



# Adoption (Scotland) Act 1978

## 1978 CHAPTER 28

### PART VI

#### MISCELLANEOUS AND SUPPLEMENTAL

#### 49 Adoption of children abroad.

- (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>F1</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>F2</sup>transferring to him the parental responsibilities and parental rights in relation] to 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) Section 45 and paragraphs 1 and 2(1) and (3) 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 register 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>F3</sup>words “(England)”: or “(Northern Ireland)”:]), be marked with the words “Proposed foreign adoption”: or “Proposed foreign re-adoption”:, as the case may require.

<sup>F4</sup>(4) .....

#### Textual Amendments

**F1** Words in s. 49(1) inserted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 88, **Sch. 10 para. 42(a)** (with s. 108, Sch. 14 para. 1(1)); S.I. 1991/828, **art. 3(2)**.

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- F2** Word in s. 49(1) substituted (1.11.1996) by 1995 c. 36, s. 98(1), **Sch. 2 para. 23** (with s. 103(1)); S.I. 1996/2203, art. 3(3), **Sch.**
- F3** Words in s. 49(3) substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, **Sch. 10 para. 42(b)** (with Sch. 14 para. 1(1)); S.I. 1991/828, **art. 3(2)**.
- F4** S. 49(4) repealed (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108, **Sch. 15** (with Sch. 14 paras. 1(1), 27(4)); S.I. 1991/828, **art. 3(2)**.

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

- C1** S. 49 excluded by S.I. 1984/1050, art. 4, **Sch. 1 para. 3**

**50 Restriction on removal of children for adoption outside Great Britain.**

- (1) Except under the authority of an order under section 49, or under section 55 of the <sup>M1</sup>Adoption Act 1976 [<sup>F5</sup>or Article 57 of the 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 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 transferring the care and possession of a child to 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 £400 or to 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 sufficient 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 transferring the care and possession of a child to a person for the purpose referred to in subsection (1) if—
- (a) he facilitates the placing of the child in the care and possession of that person; or
  - (b) 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, or if he causes another person to do so.

**Textual Amendments**

- F5** Words in s. 50(1) inserted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 88, **Sch. 10 para. 43** (with s. 108, Sch. 14 para. 1(1)); S.I. 1991/828, **art. 3(2)**

**Marginal Citations**

- M1** 1976 c. 36.

**[<sup>F6</sup>50A Restriction on bringing children into the United Kingdom for adoption**

- (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

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- 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

**F6** S. 50A inserted (2.7.2001) by 1999 c. 18, s. 14; S.S.I. 2001/235, art. 2

## 51 Prohibition on certain payments.

- (1) Subject to the provisions of this section [<sup>F7</sup>and of section 51A(3)], 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 transfer by that person of the care and possession of a child 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 £400 or to both; and [<sup>F8</sup>without prejudice to any power which the court has to make any other order in relation to the child as respects whom the offence was committed, it may order him] 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.
- (4) 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 49, 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

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- (b) any payment made by an adoption agency to another adoption agency in consideration of the placing of a child in the care and possession of 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.
- (5) <sup>F9</sup>Subject to section 51B, 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 <sup>F10</sup>(including any such payment made by virtue of section 51B)].
- (6) The Secretary of State, in the case of a scheme approved by him under subsection (5), may at any time—
- <sup>F11</sup>(a) .....
  - (b) revoke the scheme.
- <sup>F11</sup>(7) .....
- (8) ..... <sup>F12</sup>
- <sup>F11</sup>(9) .....
- <sup>F11</sup>(10) .....
- <sup>F11</sup>(11) .....

#### Textual Amendments

- F7** Words in s. 51(1) substituted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 24(a)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F8** Words in s. 51(2) substituted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 24(b)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F9** Words in s. 51(5) inserted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 24(c)(i)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F10** Words in s. 51(5) added (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 24(c)(ii)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F11** S. 51(6)(a)(7)(9)-(11) repealed (1.4.1997) by 1995 c. 36, ss. 98(1), 105(5), Sch. 2 para. 24(d), **Sch. 5** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F12** S. 51(8) repealed by S.I. 1989/194, **art. 2** and expressed to be repealed (1.4.1997) by 1995 c. 36, ss. 98(1), 105(5), Sch. 2 para. 24(d), **Sch. 5** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)

#### <sup>F13</sup>51A Adoption allowances schemes.

- (1) Subject to subsection (2), an adoption agency which is—
- (a) a local authority shall, within such period after the coming into force of this section as the Secretary of State may by order direct;
  - (b) an approved adoption society may,

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prepare a scheme (in this section and in section 51B referred to as an “adoption allowances scheme”) for the payment by the agency of allowances to any person who has adopted, or intends to adopt, a child in any case where arrangements for the adoption were made, or as the case may be are to be made, by the agency.

- (2) The Secretary of State may make regulations as respects adoption allowances schemes; and without prejudice to the generality of this subsection such regulations may in particular make provision as to—
- (a) the procedure to be followed by an 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;
  - (e) the information about allowances which is to be supplied by an agency to a person who intends to adopt a child; and
  - (f) the procedure to be followed by an agency in drawing up, in making alterations to, or in revoking and replacing, an adoption allowances scheme.
- (3) Section 51(1) shall not apply to any payment made in accordance with an adoption allowances scheme (including any such payment made by virtue of section 51B).]

#### Textual Amendments

**F13** S. 51A inserted (12.12.1996 for specified purposes and 1.4.1998 for all other purposes) by 1995 c. 36, s. 98(1), **Sch. 2 para. 25** (with s. 103(1)); S.I. 1996/3201, **art. 3(5)(7)(a)** (as amended by S.I. 1997/744, **art. 2**)

#### [<sup>F14</sup>51B Transitional provisions as respects adoption allowances.

After the coming into force of section 51A—

- (a) no scheme for the payment of allowances shall bemissible under subsection (5) of section 51; and
- (b) a scheme which has been approved under that subsection of that section shall forthwith be revoked under subsection (6)(b) of that section, so however that where a person was before its revocation receiving payments made in accordance with that scheme he may continue to receive payments so made which, had there been no revocation, would have fallen to be made to him or he may agree to receive, instead of the continued payments, payments made in accordance with an adoption allowances scheme.]

#### Textual Amendments

**F14** S. 51B inserted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 25** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **art. 2**)

#### 52 Restriction on advertisements.

- (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

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- (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 £400.

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

**C2** S. 52 modified by [S.I. 1984/1050](#), art. 4, [Sch. para. 7](#)

**53 Effect of determination and orders made in England and Wales and overseas in adoption proceedings.**

[<sup>F15</sup>(1) Where—

- (a) an authority of a Convention country (other than the United Kingdom) having power under the law of that country—
- (i) to authorise, or review the authorisation of, a Convention adoption; or
  - (ii) to give or review a decision revoking or annulling such an adoption or a Convention adoption order; or
- (b) an authority of any of the Channel Islands, the Isle of Man or any colony having power under the law of that territory—
- (i) to authorise, or review the authorisation of, a Convention adoption or an adoption effected in that territory; or
  - (ii) to give or review a decision revoking or annulling such an adoption or a Convention adoption order,

makes a determination in the exercise of that power, then, subject to section 53 and any subsequent determination having effect under this subsection, the determination shall have effect in Scotland for the purpose of effecting, confirming or terminating the adoption in question or confirming its termination as the case may be.]

[<sup>F16</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 England and Wales or Northern Ireland of an order freeing a child for adoption subsection (3) of section 20 shall apply as if the order had been revoked under that section.]

- (3) Sections 12(3) and (4) and 43 apply in relation to a child who is the subject of an order which is similar to an order under section 49 and is made (whether before or after this Act has effect) in England or Wales, 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.

**Textual Amendments**

**F15** S. 53(1) substituted (1.6.2003) by [Adoption \(Intercountry Aspects\) Act 1999](#) (c. 18), [ss. 6\(4\), 18\(3\)](#) (with s. 17); [S.S.I. 2003/121](#), art. 2(d)

**F16** S. 53(2) substituted (14.10.1991) by [Children Act 1989](#) (c. 41, SIF 20), s. 88, [Sch. 10 para. 44\(b\)](#) (with s. 108, [Sch. 14 para. 1\(1\)](#)); [S.I. 1991/828](#), [art. 3\(2\)](#)

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## 54 Evidence of adoption in England, Wales and Northern Ireland.

Any document which is receivable as evidence of any matter—

- (a) in England and Wales under section 50(2) of the <sup>M2</sup>Adoption Act 1976; or
- (b) in Northern Ireland under [<sup>F17</sup>Article 63(1) of the Adoption (Northern Ireland) Order 1987],

shall also be so receivable in Scotland.

### Textual Amendments

**F17** Words in s. 54(b) substituted (14.10.1991) by [Children Act 1989 \(c. 41, SIF 20\)](#), ss. 88, 108, [Sch. 10 para. 45](#) (with [Sch. 14 para. 1\(1\)](#)); [S.I. 1991/828](#), [art. 3\(2\)](#)

### Marginal Citations

**M2** 1976 c. 36.

## 55 Evidence of agreement and consent.

- (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 <sup>F18</sup>... may be given in writing, and, if the document signifying the agreement or consent is witnessed in accordance with rules, it shall be sufficient 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.

### Textual Amendments

**F18** Words in s. 55(1) repealed (1.6.2003) by [Adoption \(Intercountry Aspects\) Act 1999 \(c. 18\)](#), s. 18(3), [Sch. 3](#) (with s. 17); [S.S.I. 2003/121](#), [art. 2\(j\)](#)

### Modifications etc. (not altering text)

**C3** S. 55 excluded (transitionally) [S.I. 1984/1050](#), [art. 4](#), [Sch. para. 2](#)

## 56 Courts.

- (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 [<sup>F19</sup>subsection (5)], if the child is in Scotland when the application is made, the following are authorised courts—
  - (a) the Court of Session;
  - (b) the sheriff court of the sheriffdom within which 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 Court of Session is the authorised court.

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<sup>F20</sup>(4) .....

- (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) in any other case—
    - (i) the Court of Session;
    - (ii) the sheriff court of the sheriffdom within which the applicant resides.

#### Textual Amendments

- F19** Words in s. 56(2) substituted (1.6.2003) by [Adoption \(Intercountry Aspects\) Act 1999 \(c. 18\), s. 18\(3\), Sch. 2 para. 4\(5\)\(a\)](#) (with s. 17); S.S.I. 2003/121, art. 2(i)
- F20** S. 56(4) repealed (1.6.2003) by [Adoption \(Intercountry Aspects\) Act 1999 \(c. 18\), s. 18\(3\), Sch. 2 para. 4\(5\)\(b\), Sch. 3](#) (with s. 17); S.S.I. 2003/121, art. 2(i)

#### 57 Proceedings to be in private.

All proceedings before the court under Part II, section 29 or section 49 shall be heard and determined in private unless the court otherwise directs.

#### 58 Curators ad litem and reporting officers.

- (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 49, rules shall provide for the appointment, in such cases as are prescribed—
- (a) of a person to act as curator 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 [<sup>F21</sup>responsibilities and parental rights in relation] to the child,
- shall not be appointed to act as curator 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 curator ad litem and reporting officer.
- (3) Rules may provide for the reporting officer to be appointed before the application is made.



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#### Textual Amendments

**F21** Words in s. 58(2)(c) substituted (1.11.1996) by 1995 c. 36, s. 98(1), **Sch. 2 para. 26** (with s. 103(1)); S.I. 1996/2203, art. 3(3), **Sch.**

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

**C4** S. 58 excluded (transitionally) by S.I. 1984/1050, art. 4, **Sch. paras. 2, 3**

## 59 Rules of procedure.

- (1) Subject to subsection (4), provision shall be made by act of sederunt with regard to any matter to be prescribed under this Act and generally with regard to all matters of procedure and incidental matters arising out of this Act and for carrying this Act into effect.
- (2) 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 to be given or dispensed with under this Act to be notified of a date and place where he may be heard on the application and of the fact that, unless he wishes or the court requires, he need not attend.
- (3) In the case of an application under section 49, rules shall require every person who can be found, and whose agreement to the making of the order would be required if the application were for an adoption order (other than a Convention adoption order), to be notified as aforesaid.
- (4) This section does not apply to sections 9, 10 [<sup>F22</sup>and 11].

#### Textual Amendments

**F22** Words in s. 59(4) substituted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 2 para. 27** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)

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

**C5** S. 59(2) excluded (transitionally) by S.I. 1984/1050, art. 4, **Sch. para. 2**

## 60 Orders, rules and regulations.

- (1) Any power to make orders or regulations conferred by this Act on the Secretary of State or the Registrar General for Scotland shall be exercisable by statutory instrument.
- (2) A statutory instrument containing 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) <sup>F23</sup> . . . shall not be made unless a draft of the order has been approved by resolution of each House of Parliament.

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- (4) An order made under any provision of this Act may be revoked or varied by a subsequent order under that provision.
- (5) Any order, rule or regulation made under this Act may make different provision for different circumstances and may contain such incidental and transitional provisions as the authority making the order or regulation considers expedient.
- (6) The Registrar General for Scotland shall not make regulations under paragraph 1(1) [<sup>F24</sup>or 3] of Schedule 1 except with the approval of the Secretary of State.
- (7) The <sup>M3</sup>Statutory Instruments Act 1946 shall apply to a statutory instrument containing regulations made for the purposes of this Act by the Registrar General for Scotland as if the regulations had been made by a Minister of the Crown.

#### Textual Amendments

- F23** Words in s. 60(3) repealed (1.4.1997) by 1995 c. 36, ss. 98(1), 105(5), Sch. 2 para. 28, **Sch. 5** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F24** Words in s. 60(6) inserted (1.6.2003) by Adoption (Intercountry Aspects) Act 1999 (c. 18), s. 18(3), **Sch. 2 para. 4(6)** (with s. 17); S.S.I. 2003/121, art. 2(i)

#### Marginal Citations

- M3** 1946 c. 36.

## 61 Offences by bodies corporate.

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.

## 62 Service of notices etc.

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

## <sup>F25</sup>63 Nationality.

.....

#### Textual Amendments

- F25** S. 63 repealed (1.6.2003) by Adoption (Intercountry Aspects) Act 1999 (c. 18), s. 18(3), Sch. 2 para. 4(7), **Sch. 3** (with s. 17); S.S.I. 2003/121, art. 2(i)

## 64 Internal law of a country.

- (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.

*Status: Point in time view as at 01/06/2003.*

*Changes to legislation: Adoption (Scotland) Act 1978, Part VI is up to date with all changes known to be in force on or before 19 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)*

- (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.

## 65 Interpretation.

- (1) In this Act, unless the context otherwise requires—

“adoption agency” in sections 11, 13, 18 to 23 and 27 includes an adoption agency within the meaning of section 1 of the <sup>M4</sup>Adoption Act 1976 (adoption agencies in England and Wales) [<sup>F26</sup>and an adoption agency within the meaning of Article 3 of the Adoption (Northern Ireland) Order 1987 (adoption agencies in Northern Ireland)];

[<sup>F27</sup> “adoption order”—

- (a) means an order under section 12(1); and  
(b) in sections 12(3) and (4), 18 to 20, 27, 28, [<sup>F28</sup>30 and 31] and in the definition of “British adoption order”: in this subsection includes an order under section 12 of the <sup>M5</sup>Adoption Act 1976 and Article 12 of the <sup>M6</sup>Adoption (Northern Ireland) Order 1987 (adoption orders in England and Wales and Northern Ireland respectively); and  
(c) in sections 27, 28, [<sup>F28</sup>30 and 31] includes an order under section 49, section 55 of the Adoption Act 1976 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 [<sup>F29</sup>, or in connection with,] the adoption of children;

“approved adoption society” means an adoption society approved under Part I and, in sections 30 and 45, includes an adoption society approved under Part I of the <sup>M7</sup>Adoption Act 1976;

“authorised court” shall be construed in accordance with section 56;

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

[<sup>F30</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;

[<sup>F31</sup>“compulsory measures of supervision” has the same meaning as in Part II of the Children (Scotland) Act 1995;]

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[<sup>F32</sup>“the Convention” means the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, concluded at the Hague on 29th May 1993;]

[<sup>F32</sup>“Convention adoption” means an adoption effected under the law of a Convention country outside the British Islands, and certified in pursuance of Article 23(1) of the Convention;]

[<sup>F32</sup>“Convention adoption order” means an adoption order made in accordance with section 17;]

[<sup>F32</sup>“Convention country” means any country or territory in which the Convention is in force.]

“England” includes Wales;

“guardian” means—

- (a) a person appointed by deed or will . . . <sup>F33</sup>or by a court of competent jurisdiction to be the guardian of the child, and

<sup>F34</sup>(b) . . . . .

“internal law” has the meaning assigned by section 64;

<sup>F35</sup>“local authority” means a [<sup>F36</sup>council constituted under section 2 of the Local Government etc. (Scotland) Act 1994] . . .

“notice” means a notice in writing;

“order freeing a child for adoption” means an order under section 18 [<sup>F37</sup>and, [<sup>F38</sup>sections 27(2) and 53 includes an order under—

(a) section 18 of the Adoption Act 1976; and

(b) Article 17 or 18 of the Adoption (Northern Ireland) Order 1987;]

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

[<sup>F39</sup>“parent” means, irrespective of whether or not they are, or have been, married to each other—

(a) the mother of the child, where she has parental responsibilities or parental rights in relation to him;

(b) the father of the child where he has such responsibilities or rights; and

(c) both of his parents, where both have such responsibilities or rights;

“parental responsibilities” and “parental rights” have the meanings respectively given by sections 1(3) and 2(4) of the Children (Scotland) Act 1995 (analogous expressions being construed accordingly);]

“place of safety” [<sup>F40</sup>has the meaning given by section 93(1) of the Children (Scotland) Act 1995 (c.36)]

“prescribed” means prescribed by act of sederunt;

“Registrar General for Scotland” means the Registrar General of Births, Deaths and Marriages for Scotland;

<sup>F41</sup>  
...

“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 [<sup>F42</sup>where he is not a parent within the meaning of this Act, and any person who would be a relative within the meaning of this definition if the father were such a parent;];

“rules” means rules made by act of sederunt;

<sup>F41</sup>  
...

[<sup>F43</sup>“supervision requirement” has the same meaning as in Part II of the Children (Scotland) Act 1995;]

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“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;

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

(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 [<sup>F44</sup>the British Islands]; 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, or if he causes another person to do so [<sup>F45</sup>but the making, under section [<sup>F46</sup>70 of the Children (Scotland) Act 1995], by a children’s hearing of a supervision requirement which, in respect that it provides as to where he is to reside, facilitates his being placed for adoption by an adoption agency, shall not constitute the making of such arrangements.].

[<sup>F47</sup>(3A) In this Act, in relation to the proposed adoption of a child resident outside the British Islands, references to arrangements for the adoption of a child include references to arrangements for an assessment for the purpose of indicating whether a person is suitable to adopt a child or not.]

(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.

[<sup>F48</sup>(6) Any reference in this Act to a child being in, received into or kept in, care (whether or not such care is expressed as being the care of a local authority and except where the context otherwise requires) shall be taken to be a reference to his being looked after by a local authority and shall be construed in accordance with section 17(6) of the Children (Scotland) Act 1995; and any reference to the authority in whose care a child is, shall be construed accordingly.]

#### Textual Amendments

- F26** Words in s. 65(1) added (14.10.1991) by [Children Act 1989 \(c. 41, SIF 20\)](#), s. 88, [Sch. 10 para. 46\(a\)](#) (with [Sch. 14 para. 1\(1\)](#)); [S.I. 1991/828](#), [art. 3\(2\)](#)

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- F27** Definition of “adoption order”: in s. 65(1) substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, **Sch. 10 para. 46(b)** (with Sch. 14 para. 1(1)); S.I. 1991/828, **art. 3(2)**
- F28** Words in the definition of “adoption order” in s. 65(1) substituted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 29(a)(i)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F29** Words in the definition of “adoption order” in s. 65(1) inserted (1.4.1997) by 1995 c. 36, s. 94(3) (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F30** Definition of “British adoption order”: in s. 65(1) substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, **Sch. 10 para. 46(c)** (with Sch. 14 para. 1(1)); S.I. 1991/828, **art. 3(2)**
- F31** Definition in s. 65(1) inserted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 29(a)(ii)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F32** Words in s. 65(1) substituted (1.6.2003) by Adoption (Intercountry Aspects) Act 1999 (c. 18), **ss. 8, 18(3)** (with s. 17); S.S.I. 2003/121, **art. 2(e)**
- F33** Words repealed by Law Reform (Parent and Child) (Scotland) Act 1986 (c. 9, SIF 49:8), ss. 10(2), 11(4), **Sch. 2**
- F34** Words in the definition of “guardian” in s. 65(1) repealed (1.11.1996) by 1995 c. 36, ss. 98(1), 105(5), **Sch. 2 para. 29(a)(iii), Sch. 5** (with s. 103); S.I. 1996/2203, **art. 3(3), Sch.**
- F35** Words in s. 65(1) repealed (14.10.1991) by Children Act 1989 (c. 41, SIF 20), s. 108, **Sch. 15**, (with Sch. 14 paras. 1(1), 27(4)); S>I. 1991/828, **art. 3(2)** and expressed to be repealed (1.4.1997) by 1995 c. 36, ss. 98(1), 105(5), **Sch. 2 para. 29(a)(iv), Sch. 5** (with s. 103(1); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F36** Words in the definition of “local authority” in s. 65(1) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 111(3); S.I. 1996/323, art. 4(1)(c)**
- F37** Words added by Health and Social Services and Social Security Adjudications Act 1983 (c. 41, SIF 113:3), s. 9, **Sch. 2 para. 45(b)**
- F38** Words in s. 65(1) substituted (14.10.1991) by Children Act 1989 (c. 41, SIF 20), ss. 88, 108, **Sch. 10 para. 46(d)** (with Sch. 14 para. 1(1)); S.I. 1991/828, **art. 3(2)**
- F39** Definitions in s. 65(1) inserted (1.11.1996) by 1995 c. 36, s. 98(1), **Sch. 2 para. 29(v)** (with s. 103(1)); S.I. 1996/2203, **art. 3(3), Sch.** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F40** S. 65(1): words in the definition of “place of safety” substituted (1.4.2002) by Regulation of Care (Scotland) Act 2001 (asp 8), s. 79, **Sch. 3 para. 7(11)(b); S.I. 2002/162, art. 2(f)(h)** (subject to arts. 3-13)
- F41** Words in s. 65(1) repealed (1.6.2003) by Adoption (Intercountry Aspects) Act 1999 (c. 18), s. 18(3), **Sch. 3** (with s. 17); S.S.I. 2003/121, **art. 2(j)**
- F42** Words in the definition of “relative” in s. 65(1) substituted (1.11.1996) by 1995 c. 36, s. 98(1), **Sch. 2 para. 29(a)(vi)** (with s. 103(1)); S.I. 1996/2203, **art. 3(3), Sch.**
- F43** Definition inserted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 29(a)(vii)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F44** Words in s. 65(2) substituted (1.6.2003) by Adoption (Intercountry Aspects) Act 1999 (c. 18), s. 18(3), **Sch. 2 para. 4(8)** (with s. 17); S.S.I. 2003/121, **art. 2(i)**
- F45** Words inserted by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 49:6), **ss. 27, 60(6)**
- F46** Words in s. 65(3) substituted (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 29(b)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F47** S. 65(3A) inserted (10.11.2000) by 1999 c. 18, **s. 13; S.S.I. 2000/390, art. 2**
- F48** S. 65(6) added (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 29(c)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)

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

- C6** Words in s. 65(1) inserted (1.11.1996) by 1995 c. 36, s. 98(1), **Sch. 2 para. 29(v)** (with s. 103(1)); S.I. 1996/2203, **art. 3(3), Sch.**

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#### **Marginal Citations**

- M4** 1976 c. 36.
- M5** 1976 c.36 (49:11).
- M6** S.I. 1987/2203 (N.I. 22).
- M7** 1976 c. 36.

### **66 Transitional provisions, amendments and repeals.**

- (1) The transitional provisions contained in Schedule 2 shall have effect.
- (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.
- (3) The enactments specified in Schedule 4 are hereby repealed to the extent specified in column 3 of that Schedule.

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

- C7** The text of s. 66(2)(3), Schs. 3, 4 is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and, save as indicated in Sch. 3, does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

### **67 Short title, commencement and extent.**

- (1) This Act may be cited as the Adoption (Scotland) Act 1978.
- (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) Until the date appointed under subsection (2) for sections 3, 4, 5 and 8, in this Act and in the <sup>M8</sup>Adoption Act 1958 “adoption agency” means a local authority or a registered adoption society within the meaning of the said Act of 1958.
- (4) This Act shall extend to Scotland only.

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

- C8** Power of appointment conferred by s. 67(2) fully exercised: [S.I. 1984/1050, art. 3](#)

#### **Marginal Citations**

- M8** 1958 c. 5 (7 & 8 Eliz. 2).

**Status:**

Point in time view as at 01/06/2003.

**Changes to legislation:**

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