



# Adoption (Scotland) Act 1978

## 1978 CHAPTER 28

### PART II

#### ADOPTION ORDERS

##### *The making of adoption orders*

#### 12 Adoption orders.

- (1) An adoption order is an order vesting the parental [<sup>F1</sup>responsibilities and parental rights in relation] to a child in the adopters, made on their application by an authorised court [<sup>F2</sup>; except that an adoption order may be made in relation to a person who has attained the age of 18 years if the application for it was made before such attainment].
  - (2) The order does not affect the parental [<sup>F3</sup>responsibilities and parental rights] so far as they relate to any period before the making of the order.
  - (3) [<sup>F4</sup>Subject to subsection (3A)]the making of an adoption order operates to extinguish—
    - (a) any parental [<sup>F5</sup>responsibility or parental right] relating to the child which immediately before the making of the order was vested in a person (not being one of the adopters) who was—
      - (i) a parent of the child, or
      - (ii) a [<sup>F6</sup> . . . guardian of the child appointed by a deed or by the order of a court;
    - (b) any duty owed to [<sup>F7</sup> . . . the child—
      - (i) to pay or provide aliment in respect of any period occurring after the making of the order;
      - (ii) to make any payment arising out of parental [<sup>F8</sup>responsibilities and parental rights] in respect of such a period.
- [<sup>F9</sup>(3A) Where the adoption order is made by virtue of section 15(1)(aa), its making shall not operate to extinguish the parental responsibilities and parental rights which immediately before the making of the order were vested in the natural parent to whom the adopter is married.]

*Status: Point in time view as at 01/04/1997.*

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- (4) Nothing in subsection (3) shall <sup>F10</sup> . . .  
 extinguish any duty arising under a deed or agreement which constitutes a trust or which expressly provides that the duty is not to be extinguished by the making of an adoption order;  
<sup>F11</sup>(b) . . . . .
- (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.
- [<sup>F12</sup>(8) An adoption order shall not be made in relation to a child of or over the age of 12 years unless with the child’s consent; except that, where the court is satisfied that the child is incapable of giving his consent to the making of the order, it may dispense with that consent.]
- [<sup>F13</sup>(9) Where a court making an adoption order in relation to a child who is subject to a supervision requirement is satisfied that, in consequence of its doing so, compulsory measures of supervision in respect of the child are no longer necessary, it may determine that the child shall forthwith cease to be subject to that requirement.]

#### Textual Amendments

- F1** Words in s. 12(1) substituted (1.11.1996) by 1995 c. 36, s. 98(1), **Sch. 2 para. 7(a)(i)** (with s. 103(1)); S.I. 1996/2203, art. 3(3), **Sch.**
- F2** Words in s. 12(1) added (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 7(a)(ii)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F3** Words in s. 12(2) substituted (1.11.1996) by 1995 c. 36, s. 98(1), **Sch. 2 para. 7(b)** (with s. 103(1)); S.I. 1996/2203, art. 3(3), **Sch.**
- F4** Words in s. 12(3) inserted (1.4.1997) by 1995 c. 36, **s. 97(1)(a)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F5** Words in s. 12(3)(a) substituted (1.11.1996) by 1995 c. 36, s. 98(1), **Sch. 2 para. 7(c)(i)** (with s. 103(1)); S.I. 1996/2203, art. 3(3), **Sch.**
- F6** Words in s. 12(3)(a)(ii) repealed (25.9.1991) by Age of Legal Capacity (Scotland) Act 1991 (c. 50, SIF 49:8), ss. 10, 11(2), **Sch. 2** (with s. 1(3))
- F7** Words in s. 12(3)(b) repealed (1.11.1996) by 1995 c. 36, s. 105(5), **Sch. 5** (with s. 103(1)); S.I. 1996/2203, art. 3(3), **Sch.** Table
- F8** Words in s. 12(3)(b) substituted (1.11.1996) by 1995 c. 36, s. 98(1), **Sch. 2 para. 7(c)(ii)** (with s. 103(1)); S.I. 1996/2203, art. 3(3), **Sch.**
- F9** S. 12(3A) inserted (1.4.1997) by 1995 c. 36, **s. 97(1)(b)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **art. 2**)
- F10** Word “a” in s. 12(4) repealed (1.11.1996) by 1995 c. 36, s. 105(5), **Sch. 5** (with s. 103(1)); S.I. 1996/2203, art. 3(3), **Sch.** Table
- F11** S. 12(4)(b) repealed (1.11.1996) by 1995 c. 36, s. 105(5), **Sch. 5** (with s. 103(1)); S.I. 1996/2203, art. 3(3), **Sch.** Table
- F12** S. 12(8) substituted (25.9.1991) by Age of Legal Capacity (Scotland) Act 1991 (c. 50, SIF 49:8), **ss. 2(3)(a), 11(2)** (with s. 1(3))
- F13** S. 12(9) added (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 7(d)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)

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### 13 Child to live with adopters before order made.

- (1) Where the applicant, or one of the applicants, is a parent, step-parent or relative of the child, or the child was placed with the applicants by an adoption agency, 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.

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

C1 S. 13 excluded (transitionally) by S.I. 1984/1050, art. 4, Sch. paras. 2, 3

### 14 Adoption by married couple.

- [<sup>F14</sup>(1) <sup>F15</sup> . . . , 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; 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>, or,
      - (c) both of them were habitually resident in any of the places mentioned in paragraph (a) above throughout the period of one year which ends with the date of their application]

#### Textual Amendments

F14 S. 14(1)–(1B) substituted (14.10.1991) for s. 14(1) by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, Sch. 10 para. 33 (with Sch. 14 para. 1(1)); S.I. 1991/828, art. 3(2)

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- F15** Words in s. 14(1) repealed (1.11.1996) by 1995 c. 36, ss. 98(1), 105(5), Sch. 2 para. 8(a), **Sch. 5** (with s. 103(1)); S.I. 1996/2203, art. 3(3), **Sch. Table**
- F16** S. 14(2)(c) and the word preceding it added (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 8(b)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)

## 15 Adoption by one person.

- (1) <sup>F17</sup> . . . 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
  - <sup>F18</sup>(aa) not being a person who may make application by virtue of paragraph (b) below, is married to a person—
    - (i) who is the natural parent of the child concerned; and
    - (ii) in whom are vested parental responsibilities and parental rights in relation to the child,]
  - (b) [<sup>F19</sup>not being a person who may make application by virtue of paragraph (aa) above,]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 [<sup>F20</sup>, or
  - (c) he was habitually resident in any of the places mentioned in paragraph (a) above throughout the period of one year which ends with the date of his application]
- (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 <sup>F21</sup> . . . parent is dead or cannot be found [<sup>F22</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 <sup>F21</sup> . . . parent, and where such an order is made the reason justifying the exclusion of the other <sup>F21</sup> . . . parent shall be recorded by the court.

### Textual Amendments

- F17** Words in s. 15(1) repealed (1.11.1996) by 1995 c. 36, ss. 98(1), 105(5), Sch. 2 para. 9(a), **Sch. 5** (with s. 103(1)); S.I. 1996/2203, art. 3(3), **Sch. Table**
- F18** S. 15(1)(aa) inserted (1.4.1997) by 1995 c. 36, s. **97(2)(a)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F19** Words in s. 15(1)(b) inserted (1.4.1997) by 1995 c. 36, s. **97(2)(b)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)

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- F20** S. 15(2)(c) and the word preceding it added (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 9(b)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F21** Words in s. 15(3) repealed (1.11.1996) by 1995 c. 36, s. 105(5), **Sch. 5** (with s. 103(1)); S.I. 1996/2203, **art. 3(3)**, **Sch. Table**
- F22** Words in s. 15(3)(a) inserted (1.8.1991) by Human Fertilisation and Embryology Act 1990 (c. 37, SIF 83:1), s. 49(5), **Sch. 4 para. 6** (with ss. 39(3), 43(2)); S.I. 1991/1400, **art. 2(2)**

## 16 Parental agreement.

- (1) An adoption order shall not be made unless—
- (a) the child is free for adoption by virtue of an order made
- [<sup>F23</sup>(i) in Scotland under section 18;
- (ii) in England and Wales under section 18 of the Adoption Act 1976; or
- (iii) in Northern Ireland under Article 17(1) or 18(1) of the Adoption (Northern Ireland) Order 1987,
- and not revoked]; 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).
- [<sup>F24</sup>(2) The grounds mentioned in subsection (1)(b)(ii) are, that the parent or guardian—
- (a) is not known, cannot be found or is incapable of giving agreement;
- (b) is withholding agreement unreasonably;
- (c) has persistently failed, without reasonable cause, to fulfil one or other of the following parental responsibilities in relation to the child—
- (i) the responsibility to safeguard and promote the child’s health, development and welfare; or
- (ii) if the child is not living with him, the responsibility to maintain personal relations and direct contact with the child on a regular basis;
- (d) has seriously ill-treated the child, whose reintegration into the same household as the parent or guardian is, because of the serious ill-treatment or for other reasons, unlikely.]
- (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.

<sup>F25</sup>(5) .....

### Textual Amendments

- F23** Words in s. 16(1)(a) substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 88, 108, **Sch. 10 para. 34** (with **Sch. 14 para. 1(1)**); S.I. 1991/828, **art. 3(2)**
- F24** S. 16(2) substituted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 10(a)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)

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**F25** S. 16(5) repealed (1.4.1997) by 1995 c. 36, ss. 98(1), 105(5), Sch. 2 para. 10(b), **Sch. 5** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)

## 17 Convention adoption orders.

- (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, and
  - (c) must not be, or have been, married.
- (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 United Kingdom national or a national of a Convention country, and must habitually reside in Great Britain, or
  - (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 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 act of sederunt 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—

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- (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.

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