country in question, for transmission to the court; and
- (b) where he has availed himself of that opportunity, his opinion has been transmitted to the court.
- (8) In subsections (4) and (5) “specified provision” means a provision specified in an order of the Secretary of State as one notified to the Government of the United Kingdom in pursuance of the provisions of the Convention which relate to prohibitions on an adoption contained in the national law of the Convention country in question.

**Modifications etc. (not altering text)**

**C9** S. 17 restricted (23.1.2003) by 1999 c. 18, ss. 16(1), 18(3); S.I. 2003/189, art. 2(1)(a)

*Freeing for adoption*

**18 Freeing child for adoption. E+W**

- (1) Where, on an application by an adoption agency, an authorised court is satisfied in the case of each parent or guardian of the child that—
- (a) he freely, and with full understanding of what is involved, agrees generally and unconditionally to the making of an adoption order, or
- (b) his agreement to the making of an adoption order should be dispensed with on a ground specified in section 16(2),
- the court shall make an order declaring the child free for adoption.
- (2) No application shall be made under subsection (1) unless—

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- (a) it is made with the consent of a parent or guardian of a child, or
  - (b) the adoption agency is applying for dispensation under subsection (1)(b) of the agreement of each parent or guardian of the child, and the child is in the care of the adoption agency.
- [<sup>F22</sup>(2A) For the purposes of subsection (2) a child is in the care of an adoption agency if the adoption agency is a local authority and he is in their care.]
- (3) No agreement required under subsection (1)(a) shall be dispensed with under subsection (1)(b) unless the child is already placed for adoption or the court is satisfied that it is likely that the child will be placed for adoption.
  - (4) An agreement by the mother of the child is ineffective for the purposes of this section if given less than 6 weeks after the child's birth.
  - (5) On the making of an order under this section, [<sup>F23</sup>the parental rights and duties relating to the child vest in][<sup>F23</sup>parental responsibility for the child is given to] the adoption agency, and subsections (2) [<sup>F24</sup>and (3)][<sup>F24</sup>to (4)] of section 12 apply as if the order were an adoption order and the agency were the adopters.
  - (6) Before making an order under this section, the court shall satisfy itself, in relation to each parent or guardian [<sup>F25</sup>of the child who can be found], that he has been given an opportunity of making, if he so wishes, a declaration that he prefers not to be involved in future questions concerning the adoption of the child; and any such declaration shall be recorded by the court.
- [<sup>X4</sup>[ Before making an order under this section in the case of a child whose father and
- <sup>F26</sup>(7) mother were not married to each other at the time of his birth and whose father is not his guardian, the court shall satisfy itself in relation to any person claiming to be the father that either—
- (a) he has no intention of making—
    - (i) an application under section 4 of the <sup>M14</sup>Family Law Reform Act 1987 for an order giving him all the parental rights and duties with respect to the child; or
    - (ii) an application under any other enactment for an order giving him a right to custody, legal or actual custody or care and control of the child; or
  - (b) if he did make such an application, the application would be likely to be refused.]
- [ In subsection (7) the reference to a child whose father and mother were not married
- <sup>F27X4</sup>(8) to each other at the time of his birth shall be construed in accordance with section 1 of the <sup>M15</sup>Family Law Reform Act 1987.]]
- [<sup>F28</sup>(7) Before making an order under this section in the case of a child whose father does not have parental responsibility for him, the court shall satisfy itself in relation to any person claiming to be the father that—
- (a) he has no intention of applying for—
    - (i) an order under section 4(1) of the Children Act 1989, or
    - (ii) a residence order under section 10 of that Act, or
  - (b) if he did make any such application, it would be likely to be refused.
- (8) Subsections (5) and (7) of section 12 apply in relation to the making of an order under this section as they apply in relation to the making of an order under that section.]

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#### Editorial Information

- X4** S. 18(7)(8) second appearing substituted (*prosp.*) for s. 18(7)(8) first appearing by [Children Act 1989 \(c. 41, SIF 20\)](#), ss. 88, 108, Sch. 10 para. 6(3) (with [Sch. 14 para. 1\(1\)](#))

#### Textual Amendments

- F22** S. 18(2A) inserted (*prosp.*) by [Children Act 1989 \(c. 41, SIF 20\)](#), ss. 88, 108, Sch. 10 para. 6(1) (with [Sch. 14 para. 1\(1\)](#))
- F23** Words commencing “parental responsibility” substituted (*prosp.*) for words commencing “the parental rights” by [Children Act 1989 \(c. 41, SIF 20\)](#), ss. 88, 108, Sch. 10 para. 6(2) (with [Sch. 14 para. 1\(1\)](#))
- F24** Words “to (4)” substituted (*prosp.*) for words “and (3)” by [Children Act 1989 \(c. 41, SIF 20\)](#), ss. 88, 108, Sch. 10 para. 6(2) (with [Sch. 14 para. 1\(1\)](#))
- F25** Words substituted by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113:3\)](#), s. 9, [Sch. 2 para. 31](#)
- F26** S. 18(7) substituted by [Family Law Reform Act 1987 \(c. 42, SIF 49:7\)](#), ss. 7(1), 34(1)
- F27** S. 18(8) added by [Family Law Reform Act 1987 \(c. 42, SIF 49:7\)](#), ss. 33(1), 34(1), [Sch. 2 para. 67](#)
- F28** S. 18(7)(8) second appearing substituted (*prosp.*) for s. 18(7)(8) first appearing by [Children Act 1989 \(c. 41, SIF 20\)](#), ss. 88, 108, Sch. 10 para. 6(3) (with [Sch. 14 para. 1\(1\)](#))

#### Modifications etc. (not altering text)

- C10** S. 18 amended (*prosp.*) by [Children Act 1989 \(c. 41, SIF 20\)](#), ss. 12(3)(a), 33(6)(b)(i), 108, (with Sch. 14 para. 1(1))

#### Marginal Citations

- M14** [1987 c. 42\(49:7\)](#).  
**M15** [1987 c. 42\(49:7\)](#).

## 19 Progress reports to former parent. **E+W**

- (1) This section and section 20 apply to any person ( “the former parent”) who was required to be given an opportunity of making a declaration under section 18(6) but did not do so.
- (2) Within the 14 days following the date 12 months after the making of the order under section 18 the adoption agency [<sup>F29</sup>in which the parental rights and duties were vested][<sup>F29</sup>to which parental responsibility was given] on the making of the order, unless it has previously by notice to the former parent informed him that an adoption order has been made in respect of the child, shall by notice to the former parent inform him—
  - (a) whether an adoption order has been made in respect of the child, and (if not)
  - (b) whether the child has his home with a person with whom he has been placed for adoption.
- (3) If at the time when the former parent is given notice under subsection (2) an adoption order has not been made in respect of the child, it is thereafter the duty of the adoption agency to give notice to the former parent of the making of an adoption order (if and when made), and meanwhile to give the former parent notice whenever the child is placed for adoption or ceases to have his home with a person with whom he has been placed for adoption.

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- (4) If at any time the former parent by notice makes a declaration to the adoption agency that he prefers not to be involved in future questions concerning the adoption of the child—
- (a) the agency shall secure that the declaration is recorded by the court which made the order under section 18, and
  - (b) the agency is released from the duty of complying further with subsection (3) as respects that former parent.

#### Textual Amendments

**F29** Words commencing “in which parental responsibility” substituted (*prosp.*) “in which the parental rights” by [Children Act 1989 \(c. 41, SIF 20\)](#), ss. 88, 108, [Sch. 10 para. 7](#) (with [Sch. 14 para. 1\(1\)](#))

## 20 Revocation of s. 18 order. **E+W**

- (1) The former parent, at any time more than 12 months after the making of the order under section 18 when—
- (a) no adoption order has been made in respect of the child, and
  - (b) the child does not have his home with a person with whom he has been placed for adoption,

may apply to the court which made the order for a further order revoking it on the ground that he wishes to resume [<sup>F30</sup>the parental rights and duties][<sup>F30</sup>parental responsibility].

- (2) While the application is pending the adoption agency having [<sup>F30</sup>the parental rights and duties][<sup>F30</sup>parental responsibility] shall not place the child for adoption without the leave of the court.

[<sup>X5</sup>(3) Where an order freeing a child for adoption is revoked under this section—

- (a) the parental rights and duties relating to the child are vested in the individual or, as the case may be, the individuals in whom they vested immediately before that order was made;
- (b) if the parental rights and duties, or any of them, vested in a local authority or voluntary organisation immediately before the order freeing the child for adoption was made, those rights and duties are vested in the individual, or as the case may be, the individuals in whom they vested immediately before they were vested in the authority or organisation; and
- (c) any duty extinguished by virtue of section 12(3)(b) is forthwith revived,

but the revocation does not affect any right or duty so far as it relates to any period before the date of the revocation.]

[<sup>F31</sup>(3) The revocation of an order under section 18 (“a section 18 order”) operates—

- (a) to extinguish the parental responsibility given to the adoption agency under the section 18 order;
- (b) to give parental responsibility for the child to—
  - (i) the child’s mother; and
  - (ii) where the child’s father and mother were married to each other at the time of his birth, the father; and
- (c) to revive—



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- (i) any parental responsibility agreement,
  - (ii) any order under section 4(1) of the Children Act 1989, and
  - (iii) any appointment of a guardian in respect of the child (whether made by a court or otherwise),
- extinguished by the making of the section 18 order.
- (3A) Subject to subsection (3)(c), the revocation does not—
- (a) operate to revive—
    - (i) any order under the Children Act 1989, or
    - (ii) any duty referred to in section 12(3)(b),extinguished by the making of the section 18 order; or
  - (b) affect any person’s parental responsibility so far as it relates to the period between the making of the section 18 order and the date of revocation of that order.]
- (4) Subject to subsection (5), if the application is dismissed on the ground that to allow it would contravene the principle embodied in section 6—
- (a) the former parent who made the application shall not be entitled to make any further application under subsection (1) in respect of the child, and
  - (b) the adoption agency is released from the duty of complying further with section 19(3) as respects that parent.
- (5) Subsection (4)(a) shall not apply where the court which dismissed the application gives leave to the former parent to make a further application under subsection (1), but such leave shall not be given unless it appears to the court that because of a change in circumstances or for any other reason it is proper to allow the application to be made.

#### Editorial Information

**X5** S. 20(3)(3A) commencing “(3)The revocation” substituted (*prosp.*) for subsection (3) commencing “Where an order” by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, Sch. 10 para. 8(2) (with Sch. 14 para. 1(1))

#### Textual Amendments

- F30** Words “parental responsibility” substituted (*prosp.*) for words “the parental rights and duties” by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, Sch. 10 para. 8(1) (with Sch. 14 para. 1(1))
- F31** S. 20(3)(3A) commencing “(3)The revocation” substituted (*prosp.*) for subsection (3) commencing “Where an order” by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, Sch. 10 para. 8(2) (with Sch. 14 para. 1(1))

## 21 Transfer of parental rights and duties between adoption agencies. **E+W**

On the joint application of an adoption agency in which the parental rights and duties relating to a child who is in England or Wales are vested under section 18(5) or this section or under Part I of the <sup>MI6</sup>Children Act 1975 (adoption in Scotland), and any other adoption agency, an authorised court may if it thinks fit by order transfer the parental rights and duties to the latter agency.

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#### Marginal Citations

M16 1975 c. 72 (49:3).

### Supplemental

#### [<sup>F32</sup>22 Notification to local authority of adoption application. **E+W**

(1) An adoption order shall not be made in respect of a child who was not placed with the applicant by an adoption agency unless the applicant has, at least 3 months before the date of the order, given notice to the local authority within whose area he has his home of his intention to apply for the adoption order.

[ An application for such an adoption order shall not be made unless the person wishing  
<sup>F33</sup>(1A) to make the application has, within the period of two years preceding the making of the application, given notice as mentioned in subsection (1).

(1B) In subsections (1) and (1A) the references to the area in which the applicant or person has his home are references to the area in which he has his home at the time of giving the notice.]

(2) On receipt of such a notice the local authority shall investigate the matter and submit to the court a report of their investigation.

(3) Under subsection (2), the local authority shall in particular investigate,—  
(a) so far as is practicable, the suitability of the applicant, and any other matters relevant to the operation of section 6 in relation to the application; and  
(b) whether the child was placed with the applicant in contravention of section 11.

(4) A local authority which [<sup>F34</sup>receives][<sup>F34</sup>receive] notice under subsection (1) in respect of a child whom the authority know to be [<sup>F35</sup>in the care of][<sup>F35</sup>looked after by] another local authority shall, not more than 7 days after the receipt of the notice, inform that other local authority in writing, that they have received the notice.]

#### Textual Amendments

**F32** S. 22 repealed (S.) by Adoption (Scotland) Act 1978 (c. 28, SIF 49:11), s. 66, Sch. 2 paras. 3, 5, Sch. 4

**F33** S. 22(1A)(1B) inserted (*prosp.*) by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, Sch. 10 para. 10(1) (with Sch. 14 para. 1(1))

**F34** Word “receive” substituted (*prosp.*) for word “receives” by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, Sch. 10 para. 10(2) (with Sch. 14 para. 1(1))

**F35** Words “looked after” substituted (*prosp.*) for words “in the care of” by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, Sch. 10 para. 10(2) (with Sch. 14 para. 1(1))

#### [<sup>F36</sup>23 Reports where child placed by agency. **E+W**

Where an application for an adoption order relates to a child placed by an adoption agency, the agency shall submit to the court a report on the suitability of the applicants and any other matters relevant to the operation of section 6, and shall assist the court in any manner the court may direct.]

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#### Textual Amendments

**F36** S. 23 repealed (S.) by [Adoption \(Scotland\) Act 1978 \(c. 28, SIF 49:11\)](#), s. 66, Sch. 2 paras. 3, 5, [Sch. 4](#)

## 24 Restrictions on making adoption orders. **E+W**

- (1) The court shall not proceed to hear an application for an adoption order in relation to a child where a previous application for a British adoption order made in relation to the child by the same persons was refused by any court unless—
  - (a) in refusing the previous application the court directed that this subsection should not apply, or
  - (b) it appears to the court that because of a change in circumstances or for any other reason it is proper to proceed with the application.
- (2) The court shall not make an adoption order in relation to a child unless it is satisfied that the applicants have not, as respects the child, [<sup>F37</sup>contravened] section 57.

#### Textual Amendments

**F37** Word substituted by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113:3\)](#), s. 9, [Sch. 2 para. 32](#)

## 25 Interim orders. **E+W**

- (1) Where on an application for an adoption order the requirements of sections 16(1) and 22(1) are complied with, the court may postpone the determination of the application and make an order [<sup>F38</sup>vesting the legal custody of the child][<sup>F38</sup>giving parental responsibility for the child to] in the applicants for a probationary period not exceeding 2 years upon such terms for the maintenance of the child and otherwise as the court thinks fit.
- (2) Where the probationary period specified in an order under subsection (1) is less than 2 years, the court may by a further order extend the period to a duration not exceeding 2 years in all.

#### Textual Amendments

**F38** Words “giving parental responsibility for the child to” substituted (*prosp.*) for words “vesting the legal custody of the child in” by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108, [Sch. 10 para. 11](#) (with [Sch. 14 para. 1\(1\)](#))

## [<sup>F39</sup>26 Care etc. of child on refusal of adoption order. **E+W**

- (1) Where on an application for an adoption order in relation to a child . . . <sup>F40</sup> the court refuses to make the adoption order then—
  - (a) if it appears to the court that there are exceptional circumstances making it desirable that the child should be under the supervision of an independent person, the court may order that the child shall be under the supervision of a specified local authority or under the supervision of a probation officer;

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- (b) if it appears to the court that there are exceptional circumstances making it impracticable or undesirable for the child to be entrusted to either of the parents or to any other individual, the court may by order commit the child to the care of a specified local authority.
- (2) Where the court makes an order under subsection (1)(b) the order may require the payment by either parent to the local authority, while it has the care of the child, of such weekly or other periodical sum towards the maintenance of the child as the court thinks reasonable.
- (3) Sections 3 and 4 of the <sup>M17</sup>Guardianship Act 1973 (which contain supplementary provisions relating to children who are subject to supervision, or in the care of local authorities, by virtue of orders made under section 2 of that Act) apply in relation to an order under this section as they apply in relation to an order under section 2 of that Act.]

#### Textual Amendments

**F39** S. 26 repealed (*prosp.*) by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 15 (with Sch. 14 paras. 1(1), 27(4))

**F40** Words repealed by Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22, SIF 49:3), ss. 72(2), 89, Schs. 1, 3

#### Marginal Citations

**M17** 1973 c. 29(49:9).

## PART III **E+W**

### CARE AND PROTECTION OF CHILDREN AWAITING ADOPTION

#### *Restrictions on removal of children*

#### 27 **Restrictions on removal where adoption agreed or application made under s.**

##### 18. **E+W**

- (1) While an application for an adoption order is pending in a case where a parent or guardian of the child has agreed to the making of the adoption order (whether or not he knows the identity of the applicant), the parent or guardian is not entitled, against the will of the person with whom the child has his home, to remove the child from the [F41[F42actual] custody][F41home] of that person except with the leave of the court.
- (2) While an application is pending for an order freeing a child for adoption and—
- the child is in the care of the adoption agency making the application, and
  - the application was not made with the consent of each parent or guardian of the child,
- no parent or guardian of the child is entitled, against the will of the person with whom the child has his home, to remove the child from the [F41[F42actual] custody][F41home] of that person except with the leave of the court.

[F43(2A) For the purposes of subsection (2) a child is in the care of an adoption agency if the adoption is a local authority and he is in their care.]

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(3) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding [F44level 5 on the standard scale] or both.

(4) ..... F45

#### Textual Amendments

**F41** Word “home” substituted (*prosp.*) for words “actual custody” by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, Sch. 10 para. 12(a) (with **Sch. 14 para. 1(1)**)

**F42** Word inserted by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), s. 9, **Sch. 2 para. 60(c)**

**F43** S. 27(2A) inserted (*prosp.*) by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, Sch. 10 para. 13 (with **Sch. 14 para. 1(1)**)

**F44** Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), ss. 38, 46

**F45** S. 27(4)(5), 28(8)(9) repealed by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), ss. 9, 30, Sch. 2 para. 33, **Sch. 10 Pt. I**

## 28 Restrictions on removal where applicant has provided home for 5 years. **E+W**

(1) While an application for an adoption order in respect of a child made by the person with whom the child has had his home for the 5 years preceding the application is pending, no person is entitled, against the will of the applicant, to remove the child from the applicant’s [F46[F47actual] custody][F46home] except with the leave of the court or under authority conferred by any enactment or on the arrest of the child.

(2) Where a person (“the prospective adopter”) gives notice to the local authority within whose area he has his home that he intends to apply for an adoption order in respect of a child who for the preceding 5 years has had his home with the prospective adopter, no person is entitled, against the will of the prospective adopter, to remove the child from the prospective adopter’s [F46[F47actual] custody][F46home], except with the leave of a court or under authority conferred by any enactment or on the arrest of the child, before—

- (a) the prospective adopter applies for the adoption order, or
- (b) the period of 3 months from the receipt of the notice by the local authority expires,

whichever occurs first.

[F48(2A) The reference in subsections (1) and (2) to any enactment does not include a reference to section 20(8) of the Children Act 1989]

[X6(3) In any case where subsection (1) or (2) applies and—

- (a) the child was in the care of a local authority before he began to have his home with the applicant or, as the case may be, the prospective adopter, and
- (b) the child remains in the care of [F49a local authority],

the authority [F50in whose care the child is] shall not remove the child from the actual custody of the applicant or of the prospective adopter except in accordance with section 30 or 31 or with leave of a court.]

[F51(3) In any case where subsection (1) or (2) applies and—

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- (a) the child was being looked after by a local authority before he began to have his home with the applicant or, as the case may be, the prospective adopter, and
- (b) the child is still being looked after by a local authority,
- the authority which are looking after the child shall not remove him from the home of the applicant or the prospective adopter except in accordance with section 30 or 31 or with the leave of a court.]
- (4) In subsections (2) and (3) “a court” means a court with jurisdiction to make adoption orders.
- (5) A local authority which [<sup>F52</sup>receives][<sup>F52</sup>receive] such notice as is mentioned in subsection (2) in respect of a child whom the authority know to be [<sup>F53</sup>in the care of another local authority or of a voluntary organisation][<sup>F53</sup>looked after by another local authority] shall, not more than 7 days after the receipt of the notice, inform that other authority [<sup>F54</sup>or the organisation], in writing, that they have received the notice.
- (6) Subsection (2) does not apply to any further notice served by the prospective adopter on any local authority in respect of the same child during the period referred to in paragraph (b) of that subsection or within 28 days after its expiry.
- (7) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding [<sup>F55</sup>level 5 on the standard scale] or both.
- (8) . . . . .<sup>F56</sup>
- (10) The Secretary of State may by order amend subsection (1) or (2) to substitute a different period for the period of 5 years mentioned in that subsection (or the period which, by a previous order under this subsection, was substituted for that period).

#### Editorial Information

- X6** S. 28(3) appearing second substituted (*prosp.*) for s. 28(3) appearing first by [Children Act 1989 \(c. 41, SIF 20\)](#), ss. 88, 108, [Sch. 10 para. 14\(2\)](#) (with [Sch. 14 para. 1\(1\)](#))

#### Textual Amendments

- F46** Word “home” substituted (*prosp.*) for words “actual custody” by [Children Act 1989 \(c. 41, SIF 20\)](#), ss. 88, 108, [Sch. 10 para. 12\(b\)](#) (with [Sch. 14 para. 1\(1\)](#))
- F47** Word inserted by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113:3\)](#), s. 9, [Sch. 2 para. 60\(c\)](#)
- F48** S. 28(2A) inserted (*prosp.*) by [Children Act 1989 \(c. 41, SIF 20\)](#), ss. 88, 108, [Sch. 10 para. 14\(1\)](#) (with [Sch. 14 para. 1\(1\)](#))
- F49** Words substituted by [Domestic Proceedings and Magistrates' Courts Act 1978 \(c. 22, SIF 49:3\)](#), s. 89, [Sch. 1, Sch. 2 para. 50\(a\)](#)
- F50** Words inserted by [Domestic Proceedings and Magistrates' Courts Act 1978 \(c. 22, SIF 49:3\)](#), s. 89, [Sch. 1, Sch. 2 para. 50\(b\)](#)
- F51** S. 28(3) appearing second substituted (*prosp.*) for s. 28(3) appearing first by [Children Act 1989 \(c. 41, SIF 20\)](#), ss. 88, 108, [Sch. 10 para. 14\(2\)](#) (with [Sch. 14 para. 1\(1\)](#))
- F52** Word “receive” substituted (*prosp.*) for word “receives” by [Children Act 1989 \(c. 41, SIF 20\)](#), ss. 88, 108, [Sch. 10 para. 14\(3\)\(a\)](#) (with [Sch. 14 para. 1\(1\)](#))
- F53** Words commencing “looked after” substituted (*prosp.*) for words commencing “in the care of” by [Children Act 1989 \(c. 41, SIF 20\)](#), ss. 88, 108, [Sch. 10 para. 14\(3\)\(b\)](#) (with [Sch. 14 para. 1\(1\)](#))
- F54** Words repealed (*prosp.*) by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108, [Sch. 15](#) (with [Sch. 14 paras. 1\(1\), 27\(4\)](#))

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- F55** Words substituted by virtue of [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), **ss. 38, 46**
- F56** [S. 27\(4\)\(5\), 28\(8\)\(9\)](#) repealed by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113:3\)](#), **ss. 9, 30, Sch. 2 para. 33, Sch. 10 Pt. I**

## 29 Return of child taken away in breach of s. 27 or 28. **E+W**

- [<sup>X7</sup>(1) An authorised court may on the application of a person from whose [<sup>F57</sup>actual] custody a child has been removed in breach of section 27 or 28 [<sup>F58</sup>, or section 27 or 28 of the Adoption (Scotland) Act 1978] order the person who has so removed the child to return the child to the applicant.
- <sup>X7</sup>(2) An authorised court may on the application of a person who has reasonable grounds for believing that another person is intending to remove a child from the applicant's [<sup>F57</sup>actual] custody in breach of section 27 or 28 [<sup>F58</sup>, or section 27 or 28 of the Adoption (Scotland) Act 1978] by order direct that other person not to remove the child from the applicant's [<sup>F57</sup>actual] custody in breach of section 27 or 28 [<sup>F58</sup>, or section 27 or 28 of the Adoption (Scotland) Act 1978].]
- [<sup>F59</sup>(1) An authorised court may, on the application of a person from whose home a child has been removed in breach of—
- (a) section 27 or 28,
  - (b) section 27 or 28 of the <sup>M18</sup>Adoption (Scotland) Act 1978, or
  - (c) Article 28 or 29 of the <sup>M19</sup>Adoption (Northern Ireland) Order 1987
- order the person who has so removed the child to return the child to the applicant.
- (2) An authorised court may, on the application of a person who has reasonable grounds for believing that another person is intending to remove a child from his home in breach of—
- (a) section 27 or 28,
  - (b) section 27 or 28 of the Adoption (Scotland) Act 1978, or
  - (c) Article 28 or 29 of the Adoption (Northern Ireland) Order 1987,
- by order direct that other person not to remove the child from the applicant's home in breach of any of those provisions.]
- (3) If, in the case of an order made by the High Court under subsection (1), the High Court or, in the case of an order made by a county court under subsection (1), a county court is satisfied that the child has not been returned to the applicant, the court may make an order authorising an officer of the court to search such premises as may be specified in the order for the child and, if the officer finds the child, to return the child to the applicant.
- (4) If a justice of the peace is satisfied by information on oath that there are reasonable grounds for believing that a child to whom an order under subsection (1) relates is in premises specified in the information, he may issue a search warrant authorising a constable to search the premises for the child; and if a constable acting in pursuance of a warrant under this section finds the child, he shall return the child to the person on whose application the order under subsection (1) was made.
- (5) An order under subsection (3) may be enforced in like manner as a warrant for committal.

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#### Editorial Information

- X7** S. 29(1)(2) commencing “(1) An authorised court may, on the application of a person from whose home” substituted (*prosp.*) for s. 29(1)(2) commencing “(1) An authorised court may on the application of a person from whose [actual custody]” by [Children Act 1989 \(c. 41, SIF 20\)](#), ss. 88, 108, [Sch. 10 para. 15](#) (with [Sch. 14 para. 1\(1\)](#))

#### Textual Amendments

- F57** Word inserted by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113:3\)](#), s. 9, [Sch. 2 para. 60\(c\)](#)
- F58** Words inserted by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113:3\)](#), s. 9, [Sch. 2 para. 34](#)
- F59** S. 29(1)(2) commencing “(1) An authorised court may, on the application of a person from whose home” substituted (*prosp.*) for s. 29(1)(2) commencing “(1) An authorised court may on the application of a person from whose [actual custody]” by [Children Act 1989 \(c. 41, SIF 20\)](#), ss. 88, 108, [Sch. 10 para. 15](#) (with [Sch. 14 para. 1\(1\)](#))

#### Marginal Citations

- M18** 1978 c. 28 (49:11).
- M19** S.I. 1987/2203 (N.I. 22).

### 30 Return of children placed for adoption by adoption agencies. **E+W**

- (1) Subject to subsection (2), at any time after a child has been <sup>F60</sup>delivered into the actual custody of [<sup>F60</sup>placed with] any person in pursuance of arrangements made by an adoption agency for the adoption of the child by that person, and before an adoption order has been made on the application of that person in respect of the child,—
  - (a) that person may give notice to the agency of his intention not to <sup>F61</sup>retain the [<sup>F62</sup>actual] custody of the child [<sup>F61</sup>give the child a home]; or
  - (b) the agency may cause notice to be given to that person of their intention not to allow the child to remain in his <sup>F63</sup>[<sup>F62</sup>actual] custody [<sup>F63</sup>home].
- (2) No notice under paragraph (b) of subsection (1) shall be given in respect of a child in relation to whom an application has been made for an adoption order except with the leave of the court to which the application has been made.
- (3) Where a notice is given to an adoption agency by any person or by an adoption agency to any person under subsection (1), or where an application for an adoption order made by any person in respect of a child placed <sup>F64</sup>in his actual custody [<sup>F64</sup>with him] by an adoption agency is refused by the court or withdrawn, that person shall, within 7 days after the date on which notice was given or the application refused or withdrawn, as the case may be, cause the child to be returned to the agency, who shall receive the child.
- (4) Where the period specified in an interim order made under section 25 (whether as originally made or as extended under subsection (2) of that section) expires without an adoption order having been made in respect of the child, subsection (3) shall apply as if the application for an adoption order upon which the interim order was made, had been refused at the expiration of that period.
- (5) It shall be sufficient compliance with the requirements of subsection (3) if the child is delivered to, and is received by, a suitable person nominated for the purpose by the adoption agency.



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- (6) Where an application for an adoption order is refused the court may, if it thinks fit at any time before the expiry of the period of 7 days mentioned in subsection (3), order that period to be extended to a duration, not exceeding 6 weeks, specified in the order.
- (7) Any person who contravenes the provisions of this section shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding [F65]level 5 on the standard scale] or to both; and the court by which the offender is convicted may order the child in respect of whom the offence is committed to be returned to his parent or guardian or to the adoption agency which made the arrangements referred to in subsection (1).

#### Textual Amendments

- F60** Words “placed with” substituted (*prosp.*) for “delivered into the actual custody of” by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, Sch. 10 para. 16(1)(a) (with Sch. 14 para. (1))
- F61** Words “give the child a home” substituted (*prosp.*) for “retain the actual custody of the child” by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, Sch. 10 para. 16(1)(b) (with Sch. 14 para. 1(1))
- F62** Word inserted by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), s. 9, Sch. 2 para. 60(c)
- F63** Word “home” substituted (*prosp.*) for “actual custody” by Children Act 1989 (c. 41, SIF 20), s. 88, Sch. 10 para. 16(1)(c) (with Sch. 14 para. 1(1))
- F64** Words “with him” substituted (*prosp.*) for “in his actual custody” by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, Sch. 10 para. 16(2) (with Sch. 14 para. 1(1))
- F65** Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), ss. 38, 46

### 31 Application of s. 30 where child not placed for adoption. **E+W**

- (1) Where a person gives notice in pursuance of section 22(1) to the local authority within whose area he has his home of his intention to apply for an adoption order in respect of a [F66]child who is for the time being in the care of a local authority, not being a child who was delivered into the actual custody of that person in pursuance of such arrangements as are mentioned in section 30(1), that section shall apply as if the child had been so delivered, except [F66]child—
  - (a) who is (when the notice is given) being looked after by a local authority; but
  - (b) who was placed with that person otherwise than in pursuance of such arrangements as are mentioned in section 30(1),that section shall apply as if the child had been placed in pursuance of such arrangements] that where the application is refused by the court or withdrawn the child need not be returned to the local authority in whose care he is unless that authority so require.
- (2) Where notice of intention is given as aforesaid in respect of any child who is [F67]for the time being in the care of [F67] (when the notice is given) being looked after by] a local authority then, until the application for an adoption order has been made and disposed of, any right of the local authority to require the child to be returned to them otherwise than in pursuance of section 30 shall be suspended.
- (3) While the child [F68]remains in the actual custody of [F68]has his home with] the person by whom the notice is given no contribution shall be payable (whether under a contribution order or otherwise) in respect of the child by any person liable under [F69][F70]section 45 of the M20Child Care Act 1980]] [F69]Part III of Schedule 2 to the Children Act 1989] to make contributions in respect of him (but without prejudice

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to the recovery of any sum due at the time the notice is given), unless 12 weeks have elapsed since the giving of the notice without the application being made or the application has been refused by the court or withdrawn.

[<sup>F71</sup>(4) Nothing in this section affects the right of any person who has parental responsibility for a child to remove him under section 20(8) of the Children Act 1989]

#### Textual Amendments

- F66** Words commencing “child— (a) who is” substituted (*prosp.*) for words commencing “child who is for the time being” by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, Sch. 10 para. 17(1) (with **Sch. 14 para. 1(1)**)
- F67** Words commencing “(when the notice” substituted (*prosp.*) for words commencing “for the time being” by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, Sch. 10 para. 17(2) (with **Sch. 14 para. 1(1)**)
- F68** Words “has his home with” substituted (*prosp.*) for “remains in the actual custody of” by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 10 para. 17(3)(a) (with **Sch. 14 para. 1(1)**)
- F69** Words commencing “Part III” substituted (*prosp.*) for words commencing “section 45” by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, Sch. 10 para. 17(3)(b) (with **Sch. 14 para. 1(1)**)
- F70** Words substituted by Child Care Act 1980 (c. 5, SIF 20), s. 89, **Sch. 5 para. 38**
- F71** S. 31(4) added (*prosp.*) by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, Sch. 10 para. 17(4) (with **Sch. 14 para. 1(1)**)

#### Marginal Citations

**M20** 1980 c. 5(20)

### Protected children

## 32 Meaning of “protected child”. **E+W**

- (1) Where a person gives notice in pursuance of section 22(1) to the local authority within whose area he lives of his intention to apply for an adoption order in respect of a child, the child is for the purposes of this Part a protected child while he has his home with that person.
- (2) A child shall be deemed to be a protected child for the purposes of this Part if he is a protected child within the meaning of [<sup>F72</sup>section 37 of the <sup>M21</sup>Adoption Act 1958] [<sup>F72</sup>(a) section 32 of the Adoption (Scotland) Act 1978; or (b) Article 33 of the Adoption (Northern Ireland) Order 1987.].
- (3) A child is not a protected child by reason of any such notice as is mentioned in subsection (1) while—
  - [<sup>X8</sup>(a) he is in the care of any person in any such school, home or institution as is mentioned in [<sup>F73</sup>section 2(2) of the <sup>M22</sup>Foster Children Act 1980]]
  - [<sup>F74</sup>(a) he is in the care of any person—
    - (i) in any community home, voluntary home or registered children’s home;
    - (ii) in any school in which he is receiving full-time education;
    - (iii) in any health service hospital]; or
  - [<sup>F75</sup>(b) he is—
    - (i) suffering from mental disorder within the meaning of the <sup>M23</sup>Mental Health Act 1983; and

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- (ii) resident in a residential care home, within the meaning of Part I of Schedule 4 to the <sup>M24</sup>Health and Social Services and Social Security Adjudications Act 1983;]
- (c) he is liable to be detained or subject to guardianship under [<sup>F76</sup>the <sup>M25</sup>Mental Health Act 1983]
- [<sup>F77</sup>(d) he is in the care of any person in any home or institution not specified in this subsection but provided, equipped and maintained by the Secretary of State.]
- [<sup>F78</sup>(3A) In subsection (3) “community home”, “voluntary home”, “registered children’ home”, “school” and “health service hospital” have the same meaning as in the Children Act 1989.]
- [<sup>X9</sup>(4) A protected child ceases to be a protected child—
- (a) on the appointment of a guardian for him under the <sup>M26</sup>Guardianship of Minors Act 1971;
  - (b) on the notification of the local authority for the area where the child has his home that the application for an adoption order has been withdrawn;
  - (c) on the making of any of the following orders in respect of the child—
    - (i) an adoption order;
    - (ii) an order under section 26;
    - (iii) a custodianship order;
    - (iv) an order under section 42, 43 or 44 of the <sup>M27</sup>Matrimonial Causes Act 1973; or
  - (d) on his attaining the age of 18 years,
- whichever first occurs.]
- [<sup>F79</sup>(4) A protected child ceases to be a protected child—
- (a) on the grant or refusal of the application for an adoption order;
  - (b) on the notification to the local authority for the area where the child has his home that the application for an adoption order has been withdrawn;
  - (c) in a case where no application is made for an adoption order, on the expiry of the period of two years from the giving of the notice;
  - (d) on the making of a residence order, a care order or a supervision order under the Children Act 1989 in respect of the child;
  - (e) on the appointment of a guardian for him under that Act;
  - (f) on his attaining the age of 18 years; or
  - (g) on his marriage,
- whichever first occurs.
- (5) In subsection (4)(d) the references to a care order and a supervision order do not include references to an interim care order or interim supervision order.]

#### Editorial Information

- X8** S. 32(3)(a) commencing “he is in the care of any person—” substituted (*prosp.*) for s. 32(a) commencing “he is not in the care of any such person in any such school” by [Children Act 1989 \(c. 41, SIF 20\)](#), ss. 88, 108, [Sch. 10 para. 18\(2\)](#) (with [Sch. 14 para. 1\(1\)](#))
- X9** S. 32(4)(5) commencing “A protected child ceases to be a protected child— (a)on the grant” substituted (*prosp.*) for s. 32(4) commencing “A protected child ceases to be a protected child— (a)on

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the appointment” by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, Sch. 10 para. 18(4) (with **Sch. 14 para. 1(1)**)

#### Textual Amendments

- F72** S. 32(2)(a)(b) substituted (*prosp.*) for words “section 37 of the Adoption Act 1958” by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, Sch. 10 para. 18(1) (with **Sch. 14 para. 1(1)**)
- F73** Words substituted by Foster Children Act 1980 (c. 6, SIF 20), s. 23(2), **Sch. 2 Pt. I**
- F74** S. 32(3)(a) commencing “he is in the care of any person—” substituted (*prosp.*) for s. 32(a) commencing “he is not in the care of any such person in any such school” by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, Sch. 10 para. 18(2) (with **Sch. 14 para. 1(1)**)
- F75** S. 32(3)(b) substituted by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), s. 29, **Sch. 9 Pt. I para. 19**
- F76** Words substituted by virtue of Mental Health Act 1983 (c. 20, SIF 85), s. 148, **Sch. 4 para. 45**
- F77** S. 32(3)(d) added (*prosp.*) by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, Sch. 10 para. 18(2) (with **Sch. 14 para. 1(1)**)
- F78** S. 32(3A) inserted (*prosp.*) by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, Sch. 10 para. 18(3) (with **Sch. 14 para. 1(1)**)
- F79** S. 32(4)(5) commencing “A protected child ceases to be a protected child— (a) on the grant” substituted (*prosp.*) for s. 32(4) commencing “A protected child ceases to be a protected child— (a) on the appointment” by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, Sch. 10 para. 18(4) (with **Sch. 14 para. 1(1)**)

#### Marginal Citations

- M21** 1958 c. 5 (7 & 8 Eliz. 2).(49:11).
- M22** 1980 c. 6(20).
- M23** 1983 c. 20(85).
- M24** 1983 c. 41(113:3).
- M25** 1983 c. 20(85).
- M26** 1971 c. 3(49:9).
- M27** 1973 c. 18(49:3).

### 33 Duty of local authorities to secure well-being of protected children. **E+W**

- (1) It shall be the duty of every local authority to secure that protected children within their area are visited from time to time by officers of the authority, who shall satisfy themselves as to the well-being of the children and give such advice as to their care and maintenance as may appear to be needed.
- (2) Any officer of a local authority authorised to visit protected children may, after producing, if asked to do so, some duly authenticated document showing that he is so authorised, inspect any premises in the area of the authority in which such children are to be or are being kept.

### [<sup>F80</sup>34 Removal of protected children from unsuitable surroundings. **E+W**

- (1) If a juvenile court is satisfied, on the complaint of a local authority, that a protected child is being kept or is about to be received by any person who is unfit to have his care or in any premises or any environment detrimental or likely to be detrimental to him, the court may make an order for his removal to a place of safety until he can be restored to a parent, relative or guardian of his, or until other arrangements can be made with respect to him; and on proof that there is imminent danger to the health or well-being

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of the child the power to make an order under this section may be exercised by a justice of the peace acting on the application of a person authorised to visit protected children.

- (2) An order under this section may be executed by any person authorised to visit protected children or by any constable.
- (3) A local authority may receive into their care under [F81 section 2 of the M28 Child Care Act 1980] any child removed under this section, whether or not the circumstances of the child are such that they fall within paragraphs (a) to (c) of subsection (1) of that section and notwithstanding that he may appear to the local authority to be over the age of 17 years.
- (4) Where a child is removed under this section the local authority shall, if practicable, inform a parent or guardian of the child, or any person who acts as his guardian.]

#### Textual Amendments

**F80** S. 34 repealed (*prosp.*) by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 15 (with Sch. 14 paras. 1(1), 27(4))

**F81** Words substituted by Child Care Act 1980 (c. 5, SIF 20), s. 89, Sch. 5 para. 39

#### Marginal Citations

**M28** 1980 c. 5(20)

### 35 Notices and information to be given to local authorities. **E+W**

- (1) Where a person [F82 who has a protected child in his actual custody][F82 with whom a protected child has his home] changes his permanent address he shall, not less than 2 weeks before the change, or, if the change is made in an emergency, not later than one week after the change, give notice specifying the new address to the local authority in whose area his permanent address is before the change, and if the new address is in the area of another local authority, the authority to whom the notice is given shall inform that other local authority and give them such of the following particulars as are known to them, that is to say—
  - (a) the name, sex and date and place of birth of the child;
  - (b) the name and address of every person who is a parent or guardian or acts as a guardian of the child or from whom the child was received.
- (2) If a protected child dies, the person [F83 in whose actual custody he was][F83 with whom he had his home] at his death shall within 48 hours give notice of the child's death to the local authority.

#### Textual Amendments

**F82** Words commencing “with whom” substituted (*prosp.*) for words commencing “who has” by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, Sch. 10 para. 19(1) (with Sch. 14 para. 1(1))

**F83** Words commencing “with whom” substituted (*prosp.*) for words commencing “in whose” by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, Sch. 10 para. 19(2) (with Sch. 14 para. 1(1))

### 36 Offences relating to protected children. **E+W**

- (1) A person shall be guilty of an offence if—

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- (a) being required, under section 35 to give any notice or information, he fails to give the notice within the time specified in that provision or fails to give the information within a reasonable time, or knowingly makes or causes or procures another person to make any false or misleading statement in the notice of information;
  - (b) he refuses to allow the visiting of a protected child by a duly authorised officer of a local authority or the inspection, under the power conferred by section 33(2) of any premises;
  - [<sup>F84</sup>(c) he refuses to comply with an order under section 34 for the removal of any child or obstructs any person in the execution of such an order.]
- (2) A person guilty of an offence under this section shall be liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding [<sup>F85</sup>level 5 on the standard scale] or both.

#### Textual Amendments

- F84** S. 36(1)(c) repealed (*prosp.*) by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 15 (with Sch. 14 paras. 1(1), 27(4))
- F85** Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), ss. 38, 46

### 37 Miscellaneous provisions relating to protected children. **E+W**

- [<sup>F86</sup>(1) For the purposes of section 40 of the <sup>M29</sup>Children and Young Persons Act 1933, under which a warrant authorising the search for and removal of a child may be issued on suspicion of unnecessary suffering caused to, or certain offences committed against, the child, any refusal to allow the visiting of a protected child or the inspection of any premises by a person authorised to do so under section 33 shall be treated as giving reasonable cause for such a suspicion.]
- (2) A person who maintains a protected child shall be deemed for the purposes of the <sup>M30</sup>Life Assurance Act 1774 to have no interest in the life of the child.
- [<sup>F86</sup>(3) An appeal shall lie to the Crown Court against any order made under section 34 by a juvenile court or a justice of the peace.]
- (4) Subsection (2) of section 47 of the Children and Young Persons Act 1933 (which restricts the time and place at which a sitting of a juvenile court may be held and the persons who may be present at such a sitting) shall not apply to any sitting of a juvenile court in any proceedings under section 34.]

#### Textual Amendments

- F86** S. 37(1)(3)(4) repealed (*prosp.*) by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 15 (with Sch. 14 paras. 1(1), 27(4))

#### Marginal Citations

- M29** 1933 c. 12(20).  
**M30** 1774 c. 48(67).

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## PART IV **E+W**

### STATUS OF ADOPTED CHILDREN

#### 38 Meaning of “adoption” in Part IV. **E+W**

- (1) In this Part “adoption” means adoption—
- by an adoption order;
  - by an order made under the <sup>M31</sup>Children Act 1975, the <sup>M32</sup>Adoption Act 1958, the <sup>M33</sup>Adoption Act 1950 or any enactment repealed by the Adoption Act 1950;
  - by an order made in Scotland, Northern Ireland, the Isle of Man or in any of the Channel Islands;
  - which is an overseas adoption; or
  - which is an adoption recognised by the law of England and Wales and effected under the law of any other country,
- and cognate expressions shall be construed accordingly.
- (2) The definition of adoption includes, where the context admits, an adoption effected before the passing of the <sup>M34</sup>Children Act 1975, and the date of an adoption effected by an order is the date of the making of the order.

#### Marginal Citations

- M31** 1975 c. 72(49:3).  
**M32** 1958 c. 5 (7 & 8 Eliz. 2).(49:11).  
**M33** 1950 c. 26.  
**M34** 1975 c. 72(49:3).

#### 39 Status conferred by adoption. **E+W**

- (1) An adopted child shall be treated in law—
- where the adopters are a married couple, as if he had been born as a child of the marriage (whether or not he was in fact born after the marriage was solemnized);
  - in any other case, as if he had been born to the adopter in wedlock (but not as a child of any actual marriage of the adopter).
- (2) An adopted child shall, subject to subsection (3), be treated in law as if he were not the child of any person other than the adopters or adopter.
- (3) In the case of a child adopted by one of its natural parents as sole adoptive parent, subsection (2) has no effect as respects entitlement to property depending on relationship to that parent, or as respects anything else depending on that relationship.
- (4) It is hereby declared that this section prevents an adopted child from being illegitimate.
- (5) This section has effect—
- in the case of an adoption before 1st January 1976, from that date, and
  - in the case of any other adoption, from the date of the adoption.
- (6) Subject to the provisions of this Part, this section—

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- (a) applies for the construction of enactments or instruments passed or made before the adoption or later, and so applies subject to any contrary indication; and
- (b) has effect as respects things done, or events occurring, after the adoption, or after 31st December 1975, whichever is the later.

40 ..... <sup>F87</sup> **E+W**

#### Textual Amendments

**F87** S. 40 repealed by [British Nationality Act 1981 \(c. 61, SIF 87\)](#), s. 52(8), [Sch. 9](#)

#### 41 **Adoptive relatives.** **E+W**

A relationship existing by virtue of section 39 may be referred to as an adoptive relationship, and—

- (a) a male adopter may be referred to as the adoptive father;
- (b) a female adopter may be referred to as the adoptive mother;
- (c) any other relative of any degree under an adoptive relationship may be referred to as an adoptive relative of that degree.

but this section does not prevent the term “parent”, or any other term not qualified by the word “adoptive” being treated as including an adoptive relative.

#### 42 **Rules of construction for instruments concerning property.** **E+W**

- (1) Subject to any contrary indication, the rules of construction contained in this section apply to any instrument, other than an existing instrument, so far as it contains a disposition of property.
- (2) In applying section 39(1) to a disposition which depends on the date of birth of a child or children of the adoptive parent or parents, the disposition shall be construed as if—
  - (a) the adopted child had been born on the date of adoption,
  - (b) two or more children adopted on the same date had been born on that date in the order of their actual births.
 but this does not affect any reference to the age of a child.
- (3) Examples of phrases in wills on which subsection (2) can operate are—
  1. Children of A “living at my death or born afterwards”.
  2. Children of A “living at my death or born afterwards before any one of such children for the time being in existence attains a vested interest and who attain the age of 21 years”.
  3. As in example 1 or 2, but referring to grandchildren of A instead of children of A.
  4. A for life “until he has a child”, and then to his child or children.

*Note.* Subsection (2) will not affect the reference to the age of 21 years in example 2.



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- (4) Section 39(2) does not prejudice any interest vested in possession in the adopted child before the adoption, or any interest expectant (whether immediately or not) upon an interest so vested.
- (5) Where it is necessary to determine for the purposes of a disposition of property effected by an instrument whether a woman can have a child, it shall be presumed that once a woman has attained the age of 55 years she will not adopt a child after execution of the instrument, and, notwithstanding section 39, if she does so that child shall not be treated as her child or as the child of her spouse (if any) for the purposes of the instrument.
- (6) In this section, “instrument” includes a private Act settling property, but not any other enactment.

#### 43 Dispositions depending on date of birth. **E+W**

- (1) Where a disposition depends on the date of birth of a child who was born illegitimate and who is adopted by one of the natural parents as sole adoptive parent, section 42(2) does not affect entitlement under Part II of the <sup>M35</sup>Family Law Reform Act 1969 (illegitimate children).
- (2) Subsection (1) applies for example where—
  - (a) a testator dies in 1976 bequeathing a legacy to his eldest grandchild living at a specified time,
  - (b) his daughter has an illegitimate child in 1977 who is the first grandchild,
  - (c) his married son has a child in 1978,
  - (d) subsequently the illegitimate child is adopted by the mother as sole adoptive parent,and in all those cases the daughter’s child remains the eldest grandchild of the testator throughout.

#### Marginal Citations

M35 1969 c. 46(49:7).

#### 44 Property devolving with peerages etc. **E+W**

- (1) An adoption does not affect the descent of any peerage or dignity or title of honour.
- (2) An adoption shall not affect the devolution of any property limited (expressly or not) to devolve (as nearly as the law permits) along with any peerage or dignity or title of honour.
- (3) Subsection (2) applies only if and so far as a contrary intention is not expressed in the instrument, and shall have effect subject to the terms of the instrument.

#### 45 Protection of trustees and personal representatives. **E+W**

- (1) A trustee or personal representative is not under a duty, by virtue of the law relating to trusts or the administration of estates, to enquire, before conveying or distributing any property, whether any adoption has been effected or revoked if that fact could affect entitlement to the property.

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- (2) A trustee or personal representative shall not be liable to any person by reason of a conveyance or distribution of the property made without regard to any such fact if he has not received notice of the fact before the conveyance or distribution.
- (3) This section does not prejudice the right of a person to follow the property, or any property representing it, into the hands of another person, other than a purchaser, who has received it.

#### 46 Meaning of “disposition”. **E+W**

- (1) In this Part, unless the context otherwise requires,—
  - “disposition” includes the conferring of a power of appointment and any other disposition of an interest in or right over property;
  - “power of appointment” includes any discretionary power to transfer a beneficial interest in property without the furnishing of valuable consideration.
- (2) This Part applies to an oral disposition as if contained in an instrument made when the disposition was made.
- (3) For the purposes of this Part, the death of the testator is the date at which a will or codicil is to be regarded as made.
- (4) For the purposes of this Part, provisions of the law of intestate succession applicable to the estate of a deceased person shall be treated as if contained in an instrument executed by him (while of full capacity) immediately before his death.
- (5) It is hereby declared that references in this Part to dispositions of property include references to a disposition by the creation of an entailed interest.

#### 47 Miscellaneous enactments. **E+W**

- (1) Section 39 does not apply for the purposes of the table of kindred and affinity in Schedule 1 to the <sup>M36</sup>Marriage Act 1949 or sections 10 and 11 (incest) of the <sup>M37</sup>Sexual Offences Act 1956.
- (2) ..... <sup>F88</sup> section 39 does not apply for the purposes of any provision of—
  - (a) [<sup>F89</sup>the British Nationality Act 1981]
  - (b) the <sup>M38</sup>Immigration Act 1971,
  - (c) any instrument having effect under an enactment within paragraph (a) or (b), or
  - (d) any other provision of the law for the time being in force which determines [<sup>F89</sup>British citizenship, British Dependent Territories citizenship [<sup>F90</sup>, the status of a British National (Overseas)] or British Overseas citizenship.]
- (3) ..... <sup>F91</sup>
- (4) ..... <sup>F92</sup>

#### Textual Amendments

**F88** Words repealed by [British Nationality Act 1981 \(c. 61, SIF 87\)](#), s. 52(8), [Sch. 9](#)

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- F89** Words substituted by [British Nationality Act 1981 \(c. 61, SIF 87\)](#), s. 52(6), [Sch. 7](#)  
**F90** Words inserted by [S.I. 1986/948](#), art. 8, [Sch.](#)  
**F91** S. 47(3) repealed by [Social Security Act 1986 \(c. 50, SIF 113:1\)](#), s. 86, [Sch. 11](#)  
**F92** S. 47(4)(5) repealed by [Social Security Act 1988 \(c. 7, SIF 113:1\)](#), ss. 16, 19(3), [Sch. 5](#)

#### Marginal Citations

- M36** [1949 c. 76\(49:1\)](#).  
**M37** [1956 c. 69\(39:5\)](#).  
**M38** [1971 c. 77\(62\)](#).

#### 48 Pensions. **E+W**

Section 39(2) 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.

#### 49 Insurance. **E+W**

Where a child is adopted whose natural parent has effected an insurance with a friendly society or a collecting society or an industrial 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.

### PART V **E+W+S**

#### REGISTRATION AND REVOCATION OF ADOPTION ORDERS AND CONVENTION ADOPTIONS

#### 50 Adopted Children Register. **E+W**

- (1) The Registrar General shall maintain at the General Register Office a register, to be called the Adopted Children Register, in which shall be made such entries as may be directed to be made therein by adoption orders, but no other entries.
- (2) A certified copy of an entry in the Adopted Children Register, if purporting to be sealed or stamped with the seal of the General Register Office, shall, without any further or other proof of that entry, be received as evidence of the adoption to which it relates and, where the entry contains a record of the date of the birth or the country or the district and sub-district of the birth of the adopted person, shall also be received as aforesaid as evidence of that date or country or district and sub-district in all respects as if the copy were a certified copy of an entry in the Registers of Births.
- (3) The Registrar General shall cause an index of the Adopted Children Register to be made and kept in the General Register Office; and every person shall be entitled to search that index and to have a certified copy of any entry in the Adopted Children Register in all respects upon and subject to the same terms, conditions and regulations as to payments of fees and otherwise as are applicable under the <sup>M39</sup>Births and Deaths Registration Act 1953, and the <sup>M40</sup>Registration Service Act 1953, in respect of searches in other indexes kept in the General Register Office and in respect of the supply from that office of certified copies of entries in the certified copies of the Registers of Births and Deaths.

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- (4) The Registrar General shall, in addition to the Adopted Children Register and the index thereof, keep such other registers and books, and make such entries therein, as may be necessary to record and make traceable the connection between any entry in the Registers of Births which has been marked “Adopted” and any corresponding entry in the Adopted Children Register.
- (5) The registers and books kept under subsection (4) shall not be, nor shall any index thereof be, open to public inspection or search, and the Registrar General shall not furnish any person with any information contained in or with any copy or extracted from any such registers or books except in accordance with section 51 or under an order of any of the following courts, that is to say—
  - (a) the High Court;
  - (b) the Westminster County Court or such other county court as may be prescribed; and
  - (c) the court by which an adoption order was made in respect of the person to whom the information, copy or extract relates.
- (6) In relation to an adoption order made by a magistrates’ court, the reference in paragraph (c) of subsection (5) to the court by which the order was made includes a reference to a court acting for the same petty sessions area.
- (7) Schedule 1 to this Act, which, among other things, provides for the registration of adoptions and the amendment of adoption orders, shall have effect.

#### Marginal Citations

**M39** 1953 c. 20(105).

**M40** 1953 c. 37(105).

## 51 Disclosure of birth records of adopted children. **E+W+S**

- (1) Subject to <sup>F93</sup>subsections (4) and (6)]<sup>F93</sup>what follows], the Registrar General shall on an application made in the prescribed manner by an adopted person a record of whose birth is kept by the Registrar General and who has attained the age of 18 years supply to that person on payment of the prescribed fee (if any) such information as is necessary to enable that person to obtain a certified copy of the record of his birth.
- (2) On an application made in the prescribed manner by an adopted person under the age of 18 years, a record of whose birth is kept by the Registrar General and who is intending to be married in England or Wales, and on payment of the prescribed fee (if any), the Registrar General shall inform the applicant whether or not it appears from information contained in the registers of live births or other records that the applicant and the person whom he intends to marry may be within the prohibited degrees of relationship for the purposes of the <sup>M41</sup>Marriage Act 1949.
- <sup>X10</sup>[ It shall be the duty of the Registrar General and each local authority and approved <sup>F94</sup>(3) adoption society to provide counselling for adopted persons who apply for information under subsection (1).]
- (4) Before supplying any information to an applicant under subsection (1) the Registrar General shall inform the applicant that counselling services are available to him—
  - (a) at the General Register Office; or

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- (b) from the local authority for the area where the applicant is at the time the application is made; or
  - (c) from the local authority for the area where the court sat which made the adoption order relating to the applicant; or
  - (d) if the applicant’s adoption was arranged by an adoption society which is approved under section 3 of this Act or under section 4 of the <sup>M42</sup>Children Act 1975, from that society.
- (5) If the applicant chooses to receive counselling from a local authority or an adoption society under subsection (4) the Registrar General shall send to the authority or society of the applicant’s choice the information to which the applicant is entitled under subsection (1).
- (6) The Registrar General shall not supply a person who was adopted before 12th November 1975 with any information under subsection (1) unless that person has attended an interview with a counsellor either at the General Register Office or in pursuance of arrangements made by the local authority or adoption society from whom the applicant is entitled to receive counselling in accordance with subsection (4).
- (7) In this section, “prescribed” means prescribed by regulations made by the Registrar General.]
- [<sup>F95</sup>(3) Before supplying any information to an applicant under subsection (1), the Registrar General shall inform the applicant that counselling services are available to him—
- (a) if he is in England and Wales—
    - (i) at the General Register Office;
    - (ii) from the local authority in whose area he is living;
    - (iii) where the adoption order relating to him was made in England and Wales, from the local authority in whose area the court which made the order sat; or
    - (iv) from any other local authority;
  - (b) if he is in Scotland—
    - (i) from the regional or islands council in whose area he is living;
    - (ii) where the adoption order relating to him was made in Scotland, from the council in whose area the court which made the order sat; or
    - (iii) from any other regional or islands council;
  - (c) if he is in Northern Ireland—
    - (i) from the Board in whose area he is living;
    - (ii) where the adoption order relating to him was made in Northern Ireland, from the Board in whose area the court which made the order sat; or
    - (iii) from any other Board;
  - (d) if he is in the United Kingdom and his adoption was arranged by an adoption society—
    - (i) approved under section 3,
    - (ii) approved under section 3 of the <sup>M43</sup>Adoption (Scotland) Act 1978,
    - (iii) registered under Article 4 of the <sup>M44</sup>Adoption (Northern Ireland) Order 1987,
 from that society.
- (4) Where an adopted person who is in England and Wales—

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- (a) applies for information under—
    - (i) subsection (1), or
    - (ii) Article 54 of the Adoption (Northern Ireland) Order 1987, or
  - (b) is supplied with information under section 45 of the Adoption (Scotland) Act 1978,
- it shall be the duty of the persons and bodies mentioned in subsection (5) to provide counselling for him if asked by him to do so.
- (5) The persons and bodies are—
    - (a) the Registrar General;
    - (b) any local authority falling within subsection (3)(a)(ii) to (iv);
    - (c) any adoption society falling within subsection (3)(d) in so far as it is acting as an adoption society in England and Wales.
  - (6) If the applicant chooses to receive counselling from a person or body falling within subsection (3), the Registrar General shall send to the person or body the information to which the applicant is entitled under subsection (1).
  - (7) Where a person—
    - (a) was adopted before 12th November 1975, and
    - (b) applies for information under subsection (1),

the Registrar General shall not supply the information to him unless he has attended an interview with a counsellor arranged by a person or body from whom counselling services are available as mentioned in subsection (3).
  - (8) Where the Registrar General is prevented by subsection (7) from supplying information to a person who is not living in the United Kingdom, he may supply the information to any body which—
    - (a) the Registrar General is satisfied is suitable to provide counselling to that person, and
    - (b) has notified the Registrar General that it is prepared to provide such counselling.
  - (9) In this section—
    - “a Board” means a Health and Social Services Board established under Article 16 of the <sup>M45</sup>Health and Personal Social Services (Northern Ireland) Order 1972; and
    - “prescribed” means prescribed by regulations made by the Registrar General.]

#### **Editorial Information**

**X10** S. 51(3)–(9) commencing “(3) Before supplying any information” substituted (*prosp.*) for subsections (3)–(7) commencing “(3) It shall be the duty” by [Children Act 1989 \(c. 41, SIF 20\)](#), ss. 88, 108, [Sch. 10 para. 20\(2\)](#) (with [Sch. 14 para. 1\(1\)](#))

#### **Textual Amendments**

**F93** Words “what follows” substituted (*prosp.*) for “subsections (4) and (6)” by [Children Act 1989 \(c. 41, SIF 20\)](#), ss. 88, 108, [Sch. 10 para. 20\(1\)](#) (with [Sch. 14 para. 1\(1\)](#))

**F94** S. 51(3) repealed (S.) by [Adoption \(Scotland\) Act 1978 \(c. 28, SIF 49:11\)](#), s. 66, [Sch. 2 paras. 3, 5](#), [Sch. 4](#)

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**F95** S. 51(3)–(9) commencing “(3) Before supplying any information” substituted (*prosp.*) for subsections (3)–(7) commencing “(3) It shall be the duty” by **Children Act 1989 (c. 41, SIF 20)**, ss. 88, 108, Sch. 10 para. 20(2) (with **Sch. 14 para. 1(1)**)

**Marginal Citations****M41** 1949 c. 76(49:1).**M42** 1975 c. 72(49:3).**M43** 1978 c.28(49:11).**M44** S.I. 1987/2203 (N.I. 22).**M45** S.I. 1972/1265 (N.I. 14).**[<sup>F96</sup>51A Adoption Contact Register. E+W**

- (1) The Registrar General shall maintain at the General Register Office a register to be called the Adoption Contact Register.
- (2) The register shall be in two parts—
  - (a) Part I: Adopted Persons; and
  - (b) Part II: Relatives.
- (3) The Registrar General shall, on payment of such fee as may be prescribed, enter in Part I of the register the name and address of any adopted person who fulfils the conditions in subsection (4) and who gives notice that he wishes to contact any relative of his.
- (4) The conditions are that—
  - (a) a record of the adopted person’s birth is kept by the Registrar General; and
  - (b) the adopted person has attained the age of 18 years and—
    - (i) has been supplied by the Registrar General with information under section 51; or
    - (ii) has satisfied the Registrar General that he has such information as is necessary to enable him to obtain a certified copy of the record of his birth.
- (5) The Registrar General shall, on payment of such fee as may be prescribed, enter in Part II of the register the name and address of any person who fulfils the conditions in subsection (6) and who gives notice that he wishes to contact an adopted person.
- (6) The conditions are that—
  - (a) a record of the adopted person’s birth is kept by the Registrar General; and
  - (b) the person giving notice under subsection (5) has attained the age of 18 years and has satisfied the Registrar General that—
    - (i) he is a relative of the adopted person; and
    - (ii) he has such information as is necessary to enable him to obtain a certified copy of the record of the adopted person’s birth.
- (7) The Registrar General shall, on receiving notice from any person named in an entry in the register that he wishes the entry to be cancelled, cancel the entry.
- (8) Any notice given under this section must be in such form as may be determined by the Registrar General.

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- (9) The Registrar General shall transmit to an adopted person whose name is entered in Part I of the register the name and address of any relative in respect of whom there is an entry in Part II of the register.
- (10) Any entry cancelled under subsection (7) ceases from the time of cancellation to be an entry for the purposes of subsection (9).
- (11) The register shall not be open to public inspection or search and the Registrar General shall not supply any person with information entered in the register (whether in an uncanceled or a cancelled entry) except in accordance with this section.
- (12) The register may be kept by means of a computer.
- (13) In this section—
  - (a) “relative” means any person (other than an adoptive relative) who is related to the adopted person by blood (including half-blood) or marriage;
  - (b) “address” includes any address at or through which the person concerned may be contacted; and
  - (c) “prescribed” means prescribed by the Secretary of State.]

#### Textual Amendments

**F96** S. 51A inserted (1.5.1991) by Children Act 1989 (c. 41, SIF 20), s. 88, **Sch. 10 para.21** (with Sch. 14 para. 1(1)); S.I. 1991/828, **art. 3(1)**

#### Modifications etc. (not altering text)

**C11** S. 51A: transfer of functions (W.) (1.7.1999) by S.I. 1999/672, art. 2, **Sch. 1**

## 52 Revocation of adoptions on legitimization. **E+W**

- (1) Where any person adopted by his father or mother alone has subsequently become a legitimated person on the marriage of his father and mother, the court by which the adoption order was made may, on the application of any of the parties concerned, revoke that order.
- (2) Where any person legitimated by virtue of section 1 of the <sup>M46</sup>Legitimacy Act 1959, had been adopted by his father and mother before the commencement of that Act, the court by which the adoption order was made may, on the application of any of the parties concerned, revoke that order.
- (3) Where a person adopted by his father or mother alone by virtue of a regulated adoption has subsequently become a legitimated person on the marriage of his father and mother, the High Court may, upon an application under this subsection by the parties concerned, by order revoke the adoption.
- (4) In relation to an adoption order made by a magistrates’ court, the reference in subsections (1) and (2) to the court by which the order was made includes a reference to a court acting for the same petty sessions area.

#### Marginal Citations

**M46** 1959 c. 73(49:7).



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### 53 Annulment etc. of overseas adoptions. **E+W**

- (1) The High Court may, upon an application under this subsection, by order annul a regulated adoption [<sup>F97</sup>or an adoption effected by a Convention adoption order]—
  - (a) on the ground that at the relevant time the adoption was prohibited by a notified provision, if under the internal law then in force in the country of which the adopter was then a national or the adopters were then nationals the adoption could have been impugned on that ground;
  - (b) on the ground that at the relevant time the adoption contravened provisions relating to consents of the internal law relating to adoption of the country of which the adopted person was then a national, if under that law the adoption could then have been impugned on that ground;
  - (c) on any other ground on which the adoption can be impugned under the law for the time being in force in the country in which the adoption was effected.
- (2) The High Court may, upon an application under this subsection—
  - (a) order that an overseas adoption or a determination shall cease to be valid in Great Britain 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;
  - (b) decide the extent, if any, to which a determination has been affected by a subsequent determination.
- (3) Any court in Great Britain may, in any proceedings in that court, decide that an overseas adoption or a determination shall, for the purposes of those proceedings, be treated as invalid in Great Britain on either of the grounds mentioned in subsection (2).
- (4) An order or decision of the Court of Session on an application under subsection (3) of section 6 of the <sup>M47</sup>Adoption Act 1968 shall be recognised and have effect as if it were an order or decision of the High Court on an application under subsection (3) of this section.
- (5) Except as provided by this section and section 52(3) the validity of an overseas adoption or a determination shall not be impugned in England and Wales in proceedings in any court.

#### Textual Amendments

**F97** Words inserted by [Domestic Proceedings and Magistrates' Courts Act 1978 \(c. 22, SIF 49:3\)](#), ss. 74(2), 89(1), [Sch. 1](#)

#### Marginal Citations

**M47** [1968 c. 53\(49:11\)](#).

### 54 Provisions supplementary to ss. 52(3) and 53. **E+W**

- (1) Any application for an order under section 52(3) or 53 or a decision under section 53(3) shall be made in the prescribed manner and within such period, if any, as may be prescribed.
- (2) No application shall be made under section 52(3) or section 53(1) in respect of an adoption unless immediately before the application is made the person adopted or the

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adopter habitually resides in England and Wales or, as the case may be, both adopters habitually reside there.

(3) In deciding in pursuance of section 53 whether such an authority as is mentioned in section 59 was competent to entertain a particular case, a court shall be 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.

(4) In section 53—

“determination” means such a determination as is mentioned in section 59 of this Act;

“notified provision” means a provision specified in an order of the Secretary of State as one in respect of which a notification to or by the Government of the United Kingdom was in force at the relevant time in pursuance of the provisions of the Convention relating to prohibitions contained in the national law of the adopter; and

“relevant time” means the time when the adoption in question purported to take effect under the law of the country in which it purports to have been effected.

## PART VI U.K.

### MISCELLANEOUS AND SUPPLEMENTAL

#### 55 Adoption of children abroad. E+W

- (1) Where on an application made in relation to a child by a person who is not domiciled in England and Wales or Scotland [<sup>F98</sup>or Northern Ireland] an authorised court is satisfied that he intends to adopt the child under the law of or within the country in which the applicant is domiciled, the court may, subject to the following provisions of this section, make an order [<sup>F99</sup>vesting in him the parental rights and duties relating to the child][<sup>F99</sup>giving him parental responsibility for the child].
- (2) The provisions of Part II relating to adoption orders, except sections 12(1), 14(2), 15(2), 17 to 21 and 25, shall apply in relation to orders under this section as they apply in relation to adoption orders subject to the modification that in section 13(1) for “19” and “13” there are substituted “32” and “26” respectively.
- (3) Sections 50 and 51 and paragraphs 1 and 2(1) of Schedule 1 shall apply in relation to an order under this section as they apply in relation to an adoption order except that any entry in the Registers of Births, or the Adopted Children Register which is required to be marked in consequence of the making of an order under this section shall, in lieu of being marked with the word “Adopted” or “Re-adopted” (with or without the addition of the [<sup>F100</sup>word “(Scotland)”][<sup>F100</sup>words “(Scotland)” or “(Northern Ireland)”].], be marked with the words “Proposed foreign adoption” or “Proposed foreign re-adoption”, as the case may require.
- [<sup>F101</sup>(4) References in sections 27, 28, 30, 31 and 32 to an adoption order include references to an order under this section or under section 25 of the <sup>M48</sup>Children Act 1975 (orders in Scotland authorising adoption abroad).]

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#### Textual Amendments

- F98** Words inserted (*prosp.*) by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, Sch. 10 para. 22(1) (with **Sch. 14 para. 1(1)**)
- F99** Words commencing “giving him” substituted (*prosp.*) for words commencing “vesting in him” by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, Sch. 10 para. 22(1) (with **Sch. 14 para. 1(1)**)
- F100** Words “words “(Scotland)” or “Northern Ireland”.” substituted (*prosp.*) for “words “(Scotland)”” by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, Sch. 10 para. 22(2) (with **Sch. 14 para. 1(1)**)
- F101** S. 55(4) repealed (*prosp.*) by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 15 (with Sch. 14 paras. 1(1), **27(4)**)

#### Modifications etc. (not altering text)

- C12** S. 55 amended (*prosp.*) by Children Act 1989 (c. 41, SIF 20), ss. 12(3)(b), 108 (with **Sch. 14 para. 1(1)**)

#### Marginal Citations

- M48** 1975 c. 72(49:3).

## 56 Restriction on removal of children for adoption outside Great Britain. **E+W**

- (1) Except under the authority of an order under section 55, [<sup>F102</sup>or under section 25 of the Children Act 1975 (orders in Scotland authorising adoption abroad)] [<sup>F102</sup>section 49 of the <sup>M49</sup>Adoption (Scotland) Act 1978 or Article 57 of the <sup>M50</sup>Adoption (Northern Ireland) Order 1987] it shall not be lawful for any person to take or send a child who is a British subject or a citizen of the Republic of Ireland out of Great Britain to any place outside the [<sup>F103</sup>British Islands] [<sup>F103</sup>United Kingdom, the Channel Islands and the Isle of Man] with a view to the adoption of the child by any person not being a parent or guardian or relative of the child; and any person who takes or sends a child out of Great Britain to any place in contravention of this subsection, or makes or takes part in any arrangements for [<sup>F104</sup>transferring the actual custody of a child to] [<sup>F104</sup>placing a child with] any person for that purpose, shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding [<sup>F105</sup>level 5 on the standard scale] or both.
- (2) In any proceedings under this section, a report by a British consular officer or a deposition made before a British consular officer and authenticated under the signature of that officer shall, upon proof that the officer or the deponent cannot be found in the United Kingdom, be admissible as evidence of the matters stated therein, and it shall not be necessary to prove the signature or official character of the person who appears to have signed any such report or deposition.
- (3) A person shall be deemed to take part in arrangements for [<sup>F106</sup>transferring the actual custody of a child to] [<sup>F106</sup>placing a child with] a person for the purpose referred to in subsection (1) if—
- he facilitates the placing of the child [<sup>F107</sup>in the actual custody of] [<sup>F107</sup>with] that person; or
  - he initiates or takes part in any negotiations of which the purpose or effect is the conclusion of any agreement or the making of any arrangement therefor, and if he causes another person to do so.

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### Textual Amendments

- F102** Words commencing “section 49” substituted (*prosp.*) for words commencing “or under” by [Children Act 1989 \(c. 41, SIF 20\)](#), ss. 88, 108, [Sch. 10 para. 23\(2\)\(a\)](#) (with [Sch. 14 para. 1\(1\)](#))
- F103** Words commencing “United Kingdom,” substituted (*prosp.*) for “British Islands” by [Children Act 1989 \(c. 41, SIF 20\)](#), ss. 88, 108, [Sch. 10 para. 23\(2\)\(b\)](#) (with [Sch. 14 para. 1\(1\)](#))
- F104** Words “placing a child with” substituted (*prosp.*) for “transferring the actual custody of a child to” by [Children Act 1989 \(c. 41, SIF 20\)](#), ss. 88, 108, [Sch. 10 para. 23\(1\)\(a\)](#) (with [Sch. 14 para. 1\(1\)](#))
- F105** Words substituted by virtue of [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), ss. 38, 46
- F106** Words “placing a child with” substituted (*prosp.*) for “transferring the actual custody of a child to” by [Children Act 1989 \(c. 41, SIF 20\)](#), ss. 88, 108, [Sch. 10 para. 23\(1\)\(a\)](#) (with [Sch. 14 para. 1\(1\)](#))
- F107** Word “with” substituted (*prosp.*) for “in the actual custody of” by [Children Act 1989 \(c. 41, SIF 20\)](#), ss. 88, 108, [Sch. 10 para. 23\(1\)\(b\)](#) (with [Sch. 14 para. 1\(1\)](#))

### Modifications etc. (not altering text)

- C13** [S. 56](#) excluded by [Child Care Act 1980 \(c. 5, SIF 20\)](#), s. 24(5) (the said Act of 1980 repealed (*prosp.*) by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108, [Sch. 2 para. 19\(6\)](#) (with [Sch. 14 para. 1\(1\)](#))
- C14** [S. 56](#) excluded (*prosp.*) by [Children Act 1989 \(c. 41, SIF 20\)](#), ss. 17, 23, 108, [Sch. 2 para. 19\(6\)](#) (with [Sch. 14 para. 1\(1\)](#))

### Marginal Citations

- M49** 1978 c.28(49:11).
- M50** S.I. 1987/2203 (N.I. 22).

## [56A <sup>F108</sup> Restriction on bringing children into the United Kingdom for adoption **U.K.**

- (1) A person habitually resident in the British Islands who at any time brings into the United Kingdom for the purpose of adoption a child who is habitually resident outside those Islands shall be guilty of an offence unless such requirements as may be prescribed by regulations made by the Secretary of State are satisfied either—
  - (a) before that time; or
  - (b) within such period beginning with that time as may be so prescribed.
- (2) Subsection (1) does not apply where the child is brought into the United Kingdom for the purpose of adoption by a parent, guardian or relative.
- (3) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding three months, or a fine not exceeding level 5 on the standard scale, or both.
- (4) Proceedings for an offence under this section may be brought within a period of six months from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to his knowledge; but no such proceedings shall be brought by virtue of this subsection more than three years after the commission of the offence.]

### Textual Amendments

- F108** [S. 56A](#) inserted (30.4.2001) by [1999 c. 18, s. 14](#); [S.I. 2001/1279, art. 2](#)

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**Modifications etc. (not altering text)**

C15 S. 56A restricted (23.1.2003) by 1999 c. 18, ss. 16(1), 18(3); S.I. 2003/189, art. 2(1)(a)

**57 Prohibition on certain payments. E+W**

- (1) Subject to the provisions of this section, it shall not be lawful to make or give to any person any payment or reward for or in consideration of—
  - (a) the adoption by that person of a child;
  - (b) the grant by that person of any agreement or consent required in connection with the adoption of a child;
  - (c) the [F109transfer by that person of the actual custody of a child][F109handing over of a child by that person] with a view to the adoption of the child; or
  - (d) the making by that person of any arrangements for the adoption of a child.
- (2) Any person who makes or gives, or agrees or offers to make or give, any payment or reward prohibited by this section, or who receives or agrees to receive or attempts to obtain any such payment or reward, shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding [F110level 5 on the standard scale] or to both; [F111and the court may order any child in respect of whom the offence was committed to be removed to a place of safety until he can be restored to his parents or guardian or until other arrangements can be made for him.]
- (3) This section does not apply to any payment made to an adoption agency by a parent or guardian of a child or by a person who adopts or proposes to adopt a child, being a payment in respect of expenses reasonably incurred by the agency in connection with the adoption of the child, or to any payment or reward authorised by the court to which an application for an adoption order in respect of a child is made.

[F112(3A) This section does not apply to—

- (a) any payment made by an adoption agency to a person who has applied or proposes to apply to a court for an adoption order or an order under section 55 (adoption of children abroad), being a payment of or towards any legal or medical expenses incurred or to be incurred by that person in connection with the application; or
- (b) any payment made by an adoption agency to another adoption agency in consideration of the placing of a child [F113in the actual custody of][F113with] any person with a view to the child's adoption; or
- (c) any payment made by an adoption agency to a voluntary organisation for the time being approved for the purposes of this paragraph by the Secretary of State as a fee for the services of that organisation in putting that adoption agency into contact with another adoption agency with a view to the making of arrangements between the adoption agencies for the adoption of a child.

In paragraph (c) “voluntary organisation” means a body, other than a public or local authority, the activities of which are not carried on for profit.]

[F114(4) If an adoption agency submits to the Secretary of State a scheme for the payment by the agency of allowances to persons who have adopted or intend to adopt a child where arrangements for the adoption were made, or are to be made, by that agency, and the Secretary of State approves the scheme, this section shall not apply to any payment made in accordance with the scheme.

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- (5) The Secretary of State, in the case of a scheme approved by him under subsection (4), may at any time—
- (a) make, or approve the making by the agency of, alterations to the scheme;
  - (b) revoke the scheme.
- (6) The Secretary of State shall, within seven years of the date on which section 32 of the <sup>M51</sup>Children Act 1975 came into force and, thereafter, every five years, publish a report on the operation of the schemes since that date or since the publication of the last report.]
- (7) ..... <sup>F115</sup>
- [<sup>F116</sup>(8) The Secretary of State may by order made by statutory instrument at any time before the said anniversary repeal subsection (7) of this section.
- (9) An order under subsection (8) of this section shall not be made unless a report has been published under subsection (6) of this section.
- (10) Notwithstanding the expiry of subsection (4) of this section or the revocation of a scheme approved under this section, subsection (1) of this section shall not apply in relation to any payment made, whether before or after the expiry of subsection (4) or the revocation of the scheme, in accordance with a scheme which was approved under this section to a person to whom such payments were made—
- (a) where the scheme was not revoked, before the expiry of subsection (4), or
  - (b) if the scheme was revoked, before the date of its revocation.]

#### Textual Amendments

- F109** Words commencing “handing over” substituted (*prosp.*) for words commencing “transfer by” by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, Sch. 10 para. 24(1) (with **Sch. 14 para. 1(1)**)
- F110** Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), ss. 38, 46
- F111** Words repealed (*prosp.*) by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 15 (with Sch. 14 paras. 1(1), **27(4)**)
- F112** S. 57(3A) inserted by Criminal Law Act 1977 (c. 45, SIF 39:1), s. 65, **Sch. 12**
- F113** Word “with” substituted (*prosp.*) for “in the actual custody of” by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, Sch. 10 para. 24(2) (with **Sch. 14 para. 1(1)**)
- F114** S. 57(4)–(6) repealed (*prosp.*) by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 15 (with Sch. 14 paras. 1(1), **27(4)**)
- F115** S. 57(7) repealed by S.I. 1989/166, **art.2** (and expressed to be repealed (*prosp.*) by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 15 (with Sch. 14 paras. 1(1), **27(4)**)
- F116** S. 57(8)–(10) repealed (*prosp.*) by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 15 (with Sch. 14 paras. 1(1), **27(4)**)

#### Marginal Citations

- M51** 1975 c. 72(49:3).

#### [<sup>F117</sup>57A Permitted allowances. **U.K.**

- (1) The Secretary of State may make regulations for the purpose of enabling adoption agencies to pay allowances to persons who have adopted, or intend to adopt, children in pursuance of arrangements made by the agencies.

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- (2) Section 57(1) shall not apply to any payment made by an adoption agency in accordance with the regulations.
- (3) The regulations may, in particular, make provision as to—
  - (a) the procedure to be followed by any agency in determining whether a person should be paid an allowance;
  - (b) the circumstances in which an allowance may be paid;
  - (c) the factors to be taken into account in determining the amount of an allowance;
  - (d) the procedure for review, variation and termination of allowances; and
  - (e) the information about allowances to be supplied by any agency to any person who is intending to adopt a child.
- (4) Any scheme approved under section 57(4) shall be revoked as from the coming into force of this section.
- (5) Section 57(1) shall not apply in relation to any payment made—
  - (a) in accordance with a scheme revoked under subsection (4) or section 57(5) (b); and
  - (b) to a person to whom such payments were made before the revocation of the scheme.
- (6) Subsection (5) shall not apply where any person to whom any payments may lawfully be made by virtue of subsection (5) agrees to receive (instead of such payments) payments complying with regulations made under this section.]

#### Textual Amendments

**F117** S. 57A inserted (14.10.1991) by [Children Act 1989 \(c. 41, SIF 20\)](#), ss. 88, 108, [Sch. 10 para.25](#) (with [Sch. 14 para. 1\(1\)](#)); S.I. 1991/828, [art. 3\(2\)](#)

#### Modifications etc. (not altering text)

**C16** S. 57A: transfer of functions (W.) (1.7.1999) by s.I. 1999/672, art. 2, Sch. 1

## 58 Restriction on advertisements. **U.K.**

- (1) It shall not be lawful for any advertisement to be published indicating—
  - (a) that the parent or guardian of a child desires to cause a child to be adopted; or
  - (b) that a person desires to adopt a child; or
  - (c) that any person (not being an adoption agency) is willing to make arrangements for the adoption of a child.
- (2) Any person who causes to be published or knowingly publishes an advertisement in contravention of the provisions of this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding [<sup>F118</sup>level 5 on the standard scale].

#### Textual Amendments

**F118** Words substituted by virtue of [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), ss. 38, 46

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**[<sup>F119</sup>58A Information concerning adoption. E+W**

- (1) Every local authority and every approved adoption society shall transmit to the Secretary of State, at such times and in such form as he may direct, such particulars as he may require with respect—
  - (a) to their performance of all or any of their functions under the enactments mentioned in subsection (2) below; and
  - (b) to the children and other persons in relation to whom they have exercised those functions.
- (2) The enactments referred to in subsection (1) above are—
  - (a) the <sup>M52</sup>Adoption Act 1958;
  - (b) Part I of the <sup>M53</sup>Children Act 1975; and
  - (c) this Act.
- (3) The clerk of each magistrates' court shall transmit to the Secretary of State, at such times and in such form as he may direct, such particulars as he may require with respect to the proceedings of the court under the enactments mentioned in subsection (2) above.
- (4) The Secretary of State shall publish from time to time abstracts of the particulars transmitted to him under subsections (1) and (3) above.]

**Textual Amendments**

**F119** S. 58A inserted by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113:3\)](#), s. 9, [Sch. 2 para. 35](#)

**Modifications etc. (not altering text)**

**C17** S. 58A: transfer of functions (W) (1.7.1999) by [S.I. 1999/672](#), art. 2, [Sch. 1](#)

**Marginal Citations**

**M52** 1958 c. 5 (7 & 8 Eliz. 2).(49:11).

**M53** 1975 c. 72(49:3).

**59 Effect of determination and orders made in Scotland and overseas in adoption proceedings. E+W**

- (1) Where an authority of a Convention country or any British territory other than [<sup>F120</sup>Great Britain][<sup>F120</sup>the United Kingdom] having power under the law of that country or territory—
  - (a) to authorise or review the authorisation of a regulated adoption or a specified order; or
  - (b) to give or review a decision revoking or annulling a regulated adoption, a specified order or a Convention adoption order,
 makes a determination in the exercise of that power, then, subject to sections 52(3) and 53 and any subsequent determination having effect under this subsection, the determination shall have effect in England and Wales for the purpose of effecting, confirming or terminating the adoption in question or confirming its termination, as the case may be.



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[<sup>X11</sup>(2) Subsections (2) and (3) of section 12 shall apply in relation to an order under section 14 of the <sup>M54</sup>Children Act 1975 (freeing children for adoption in Scotland) as if the order were an adoption order; and, on the revocation of the order under section 16 of that Act, any duty extinguished by section 12(3)(b) is forthwith revived but the revival does not have the effect as respects anything done or not done before the revival.]

[<sup>F121</sup>(2) Subsections (2) to (4) of section 12 shall apply in relation to an order freeing a child for adoption (other than an order under section 18) as if it were an adoption order; and, on the revocation in Scotland or Northern Ireland of an order freeing a child for adoption, subsections (3) and (3A) of section 20 shall apply as if the order had been revoked under that section.]

(3) Sections 12(3) and (4) and 49 apply in relation to a child who is the subject of an order which is similar to an order under section 55 and is made (whether before or after this Act has effect) in Scotland, Northern Ireland, the Isle of Man or any of the Channel Islands, as they apply in relation to a child who is the subject of an adoption order.

#### Editorial Information

**X11** S. 59(2) commencing “Subsections (2) to (4)” substituted (*prosp.*) for s. 59(2) commencing “Subsections (2) and (3)” by [Children Act 1989 \(c. 41, SIF 20\)](#), ss. 88, 108, [Sch. 10 para. 26\(2\)](#) (with [Sch. 14 para. 1\(1\)](#))

#### Textual Amendments

**F120** Words “the United Kingdom” substituted (*prosp.*) for “Great Britain” by [Children Act 1989 \(c. 41, SIF 20\)](#), ss. 88, 108, [Sch. 10 para. 26\(1\)](#) (with [Sch. 14 para. 1\(1\)](#))

**F121** S. 59(2) commencing “Subsections (2) to (4)” substituted (*prosp.*) for s. 59(2) commencing “Subsections (2) and (3)” by [Children Act 1989 \(c. 41, SIF 20\)](#), ss. 88, 108, [Sch. 10 para. 26\(2\)](#) (with [Sch. 14 para. 1\(1\)](#))

#### Marginal Citations

**M54** [1975 c. 72\(49:3\)](#).

## 60 Evidence of adoption in Scotland and Northern Ireland. E+W

Any document which is receivable as evidence of any matter—

- (a) in Scotland under [<sup>F122</sup>section 22(2) of the <sup>M55</sup>Adoption Act 1958][<sup>F122</sup>section 45(2) of the Adoption (Scotland) Act 1978]; or
- (b) in Northern Ireland under [<sup>F123</sup>section 23(4) of the <sup>M56</sup>Adoption Act (Northern Ireland) 1967 or any corresponding provision contained in a Measure of the Northern Ireland Assembly for the time being in force][<sup>F123</sup>Article 63(1) of the Adoption (Northern Ireland) Order 1987],

shall also be so receivable in England and Wales.

#### Textual Amendments

**F122** Words commencing “section 45(2)” substituted (*prosp.*) for words commencing “section 22(2)” by [Children Act 1989 \(c. 41, SIF 20\)](#), ss. 88, 108, [Sch. 10 para. 27](#) (with [Sch. 14 para. 1\(1\)](#))

**F123** Words commencing “Article 63(1)” substituted (*prosp.*) for words commencing “section 23(4)” by [Children Act 1989 \(c. 41, SIF 20\)](#), ss. 88, 108, [Sch. 10 para. 27](#) (with [Sch. 14 para. 1\(1\)](#))

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#### Marginal Citations

**M55** 1958 c. 5 (7 & 8 Eliz. 2).(49:11).

**M56** 1967 c. 35 (N.I.).

### 61 Evidence of agreement and consent. **U.K.**

- (1) Any agreement or consent which is required by this Act to be given to the making of an order or application for an order (other than an order to which section 17(6) applies) may be given in writing, and, if the document signifying the agreement or consent is witnessed in accordance with rules, it shall be admissible in evidence without further proof of the signature of the person by whom it was executed.
- (2) A document signifying such agreement or consent which purports to be witnessed in accordance with rules shall be presumed to be so witnessed, and to have been executed and witnessed on the date and at the place specified in the document, unless the contrary is proved.

### 62 Courts. **E+W**

- (1) In this Act, “authorised court”, as respects an application for an order relating to a child, shall be construed as follows.
- (2) Subject to subsections (4) to (6), if the child is in England or Wales when the application is made, the following are authorised courts—
  - (a) the High Court;
  - (b) the county court within whose district the child is, and, in the case of an application for an order freeing a child for adoption, any county court within whose district a parent or guardian of the child is;
  - (c) any other county court prescribed by rules made under [<sup>F124</sup>[<sup>F125</sup>section 75 of the <sup>M57</sup>County Courts Act 1984]][<sup>F124</sup>section 66(1) of this Act;]
  - (d) a magistrates’ court within whose area the child is, and, in the case of an application for an order freeing the child for adoption, a magistrates’ court within whose area a parent or guardian of the child is.
- (3) If, in the case of an application for an adoption order or for an order freeing a child for adoption, the child is not in Great Britain when the application is made, the High Court is the authorised court.
- (4) In the case of an application for a Convention adoption order, paragraphs (b), (c) and (d) of subsection (2) do not apply.
- (5) Subsection (2) does not apply in the case of an application under section 29 but for the purposes of such an application the following are authorised courts—
  - (a) if there is pending in respect of the child an application for an adoption order or an order freeing him for adoption, the court in which that application is pending;
  - (b) if paragraph (a) does not apply and there is no application for an order under [<sup>F126</sup>section 8 or 14 of the <sup>M58</sup>Children Act 1975 (which make provision in Scotland for adoption orders and orders freeing children for adoption pending in respect of the child)] [<sup>F126</sup>(i) section 12 or 18 of the <sup>M59</sup>Adoption (Scotland) Act 1978; or

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(ii) Article 12, 17 or 18 of the <sup>M60</sup>Adoption (Northern Ireland) Order 1987]

, the High Court, the county court within whose district the applicant lives and the magistrates' court within whose area the applicant lives.

(6) In the case of an order under section 55, paragraph (d) of subsection (2) does not apply.

[<sup>F127</sup>(7) Any court to which the proceedings on an application are transferred under any enactment is, as regards the transferred proceedings, an authorised court if it is not an authorised court under the preceding provisions of this section.]

#### Textual Amendments

- F124** Words “section 66(1) of this Act” substituted (*prosp.*) for words from “section 75” to “1984” by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), s. 46(1), **Sch. 1 para. 20(a)**
- F125** Words substituted by [County Courts Act 1984 \(c. 28, SIF 34\)](#), s. 148(1), **Sch. 2 Pt. V para. 58**
- F126** S. 62(5)(b)(i)(ii) substituted (*prosp.*) for words commencing “section 8” by [Children Act 1989 \(c. 41, SIF 20\)](#), ss. 88, 108, [Sch. 10 para. 28 \(with Sch. 14 para. 1\(1\)\)](#)
- F127** S. 62(7) inserted by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), s. 46(1), **Sch. 1 para. 20(b)**

#### Marginal Citations

- M57** [1984 c. 28\(34\)](#).
- M58** [1975 c. 72\(49:3\)](#).
- M59** [1978 c. 28\(49:11\)](#).
- M60** [S.I. 1987/2203 \(N.I. 22\)](#).

## 63 Appeals etc. **U.K.**

- (1) ..... <sup>F128</sup>
- (2) Subject to subsections (3) . . . <sup>F129</sup> where on an application to a magistrates' court under this Act the court makes or refuses to make an order, an appeal shall lie to the High Court.
- (3) ..... <sup>F129</sup> where an application is made to a magistrates' court under this Act, and the court considers that the matter is one which would more conveniently be dealt with by the High Court, the magistrates' court shall refuse to make an order, and in that case no appeal shall lie to the High Court.
- (4) [<sup>F130</sup>No appeal shall lie to the High Court] against an order made under section 34.

#### Textual Amendments

- F128** S. 63(1) repealed by [Matrimonial and Family Proceedings Act 1984 \(c. 42, SIF 49:3\)](#), s. 46(3), **Sch. 3**
- F129** Words repealed by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113:3\)](#), s. 30, **Sch. 10 Pt. I**
- F130** Words substituted by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113:3\)](#), s. 9, **Sch. 2 para. 36**

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## 64 Proceedings to be in private. **U.K.**

Proceedings under [<sup>F131</sup>this Act]

- (a) in the High Court, may be disposed of in chambers;
- (b) in a county court, shall be heard and determined in camera;
- (c) .....<sup>F132</sup>

### Textual Amendments

**F131** Words substituted by [Domestic Proceedings and Magistrates' Courts Act 1978 \(c. 22, SIF 49:3\)](#), ss. 73(2), 89(1), [Sch. 1](#)

**F132** S. 64(c) repealed by [Domestic Proceedings and Magistrates' Courts Act 1978 \(c. 22, SIF 49:3\)](#), s. 89, [Schs. 1, 3](#)

## 65 Guardians ad litem and reporting officers. **E+W**

- (1) For the purpose of any application for an adoption order or an order freeing a child for adoption or an order under section 20 or 55 rules shall provide for the appointment, in such cases as are prescribed—
- (a) of a person to act as guardian ad litem of the child upon the hearing of the application, with the duty of safe-guarding the interests of the child in the prescribed manner;
  - (b) of a person to act as reporting officer for the purpose of witnessing agreements to adoption and performing such other duties as the rules may prescribe.
- (2) A person who is employed—
- (a) in the case of an application for an adoption order, by the adoption agency by whom the child was placed; or
  - (b) in the case of an application for an order freeing a child for adoption, by the adoption agency by whom the application was made; or
  - (c) in the case of an application under section 20, by the adoption agency with the parental rights and duties relating to the child,

shall not be appointed to act as guardian ad litem or reporting officer for the purposes of the application but, subject to that, the same person may if the court thinks fit be both guardian ad litem and reporting officer.

## <sup>F133</sup>65A Panels for selection of guardians ad litem and reporting officers. **E+W**

- (1) The Secretary of State may by regulations provide for the establishment of panels of persons from whom guardians ad litem and reporting officers appointed under rules made under section 65 must be selected.
- (2) The regulations may, in particular, make provision—
- (a) as to the constitution, administration and procedures of panels;
  - (b) requiring two or more specified local authorities to make arrangements for the joint management of a panel;
  - (c) for the defrayment by local authorities of expenses incurred by members of panels;
  - (d) for the payment by local authorities of fees and allowances for members of panels;

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- (e) as to the qualifications for membership of a panel;
  - (f) as to the training to be given to members of panels;
  - (g) as to the co-operation required of specified local authorities in the provision of panels in specified areas; and
  - (h) for monitoring the work of guardians ad litem and reporting officers.
- (3) Rules of court may make provision as to the assistance which any guardian ad litem or reporting officer may be required by the court to give to it.
- [ The Secretary of State may, with the consent of the Treasury, make such grants with
- <sup>F134</sup>(4) respect to expenditure of any local authority—
- (a) in connection with the establishment and administration of guardian ad litem and reporting officer panels in accordance with section 65;
  - (b) in paying expenses, fees, allowances and in the provision of training for members of such panels
- as he considers appropriate.]]

#### Textual Amendments

**F133** S. 65A inserted (*prosp.*) by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, Sch. 10 para. 29 (with Sch. 14 para. 1(1))

**F134** S. 65A(4) added (*prosp.*) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), ss. 108, 116, Sch. 16 para. 7

## 66 Rules of procedure. **E+W**

- (1) Rules in regard to any matter to be prescribed under this Act and dealing generally with all matters of procedure and incidental matters arising out of this Act and for carrying this Act into effect shall be made by the Lord Chancellor.
- (2) Subsection (1) does not apply in relation to proceedings before magistrates' courts, but the power to make rules conferred by [<sup>F135</sup>section 144 of the <sup>M61</sup>Magistrates' Courts Act 1980] shall include power to make provision as to any of the matters mentioned in that subsection.
- (3) In the case of—
- (a) an application for an adoption order in relation to a child who is not free for adoption;
  - (b) an application for an order freeing a child for adoption.
- rules shall require every person who can be found and whose agreement or consent to the making of the order is required under this Act to be notified of a date and place where he will be heard on the application and of the fact that, unless he wishes or the court requires, he need not attend.
- (4) In the case of an application under section 55, rules shall require every parent and guardian of the child who can be found to be notified as aforesaid.
- (5) Rules made as respects magistrates' courts may provide for enabling any fact tending to establish the identity of a child with a child to whom a document relates to be proved by affidavit and for excluding or restricting in relation to any facts that may be so proved the power of a justice of the peace to compel the attendance of witnesses.

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(6) This section does not apply in relation to sections 9, 10, 11 and 32 to 37.

#### Textual Amendments

**F135** Words substituted by [Magistrates' Courts Act 1980 \(c. 43, SIF 82\)](#), s. 154, [Sch. 7 para. 141](#)

#### Marginal Citations

**M61** [1980 c. 43\(82\)](#).

### 67 Orders, rules and regulations. **E+W**

- (1) Any power to make orders, rules or regulations conferred by this Act on the Secretary of State, the Lord Chancellor or the Registrar General shall be exercisable by statutory instrument.
- (2) A statutory instrument containing rules or regulations made under any provision of this Act, except section 3(1), shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) An order under section 28(10) or 57(8) shall not be made unless a draft of the order has been approved by resolution of each House of Parliament.
- (4) An order made under any provision of this Act, except section 74, may be revoked or varied by a subsequent order under that provision.
- (5) Orders and regulations made under this Act may make different provision in relation to different cases or classes of cases and may exclude certain cases or classes of cases.
- (6) The Registrar General shall not make regulations under section 51 or paragraph 1(1) of Schedule 1 except with the approval of the Secretary of State.

### 68 Offences by bodies corporate. **U.K.**

Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of, any director, manager, member of the committee, secretary or other officer of the body, he as well as the body shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

### 69 Services of notices etc. **U.K.**

Any notice or information required to be given under this Act may be given by post.

### 70 Nationality. **E+W**

- (1) If the Secretary of State by order declares that a description of persons specified in the order has, in pursuance of the Convention, been notified to the Government of the United Kingdom as the description of persons who are deemed to possess the nationality of a particular Convention country, persons of that description shall, subject to the following provisions of this section, be treated for the purposes of this Act as nationals of that country.

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- (2) Subject to section 54(3) and subsection (3) of this section, where it appears to the court in any proceedings under this Act, or to any court by which a decision in pursuance of section 53(3) falls to be given, that a person is or was at a particular time a national of two or more countries, then—
  - (a) if it appears to the said court that he is or was then a United Kingdom national, he shall be treated for the purposes of those proceedings or that decision as if he were or had then been a United Kingdom national only;
  - (b) if, in a case not falling within paragraph (a), it appears to the said court that one only of those countries is or was then a Convention country, he shall be treated for those purposes as if he were or had then been a national of that country only;
  - (c) if, in a case not falling within paragraph (a), it appears to the said court that two or more of those countries are or were then Convention countries, he shall be treated for those purposes as if he were or had then been a national of such one only of those Convention countries as the said court considers is the country with which he is or was then most closely connected;
  - (d) in any other case, he shall be treated for those purposes as if he were or had then been a national of such one only of those countries as the said court considers is the country with which he is or was then most closely connected.
- (3) A court in which proceedings are brought in pursuance of section 17, 52(3) or 53 shall be entitled to disregard the provisions of subsection (2) in so far as it appears to that court appropriate to do so for the purposes of those proceedings; but nothing in this subsection shall be construed as prejudicing the provisions of section 54(3).
- (4) Where, after such inquiries as the court in question considers appropriate, it appears to the court in any proceedings under this Act, or to any court by which such a decision as aforesaid falls to be given, that a person has no nationality or no ascertainable nationality, he shall be treated for the purposes of those proceedings or that decision as a national of the country in which he resides or, where that country is one of two or more countries having the same law of nationality, as a national of those countries.

## 71 Internal law of a country. **U.K.**

- (1) In this Act “internal law” in relation to any country means the law applicable in a case where no question arises as to the law in force in any other country.
- (2) In any case where the internal law of a country falls to be ascertained for the purposes of this Act by any court and there are in force in that country two or more systems of internal law, the relevant system shall be ascertained in accordance with any rule in force throughout that country indicating which of the systems is relevant in the case in question or, if there is no such rule, shall be the system appearing to that court to be most closely connected with the case.

## 72 Interpretation. **E+W**

- (1) In this Act, unless the context otherwise requires—
  - “adoption agency” in sections 11, 13, 18 to 23 and 27 to 31 includes an adoption agency within the meaning of [F136section 1 of the M62Children Act 1975 (adoption agencies in Scotland);]
  - [F136(a) section 1 of the M63Adoption (Scotland) Act 1978; and
  - (b) Article 3 of the M64Adoption (Northern Ireland) Order 1987.]

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[<sup>F137</sup> “adoption order” means an order under section 12(1) and, in sections 12(3) and (4), 18 to 21 [<sup>F138</sup>, 27 and 28] and 30 to 32 includes an order under section 8 of the Children Act 1975 (adoption orders in Scotland);]

[<sup>F137</sup> “adoption order” —

- (a) means an order under section 12(1); and
- (b) in sections 12(3) and (4), 18 to 20, 27, 28 and 30 to 32 and in the definition of “British adoption order” in this subsection includes an order under section 12 of the Adoption (Scotland) Act 1978 and Article 12 of the Adoption (Northern Ireland) Order 1987 (adoption orders in Scotland and Northern Ireland respectively); and
- (c) in sections 27, 28 and 30 to 32 includes an order under section 55, section 49 of the Adoption (Scotland) Act 1978 and Article 57 of the Adoption (Northern Ireland) Order 1987 (orders in relation to children being adopted abroad).]

“adoption society” means a body of persons whose functions consist of or include the making of arrangements for the adoption of children;

“approved adoption society” means an adoption society approved under Part I;

“authorised court” shall be construed in accordance with section 62;

“body of persons” means any body of persons, whether incorporated or unincorporated;

[<sup>F139</sup> “British adoption order” means an adoption order, an order under section 8 of the Children Act 1975 (adoption orders in Scotland), or any provision for the adoption of a child effected under the law of Northern Ireland or any British territory outside the United Kingdom;]

[<sup>F139</sup> “British adoption order” means—

- (a) an adoption order as defined in this subsection, and
- (b) an order under any provision for the adoption of a child effected under the law of any British territory outside the United Kingdom.]

“British territory” means, for the purposes of any provision of this Act, any of the following countries, that is to say, Great Britain, Northern Ireland, the Channel Islands, the Isle of Man and a colony, being a country designated for the purposes of that provision by order of the Secretary of State or, if no country is so designated, any of those countries;

“child”, except where used to express a relationship, means a person who has not attained the age of 18 years;

“The Convention” means the Convention relating to the adoption of children concluded at the Hague on 15th November 1965 and signed on behalf of the United Kingdom on that date;

“Convention adoption order” means an adoption order made in accordance with section 17(1);

“Convention country” means any country outside British territory, being a country for the time being designated by an order of the Secretary of State as a country in which, in his opinion, the Convention is in force;

“existing”, in relation to an enactment or other instrument, means one passed or made at any time before 1st January 1976;

[<sup>F140</sup> “guardian” means—

- (a) a person appointed by deed or will in accordance with the provisions of the <sup>M65</sup>Guardianship of Infants Acts 1886 <sup>M66</sup> and 1925 or the <sup>M67</sup>Guardianship of



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Minors Act 1971 or by a court of competent jurisdiction to be the guardian of the child, and

[<sup>F141</sup>(b) in the case of a child whose father and mother were not married to each other at the time of his birth, includes the father where—

- (i) an order is in force under section 4 of the Family Law Reform Act 1987 giving him all the parental rights and duties with respect to the child; or
- (ii) he has a right to custody, legal or actual custody or care and control of the child by virtue of an order made under any enactment.]]

[<sup>F140</sup> “guardian” has the same meaning as in the Children Act 1989.]

“internal law” has the meaning assigned by section 71;

“local authority” means the council of a county (other than a metropolitan county), a metropolitan district, a London borough or the Common Council of the City of London [<sup>F142</sup>and, in sections 13, 22, 28 to 31, 35(1) and 51, includes a regional or islands council;]

“notice” means a notice in writing;

“order freeing a child for adoption” means an order under section 18; [<sup>F143</sup>and in [<sup>F144</sup>section 27(2) includes an order under section 18 of the Adoption (Scotland) Act 1978 (order freeing a child for adoption made in Scotland)] [<sup>F144</sup>sections 27(2) and 59 includes an order under—

- (a) section 18 of the Adoption (Scotland) Act 1978; and
- (b) Article 17 or 18 of the Adoption (Northern Ireland) Order 1987]]

“overseas adoption” has the meaning assigned by subsection (2);

[<sup>F145</sup> “parent” means, in relation to a child, any parent who has parental responsibility for the child under the Children Act 1989;]

[<sup>F145</sup> “parental responsibility” and “parental responsibility agreement” have the same meaning as in the Children Act 1989.]

[<sup>F146</sup> “place of safety” means a community home provided by a local authority, a controlled community home, police station, or any hospital, surgery or other suitable place the occupier of which is willing temporarily to receive a child;]

“prescribed” means prescribed by rules;

“regulated adoption” means an overseas adoption of a description designated by an order under subsection (2) as that of an adoption regulated by the Convention;

“relative” in relation to a child means a grandparent, brother, sister, uncle or aunt, whether of the full blood or half-blood or by affinity and includes, where the child is illegitimate, the father of the child and any person who would be a relative within the meaning of this definition if the child were the legitimate child of his mother and father;

“rules” means rules made under section 66(1) or made by virtue of section 66(2) under [<sup>F147</sup>section 144 of the <sup>M68</sup>Magistrates’ Courts Act 1980]

“specified order” means any provision for the adoption of a child effected under enactments similar to section 12(1) and 17 in force in [<sup>F148</sup>Northern Ireland or] any British territory outside the United Kingdom;

“United Kingdom national” means, for the purposes of any provision of this Act, a citizen of the United Kingdom and colonies satisfying such conditions, if any, as the Secretary of State may by order specify for the purposes of that provision;

[<sup>F149</sup> “upbringing” has the same meaning as in the Children Act 1989.]

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“voluntary organisation” means a body other than a public or local authority the activities of which are not carried on for profit.

<sup>[X12]</sup>  
F150 (1A) In the definition of “guardian” in subsection (1) the reference to a child whose father and mother were not married to each other at the time of his birth shall be construed in accordance with section 1 of the Family Law Reform Act 1987.]

<sup>[F151]</sup> (1A) In this Act, in determining with what person, or where, a child has his home, any absence of the child at a hospital or boarding school and any other temporary absence shall be disregarded.

(1B) In this Act, references to a child who is in the care of or looked after by a local authority have the same meaning as in the Children Act 1989.]

(2) In this Act “overseas adoption” means an adoption of such a description as the Secretary of State may by order specify, being a description of adoptions of children appearing to him to be effected under the law of any country outside Great Britain; and an order under this subsection may contain provision as to the manner in which evidence of an overseas adoption may be given.

(3) For the purposes of this Act, a person shall be deemed to make arrangements for the adoption of a child if he enters into or makes any agreement or arrangement for, or for facilitating, the adoption of the child by any other person, whether the adoption is effected, or is intended to be effected, in Great Britain or elsewhere, or if he initiates or takes part in any negotiations of which the purpose or effect is the conclusion of any agreement or the making of any arrangement therefor, and if he causes another person to do so.

(4) Except so far as the context otherwise requires, any reference in this Act to an enactment shall be construed as a reference to that enactment as amended by or under any other enactment, including this Act.

(5) In this Act, except where otherwise indicated—

- (a) a reference to a numbered Part, section or Schedule is a reference to the Part or section of, or the Schedule to, this Act so numbered, and
- (b) a reference in a section to a numbered subsection is a reference to the subsection of that section so numbered, and
- (c) a reference in a section, subsection or Schedule to a numbered paragraph is a reference to the paragraph of that section, subsection or Schedule so numbered.

#### Editorial Information

**X12** S. 72(1A)(1B) commencing “(1A) In this Act” substituted (*prosp.*) for s. 72(1A) commencing “In the definition of” by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, Sch. 10 para. 30(9) (with Sch. 14 para. 1(1))

#### Textual Amendments

**F136** Paras. (a) and (b) substituted (*prosp.*) for words commencing “section 1 of the Children Act” by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, Sch. 10 para. 30(2) (with Sch. 14 para. 1(1))

**F137** Definition of adoption order commencing “ “adoption order”— (a)means an order” substituted (*prosp.*) for definition of adoption order commencing “ “adoption order” means an order” by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, Sch. 10 para. 30(3) (with Sch. 14 para. 1(1))

*Status: Point in time view as at 09/09/1991.*

*Changes to legislation: Adoption Act 1976 is up to date with all changes known to be in force on or before 28 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- F138** Words inserted by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113:3\)](#), s. 9, [Sch. 2 para. 37\(a\)](#)
- F139** Definition of British adoption order commencing “ “British adoption order” means— (a)an adoption order” substituted (*prosp.*) for definition of British adoption order commencing “ “British adoption order” means an adoption order” by [Children Act 1989 \(c. 41, SIF 20\)](#), ss. 88, 108, [Sch. 10 para. 30\(4\)](#) (with [Sch. 14 para. 1\(1\)](#))
- F140** Definition of guardian commencing “ “guardian” has the same meaning” substituted (*prosp.*) for definition of guardian commencing “ “guardian” means—” by [Children Act 1989 \(c. 41, SIF 20\)](#), ss. 88, 108, [Sch. 10 para. 30\(5\)](#) (with [Sch. 14 para. 1\(1\)](#))
- F141** Para. (b) in the definition of guardian substituted by [Family Law Reform Act 1987 \(c. 42, SIF 49:7\)](#), ss. [7\(2\)](#), [34\(2\)](#)
- F142** Words repealed (*prosp.*) by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108, [Sch. 15](#) (with [Sch. 14 paras. 1\(1\)](#), [27\(4\)](#))
- F143** Words added by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113:3\)](#), s. 9, [Sch. 2 para. 37\(b\)](#)
- F144** Words commencing “sections 27(2) and 59” substituted (*prosp.*) for words commencing “section 27(2) includes” by [Children Act 1989 \(c. 41, SIF 20\)](#), ss. 88, 108, [Sch. 10 para. 30\(6\)](#) (with [Sch. 14 para. 1\(1\)](#))
- F145** Definition inserted (*prosp.*) by [Children Act 1989 \(c. 41, SIF 20\)](#), ss. 88, 108, [Sch. 10 para. 30\(7\)](#) (with [Sch. 14 para. 1\(1\)](#))
- F146** Definition repealed (*prosp.*) by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108, [Sch. 15](#) (with [Sch. 14 para. 1\(1\)](#), [27\(4\)](#))
- F147** Words substituted by [Magistrates' Courts Act 1980 \(c. 43, SIF 82\)](#), s. 154, [Sch. 7 para. 142](#)
- F148** Words repealed (*prosp.*) by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 108, [Sch. 15](#) (with [Sch. 14 paras. 1\(1\)](#), [27\(4\)](#))
- F149** Definition inserted (*prosp.*) by [Children Act 1989 \(c. 41, SIF 20\)](#), ss. 88, 108, [Sch. 10 para. 30\(8\)](#) (with [Sch. 14 para. 1\(1\)](#))
- F150** [S. 72\(1A\)](#) inserted by [Family Law Reform Act 1987 \(c. 42, SIF 49:7\)](#), ss. [33\(1\)](#), [34\(2\)](#), [Sch. 2 para. 68](#)
- F151** [S. 72\(1A\)\(1B\)](#) commencing “(1A) In this Act” substituted (*prosp.*) for [s. 72\(1A\)](#) commencing “In the definition of” by [Children Act 1989 \(c. 41, SIF 20\)](#), ss. 88, 108, [Sch. 10 para. 30\(9\)](#) (with [Sch. 14 para. 1\(1\)](#))

#### Marginal Citations

- M62** [1975 c. 72\(49:3\)](#).  
**M63** [1978 c. 28\(49:11\)](#).  
**M64** [S.I. 1987/2203 \(N.I. 22\)](#).  
**M65** [1886 c. 27](#).  
**M66** [1925 c. 45](#).  
**M67** [1971 c. 3\(49:9\)](#).  
**M68** [1980 c. 43\(82\)](#).

### 73 Transitional provisions, amendments and repeals. **U.K.**

- (1) The transitional provisions contained in Schedule 2 shall have effect.
- <sup>F152X13</sup>(2) The enactments specified in Schedule 3 shall have effect subject to the amendments specified in that Schedule, being amendments consequential upon the provisions of this Act.]
- <sup>X14</sup>(3) The enactments specified in Schedule 4 are hereby repealed to the extent specified in column 3 of that Schedule.

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#### Editorial Information

- X13** The text of s. 73(2) and Sch. 3 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, except as specified, does not reflect any amendments or repeals which may have been made prior to 1.2.1991.
- X14** The text of s. 73(3) and Sch. 4 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

#### Textual Amendments

- F152** S. 73(2) repealed (S.) by [Adoption \(Scotland\) Act 1978 \(c. 28, SIF 49:11\)](#), s. 66, [Sch. 4](#)

### 74 Short title, commencement and extent. **E+W**

- (1) This Act may be cited as the Adoption Act 1976.
- (2) This Act shall come into force on such date as the Secretary of State may by order appoint and different dates may be appointed for different provisions.
- (3) This Act, [<sup>F153</sup>except sections 22, 23, 51 and 73(2), this section and Part II of Schedule 3], shall not extend to Scotland and the said Part II shall not extend to England and Wales.
- (4) This Act, . . . <sup>F154</sup> shall not extend to Northern Ireland.

#### Subordinate Legislation Made

- P1** Power of appointment conferred by s. 74(2) partly exercised: [S.I. 1983/1946](#), [art. 2\(2\)](#) 1987/1242, art. 2(2), Sch. 2 (Act wholly in force 1.1.1988 as regards its unrepealed provisions except for ss. 72(2)(3) so far as relating to Sch. 3 paras. 7, 21 and to the repeals in Sch. 4 of paras. 6, 26 and 63 of Sch. 3 to the Children Act 1975)

#### Textual Amendments

- F153** Words repealed (S.) by [Adoption \(Scotland\) Act 1978 \(c. 28, SIF 49:11\)](#), s. 66, [Sch. 4](#)
- F154** Words repealed by [British Nationality Act 1981 \(c. 61, SIF 87\)](#), s. 52(8), [Sch. 9](#)

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## SCHEDULES

### SCHEDULE 1 **E+W**

#### REGISTRATION OF ADOPTIONS

##### *Registration of adoption orders*

- 1 (1) Every adoption order shall contain a direction to the Registrar General to make in the Adopted Children Register an entry in such form as the Registrar General may by regulations specify.
- (2) The direction contained in a Convention adoption order in pursuance of this paragraph shall include an instruction that the entry made in that register in consequence of the order shall be marked with the words “Convention order”.
- (3) Where on an application to a court for an adoption order in respect of a child (not being a child who has previously been the subject of an adoption order made by a court in England or Wales under this Act or any enactment at the time in force) there is proved to the satisfaction of the court the identity of the child with a child to whom an entry in the Registers of Births relates, any adoption order made in pursuance of the application shall contain a direction to the Registrar General to cause the entry in the Registers of Births to be marked with the word “Adopted”.
- (4) Where an adoption order is made in respect of a child who has previously been the subject of an adoption order made by a court in England or Wales under this Act or any enactment at the time in force, the order shall contain a direction to the Registrar General to cause the previous entry in the Adopted Children Register to be marked with the word “Re-adopted”.
- (5) Where an adoption order is made, the prescribed officer of the court which made the order shall cause the order to be communicated in the prescribed manner to the Registrar General, and upon receipt of the communication the Registrar General shall cause compliance to be made with the directions contained in the order.

##### *Registration of adoptions in Scotland, Northern Ireland, the Isle of Man and the Channel Islands*

- 2 (1) Where the Registrar General is notified by the Registrar General for Scotland that an adoption order has been made by a court in Scotland in respect of a child to whom an entry in the Registers of Births or the Adopted Children Register relates, the Registrar General shall cause the entry to be marked “Adopted (Scotland)” or, as the case may be, “Re-adopted (Scotland)”; and where, after an entry has been so marked, the Registrar General is notified as aforesaid that the adoption order has been quashed, or that an appeal against the adoption order has been allowed, he shall cause the marking to be cancelled.
- (2) Where the Registrar General is notified by the authority maintaining a register of adoptions in Northern Ireland, the Isle of Man or any of the Channel Islands that an

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order has been made in that country authorising the adoption of a child to whom an entry in the Registers of Births or the Adopted Children Register relates, he shall cause the entry to be marked with the word “Adopted” or “Re-adopted”, as the case may require, followed by the name, in brackets, of the country in which the order was made.

- (3) Where, after an entry has been so marked, the Registrar General is notified as aforesaid that the order has been quashed, that an appeal against the order has been allowed or that the order has been revoked, he shall cause the marking to be cancelled; and a copy or extract of an entry in any register, being an entry the marking of which is cancelled under this sub-paragraph, shall be deemed to be an accurate copy if and only if both the marking and the cancellation are omitted therefrom.
- (4) The preceding provisions of this paragraph shall apply in relation to orders corresponding to orders under section 55 as they apply in relation to orders authorising the adoption of a child; but any marking of an entry required by virtue of this sub-paragraph shall consist of the words “proposed foreign adoption” or as the case may require, “proposed foreign re-adoption” followed by the name in brackets of the country in which the order was made.
- (5) Without prejudice to sub-paragraphs (2) and (3) where, after an entry in the Registers of Births has been marked in accordance with this paragraph, the birth is re-registered under section 14 of the <sup>M69</sup>Births and Deaths Registration Act 1953 (re-registration of births of legitimated children) the entry made on the re-registration shall be marked in the like manner.

#### Marginal Citations

M69 1953 c. 20 (105)

#### *Registration of overseas adoptions*

- 3 (1) If the Registrar General is satisfied that an entry in the Registers of Births relates to a person adopted under an overseas adoption and that he has sufficient particulars relating to that person to enable an entry, in the form specified for the purposes of this sub-paragraph in regulations made under paragraph 1(1), to be made in the Adopted Children register in respect of that person, he shall—
  - (a) make such an entry in the Adopted Children Register; and
  - (b) if there is a previous entry in respect of that person in that register, mark the entry (or if there is more than one such entry the last of them) with the word “Re-adopted” followed by the name in brackets of the country in which the adoption was effected; and
  - (c) unless the entry in the Registers of Births is already marked with the word “Adopted” whether or not followed by other words), mark the entry with that word followed by the name in brackets of the country aforesaid.

#### *Amendment of orders and rectification of Registers*

- 4 (1) The court by which an adoption order has been made may, on the application of the adopter or of the adopted person, amend the order by the correction of any error in the particulars contained therein, and may—

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- (a) if satisfied on the application of the adopter or the adopted person that within one year beginning with the date of the order any new name has been given to the adopted person (whether in baptism or otherwise), or taken by him, either in lieu of or in addition to a name specified in the particulars required to be entered in the Adopted Children Register in pursuance of the order, amend the order by substituting or adding that name in those particulars, as the case may require;
  - (b) if satisfied on the application of any person concerned that a direction for the marking of an entry in the Registers of Births or the Adopted Children Register included in the order in pursuance of sub-paragraph (3) or (4) of paragraph 1 was wrongly so included, revoke that direction.
- (2) Where an adoption order is amended or a direction revoked under sub-paragraph (1), the prescribed officer of the court shall cause the amendment to be communicated in the prescribed manner to the Registrar General who shall as the case may require—
  - (a) cause the entry in the Adopted Children Register to be amended accordingly; or
  - (b) cause the marking of the entry in the Registers of Births or the Adopted Children Register to be cancelled.
- (3) Where an adoption order is quashed or an appeal against an adoption order allowed by any court, the court shall give directions to the Registrar General to cancel any entry in the Adopted Children Register, and any marking of an entry in that Register, or the Registers of Births as the case may be, which was effected in pursuance of the order.
- (4) Where an adoption order has been amended, any certified copy of the relevant entry in the Adopted Children Register which may be issued pursuant to subsection (3) of section 50 shall be a copy of the entry as amended, without the reproduction of any note or marking relating to the amendment or of any matter cancelled pursuant thereto; and a copy or extract of an entry in any register, being an entry the marking of which has been cancelled, shall be deemed to be an accurate copy if and only if both the marking and the cancellation are omitted therefrom.
- (5) If the Registrar General is satisfied—
  - (a) that a Convention adoption order or an overseas adoption has ceased to have effect, whether on annulment or otherwise; or
  - (b) that any entry or mark was erroneously made in pursuance of paragraph 3 in any register mentioned in that paragraph,he may cause such alterations to be made in any such register as he considers are required in consequence of the cesser or to correct the error; and where an entry in such a register is amended in pursuance of this sub-paragraph, any copy or extract of the entry shall be deemed to be accurate if and only if it shows the entry as amended but without indicating that it has been amended.
- (6) In relation to an adoption order made by a magistrates' court, the reference in sub-paragraph (1) to the court by which the order has been made includes a reference to a court acting for the same petty sessions area.

*Marking of entries on re-registration of birth on legitimation*

- 5 (1) Without prejudice to section 52, where, after an entry in the Registers of Births has been marked with the word "Adopted" (with or without the addition of the word

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“(Scotland)”), the birth is re-registered under section 14 of the <sup>M70</sup>Births and Deaths Registration Act 1953 (re-registration of births of legitimated persons) the entry made on the re-registration shall be marked in the like manner.

- (2) Without prejudice to paragraph 4(5), where an entry in the Registers of Births is marked in pursuance of paragraph 3 and the birth in question is subsequently re-registered under the said section 14, the entry made on re-registration shall be marked in the like manner.

#### Marginal Citations

**M70** 1953 c. 20 (105)

#### *Cancellations in Registers on legitimation*

- 6 Where an adoption order, . . . <sup>F155</sup> is revoked under section 52(1) or (2) the prescribed officer of the court shall cause the revocation to be communicated in the prescribed manner to the Registrar General who shall cause to be cancelled—

- (a) the entry in the Adopted Children Register relating to the adopted person; and
- (b) the marking with the word “Adopted” (or, as the case may be, with that word and the word “(Scotland)”) if any entry relating to him in the Registers of Births;

and a copy or extract of an entry in any register, being an entry the marking of which is cancelled under this section, shall be deemed to be an accurate copy if and only if both the marking and the cancellation are omitted therefrom.

#### Textual Amendments

**F155** Words repealed by [Domestic Proceedings and Magistrates' Courts Act 1978 \(c. 22, SIF 49:3\)](#), ss. 72(2), 89, Schs. 1, 3

## SCHEDULE 2 E+W

### TRANSITIONAL PROVISIONS AND SAVINGS

#### *General*

- 1 In so far as anything done under an enactment repealed by this Act could have been done under a corresponding provision of this Act it shall not be invalidated by the repeal but shall have effect as if done under that provision.
- 2 Where any period of time specified in an enactment repealed by this Act is current at the commencement of this Act, this Act shall have effect as if the corresponding provision thereof had been in force when that period began to run.
- 3 Nothing in this Act shall affect the enactments repealed by this Act in their operation in relation to offences committed before the commencement of this Act.



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- 4 Any reference in any document, whether express or implied, to any enactment repealed by this Act shall, unless the context otherwise requires, be construed as a reference to the corresponding enactment of this Act.

*Existing adoption orders*

- 5 (1) Without prejudice to paragraph 1, an adoption order made under an enactment at any time before this Act comes into force shall not cease to have effect by virtue only of a repeal effected by this Act.
- (2) Paragraph 4(1) and (2) of Schedule 1 shall apply in relation to an adoption order made before this Act came into force as if the order had been made under section 12, but as if, in sub-paragraph (1)(b) of the said paragraph 4, there were substituted for the reference to paragraph 1(3) and (4) a reference—
- (a) in the case of an order under the <sup>M71</sup>Adoption of Children Act 1926, to section 12(3) and (4) of the <sup>M72</sup>Adoption of Children Act 1949,
  - (b) in the case of an order under the <sup>M73</sup>Adoption Act 1950, to section 18(3) and (4) of that Act,
  - (c) in the case of an order under the <sup>M74</sup>Adoption Act 1958, to section 21(4) and (5) of that Act.
- (3) The power of the court under the said paragraph 4(1) to amend an order includes power, in relation to an order made before 1st April 1959, to make on the application of the adoptor or adopted person any such amendment of the particulars contained in the order as appears to be required to bring the order into the form in which it would have been made if paragraph 1 of Schedule 1 had applied to the order.
- (4) Section 52(1) and paragraph 6 of Schedule 1 shall apply in relation to an adoption order made under an enactment at any time before this Act came into force as they apply in relation to an adoption order made under this Act.

**Marginal Citations**

- M71** 1926 c. 29.  
**M72** 1949 c. 98 (20)  
**M73** 1950 c. 26.  
**M74** 1958 c. 5 (7 & 8 Eliz. 2) (49:11)

*Rights relating to property*

- 6 (1) Section 39—
- (a) does not apply to an existing instrument or enactment in so far as it contains a disposition of property, and
  - (b) does not apply to any public general Act in its application to any disposition of property in an existing instrument or enactment.
- (2) Sections 16 and 17 of the Adoption Act 1958, and provisions containing references to those sections shall continue to apply in relation to dispositions of property effected by existing instruments notwithstanding the repeal of those sections, and such provisions, by the <sup>M75</sup>Children Act 1975.
- (3) Section 46 shall apply in relation to this paragraph as if it were contained in Part IV.

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#### Marginal Citations

**M75** 1975 c. 72 (49:9, 10)

#### *Payments relating to adoptions*

- 7 Section 57(7), (8) and (9) shall not have effect if, immediately before section 57 comes into force, there is in force in England and Wales an order under section 50(8) of the Adoption Act 1958.

#### *Registers of adoptions*

- 8 Any register, or index to a register kept under the <sup>M76</sup>Adoption Act 1958, or any register or index deemed to be part of such a register, shall be deemed to be part of the register kept under section 50.

#### Marginal Citations

**M76** 1958 c. 5 (7 & 8 Eliz. 2) (49:9, 10)

### <sup>X15</sup>SCHEDULE 3 **E+W**

#### CONSEQUENTIAL AMENDMENTS

#### Editorial Information

**X15** The text of s. 73(2) and Sch. 3 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, except as specified, does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

### **PART I E+W**

#### AMENDMENTS EXTENDING ONLY TO ENGLAND AND WALES

- 1—3 ..... **F156**

#### Textual Amendments

**F156** Sch. 3 paras. 1–3 repealed by Child Care Act 1980 (c. 5, SIF 20), s. 89, **Sch. 6**

- 4 ..... **F157**

#### Textual Amendments

**F157** Sch. 3 para. 4 repealed by Domestic Proceedings and Magistrates' Courts Act 1978 (c. 22, SIF 49:3), s. 89(2), **Sch. 3**

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5, 6. .... F158

**Textual Amendments**

**F158** Sch. 3 paras. 5 and 6 repealed by Foster Children Act 1980 (c. 6, SIF 20), s. 23(3), Sch. 3

*County Courts Act 1959 (c.22)*

7 In section 109(2) of the County Courts Act 1959, after paragraph (h) there is added the following paragraph—

“(i) any proceedings under Part II or section 29 or 55 of the Adoption Act 1976.”.

*[<sup>F159</sup> Children and Young Persons Act 1963 (c.37)]*

**Textual Amendments**

**F159** Sch. 3 paras. 8, 11 repealed (*prosp.*) by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 15 (with Sch. 14 para. 1(1), 27(4))

8 In section 23(1)(c) of the Children and Young Persons Act 1963 for the words “section 43 of the Adoption Act 1958” there are substituted the words “section 34 of the Adoption Act 1976”.

*Health Services and Public Health Act 1968 (c. 46)*

9 In section 64(3)(a) of the Health Services and Public Health Act 1968 there is added at the end the following paragraph—

“(xviii) the Adoption Act 1976.”

10 In section 65(3)(b) of the said Act of 1968 there is added at the end of the following paragraph—

“(xix) the Adoption Act 1976”.

*[<sup>F160</sup> Children and Young Persons Act 1969 (c. 54)]*

**Textual Amendments**

**F160** Sch. 3 paras. 8, 11 repealed (*prosp.*) by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 15 (with Sch. 14 para. 1(1), 27(4))

11 In section 21A of the Children and Young Persons Act 1969 for the references to sections 14 and 25 of the Children Act 1975 there are substituted references to section 18 and 55 respectively of this Act.

12, 13. .... F161

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**Textual Amendments**

**F161** Sch. 3 paras. 12 and 13 repealed by Child Care Act 1980 (c. 5, SIF 20), s. 89, **Sch. 6**

14 ..... **F162**

**Textual Amendments**

**F162** Sch. 3 para. 14 repealed by Supreme Court Act 1981 (c. 54, SIF 37), s. 152(4), **Sch. 7**

*Local Authority Social Services Act 1970 (c. 42)*

15 In Schedule 1 to the Local Authority Social Services Act 1970, the following is added at the end—

“Adoption Act 1976 (c. 36)	Maintenance of Adoption Service ; functions of local authority as adoption agency ; applications for orders freeing children for adoption ; inquiries carried out by local authorities in adoption cases; care, possession and supervision of children awaiting adoption.”.
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16 ..... **F163**

**Textual Amendments**

**F163** Sch. 3 para. 16 repealed by Family Law Reform Act 1987 (c. 42, SIF 49:7), ss. 33(4), 34(2), **Sch. 4**

*Immigration Act 1971 (c. 77)*

17 In section 33(1) of the Immigration Act 1971, in the definition of “legally adopted”, for the words “section 4 of the Adoption Act 1968” there are substituted the words “section 72(2) of the Adoption Act 1976”.

18 ..... **F164**

**Textual Amendments**

**F164** Sch. 3 para. 18 repealed by Legal Aid Act 1988 (c. 34, SIF 77:1), s. 45, **Sch. 6**

*Children Act 1975 (c. 72)*

[<sup>F165</sup>19 In section 37(1) of the Children Act 1975 for the words “section 12” and “section 24(6)” there are substituted respectively the words “section 16 of the Adoption Act 1976” and “section 17(6) of that Act”.]

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**Textual Amendments**

**F165** Sch. 3 para. 19 repealed (*prosp.*) by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 15 (with Sch. 14 paras. 1(1), 27(4))

20 ..... **F166**

**Textual Amendments**

**F166** Sch. 3 para. 20 repealed by Child Care Act 1980 (c. 5, SIF 20), s. 89, Sch. 6

[<sup>F167</sup>21 In section 98(1)(b) of the said Act of 1975 at the end there are added the words “within the meaning of section 1 of the Adoption Act 1976”.]

**Textual Amendments**

**F167** Sch. 3 paras. 21, 22 repealed (*prosp.*) by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 15 (with Sch. 14 paras. 1(1), 27(4))

[<sup>F168</sup>22 In section 103(1)(a) of the said Act of 1975 for paragraph (i) there is substituted the following paragraph—  
“(i) section 65 of the Adoption Act 1976 ;”.]

**Textual Amendments**

**F168** Sch. 3 paras. 21, 22 repealed (*prosp.*) by Children Act 1989 (c. 41, SIF 20), s. 108, Sch. 15 (with Sch. 14 paras. 1(1), 27(4))

*Legitimacy Act 1976 (c. 31)*

- 23 In section 4 of the Legitimacy Act 1976,
- (a) in subsection (1), for the words “Paragraph 3 of Schedule 1 to the Children Act 1975” there are substituted the words “Section 39 of the Adoption Act 1976” ;
  - (b) in subsection (2)(a), for the words “sub-paragraph (2) of the said paragraph 3” there are substituted the words “subsection (2) of the said section 39” ;
  - (c) in subsection (2)(b), for the words “Part II of the said Schedule I” there are substituted the words “section 39, 41 or 42 of the Adoption Act 1976”.
- 24 In section 6(2) of the said Act of 1976, for the words “paragraph 6(2) of Schedule 1 to the Children Act 1975” there are substituted the words “section 42(2) of the Adoption Act 1976”.

**PART II E+W**

25—44. .... **F169**

*Status: Point in time view as at 09/09/1991.*

*Changes to legislation: Adoption Act 1976 is up to date with all changes known to be in force on or before 28 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### Textual Amendments

**F169** Sch. 3 Pt. II (paras. 25–44) repealed (S.) by Adoption (Scotland) Act 1978 (c. 28, SIF 49:11), s. 66, Sch. 4

## <sup>X16</sup>SCHEDULE 4 **E+W**

### REPEALS

### Editorial Information

**X16** The text of s. 73(3) and Sch. 4 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

Chapter	Short title	Extent of Repeal
1958 c. 5 (7 & 8 Eliz. 2).	Adoption Act 1958.	The whole Act so far as unrepealed.
1959 c. 72.	Mental Health Act 1959.	In section 19(3), the words “or a protected child within the meaning of Part IV of the Adoption Act 1958”.
1960 c. 59.	Adoption Act 1960.	The whole Act.
1964 c. 57.	Adoption Act 1964.	The whole Act.
1968 c. 46.	Health Services and Public Health Act 1968.	In section 64(3)(a), paragraphs (v) and (xii). In section 65(3)(b), paragraphs (v) and (xiii).
1968 c. 53.	Adoption Act 1968.	The whole Act.
1969 c. 54.	Children and Young Persons Act 1969.	In Schedule 5, paragraphs 33 to 36.
1970 c. 31.	Administration of Justice Act 1970.	In Schedule 1, the paragraph relating to appeals under section 10 of the Adoption Act 1958.
1970 c. 42.	Local Authorities Social Services Act 1970.	In Schedule 1, the paragraphs relating to the Adoption Act 1958 and Part I of the Children Act 1975.
1971 c. 3.	Guardianship of Minors Act 1971.	In Schedule 1, the paragraphs relating to the Adoption Act 1958.
1972 c. 70.	Local Government Act 1972.	In Schedule 23, paragraph 8.

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1975 c. 72.	Children Act 1975.	Part I. Section 100(4), (5) and (6). In section 102(1), the words “Part I except section 24(6) or” and paragraph (a). In section 107(1), the definitions of “adoption order”, “adoption society”, “approved adoption society”, “British adoption order”, “British territory”, “the Convention”, “Convention adoption order”, “Convention country” and “United Kingdom national”, and in the definition of “guardian”, paragraph (b). Schedules 1 and 2. In Schedule 3, paragraphs 6, 16(b), 17, 21 to 40, 44, 45, 61 to 65, and 74(a).
1976 c. 31.	Legitimacy Act 1976.	In Schedule 1, paragraph 7.

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**Status:**

Point in time view as at 09/09/1991.

**Changes to legislation:**

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