

Adoption and Children (Scotland) Bill

[AS INTRODUCED]

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Explanatory Notes, together with other accompanying documents, are printed separately as SP Bill 61-EN. A Policy Memorandum is printed separately as SP Bill 61-PM.

Adoption and Children (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to restate and amend the law relating to adoption; to make other provision in relation to the care and possession of children; to enable provision to be made in relation to allowances for the fostering of children; and for connected purposes.

PART 1

ADOPTION

CHAPTER 1

THE ADOPTION SERVICE

The adoption service

1 Duty of local authority to provide adoption service

(1) Each local authority must—

- (a) to the extent that it already provides an adoption service in its area, continue to do so, and
- (b) to the extent that it does not provide such a service in its area, provide such a service there.

(2) An adoption service consists of—

- (a) pre-adoption services,
- (b) adoption support services, and
- (c) post-adoption services.

(3) For the purpose of carrying out the duties imposed by subsection (1) efficiently and effectively, a local authority must have regard to—

- (a) the other services that it provides in its area in carrying out the functions of a local authority under any of the enactments mentioned in section 5(1B) of the Social Work (Scotland) Act 1968 (c.49) (power of the Scottish Ministers to issue certain directions) including, in particular, those functions in so far as they relate to children, and
- (b) any registered adoption service provided there.

- (4) A local authority may carry out the duties imposed by subsection (1) by securing the provision of its adoption service by a registered adoption service.
- (5) In this section, “registered adoption service” means an adoption service provided as mentioned in section 2(11)(b) of the Regulation of Care (Scotland) Act 2001 (asp 8) and registered under Part 1 of that Act.

2 Local authority plans

- (1) Before the expiry of such period as the Scottish Ministers may direct, each local authority must prepare and publish a plan for the provision of the adoption service which it is required by section 1(1) to continue to provide, or to provide, in its area.
- (2) Each local authority—
- (a) must from time to time review the plan published by it under subsection (1), and
 - (b) may, having regard to any such review, prepare and publish—
 - (i) modifications of the plan, or
 - (ii) a plan in substitution for the plan.
- (3) In preparing a plan, or carrying out a review, under this section a local authority must consult—
- (a) each Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978 (c.29) which provides services under that Act in the area of the local authority,
 - (b) such voluntary organisations as appear to the authority to represent the interests of persons who use, or are likely to use, adoption services in that area,
 - (c) such voluntary organisations as appear to the authority to provide services in that area which, were they to be provided by the authority, might be part of an adoption service, and
 - (d) such other persons as may be prescribed by regulations made by the Scottish Ministers.
- (4) A local authority may incorporate a plan published under subsection (1) in any plan published by the authority under section 19(1) of the 1995 Act (local authority plans for services for children).
- (5) Where a local authority incorporates a plan as mentioned in subsection (4), it need not separately publish a plan under subsection (1).
- (6) Subsections (2) and (5) apply to a plan modified or substituted under subsection (2) as they apply to a plan published under subsection (1).
- (7) The Scottish Ministers may give a local authority directions as to the carrying out of its functions under subsection (2).
- (8) The Scottish Ministers may vary or revoke any direction given under subsection (7).

3 Assistance in carrying out functions under sections 1 and 2

- (1) Where it appears to a local authority that an appropriate person could assist the authority in carrying out any of its functions under section 1 or 2, it may require the person to assist the authority in the way specified in the requirement.

- (2) An appropriate person need not comply with a requirement made by virtue of subsection (1) if—
- (a) it would not be reasonably practicable to do so,
 - (b) doing so would be incompatible with the person’s functions (whether statutory or otherwise), or
 - (c) where the person is not a natural person, doing so would unduly prejudice the carrying out of such functions.
- (3) For the purposes of this section, a person is “appropriate” if the person is—
- (a) another local authority,
 - (b) a Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978 (c.29),
 - (c) such other person as may be prescribed by regulations made by the Scottish Ministers.

4 Meaning of “adoption service” in Regulation of Care (Scotland) Act 2001

In section 2 of the Regulation of Care (Scotland) Act 2001 (asp 8) (meaning of “care services”)—

(a) in subsection (11), for paragraphs (a) and (b), substitute—

“(a) provided by a local authority under section 1(1) of the Adoption and Children (Scotland) Act 2006 (asp 00); or

(b) provided by a person other than a local authority and which consists of, or includes—

(i) the making of arrangements for or in connection with the adoption of children; or

(ii) the provision of support, counselling or other forms of assistance in connection with the adoption of children,

(whether the person functions generally or in relation to a service provided, or to be provided, under that section).”, and

(b) in subsection (12), for “(11)(b)” substitute “(11)(b)(i)”.

Regulations

5 Adoption agencies: regulations about carrying out of functions

- (1) The Scottish Ministers may make regulations for any purpose relating to the carrying out of its functions by a registered adoption service.
- (2) The Scottish Ministers may make regulations with respect to the carrying out by local authorities of their functions in relation to adoption.
- (3) Regulations under this section may in particular make provision for or in connection with—
- (a) specifying circumstances in which a local authority proposing to make arrangements for the adoption of a child must apply for a permanence order,

- (b) requiring such an application to be made within a period specified in the regulations.

Services

6 Pre-adoption services

- 5 (1) Pre-adoption services are services (including in particular services of a type mentioned in subsection (2)) which are designed to meet the needs, in relation to adoption, of—
- (a) children who may be adopted,
 - (b) parents and guardians of such children,
 - (c) persons who may adopt a child.
- 10 (2) Those types of service are—
- (a) arrangements for assessing children who may be adopted,
 - (b) arrangements for assessing prospective adopters,
 - (c) arrangements for placing children for adoption,
 - (d) counselling and assistance to any of the persons mentioned in subsection (1),
 - 15 (e) the provision of information about, and guidance on, the adoption process to any such persons, and
 - (f) any other assistance, in relation to the adoption process, that the local authority providing pre-adoption services in a particular case considers appropriate in the circumstances of that case.
- 20 (3) A local authority must, on the request of a person mentioned in subsection (1), provide pre-adoption services to the person.
- (4) The Scottish Ministers may by regulations—
- (a) amend subsection (2) by—
 - (i) adding further types of service,
 - 25 (ii) modifying the types of service mentioned in that subsection, and
 - (b) make further provision about pre-adoption services.

7 Adoption support services

- (1) A local authority may, on the request of a person (other than a person mentioned in section 6(1)) (a “relevant person”), make an assessment of the needs of the person for adoption support services.
- 30 (2) Adoption support services are services (including in particular services of a type mentioned in subsection (3)), which are designed to meet the needs, in relation to adoption, of relevant persons affected by an application, or a proposed application, for an adoption order.
- 35 (3) Those types of service are—
- (a) counselling and assistance to a relevant person,

(b) the provision of information about, and guidance on, the adoption process to a relevant person, and

(c) any other assistance, in relation to the adoption process, that the local authority providing adoption support services in a particular case considers appropriate in the circumstances of that case.

(4) The Scottish Ministers may by regulations—

(a) amend subsection (3) by—

(i) adding further types of service,

(ii) modifying the types of service mentioned in that subsection, and

(b) make further provision about adoption support services.

8 Provision of adoption support services

Where an assessment under subsection (1) of section 7 shows that a relevant person (within the meaning of that subsection) has needs that can be met by the provision of adoption support services, the authority may provide the person with the services.

CHAPTER 2

THE ADOPTION PROCESS

Preliminary

9 Considerations applying to the exercise of powers

(1) Subsections (2) to (4) apply where a court or adoption agency is coming to a decision relating to the adoption of a child.

(2) The court or adoption agency must have regard to all the circumstances of the case.

(3) The court or adoption agency is to regard the need to safeguard and promote the welfare of the child throughout the child's life as the paramount consideration.

(4) The court or adoption agency must, so far as is practicable, have regard in particular to—

(a) the child's ascertainable wishes and feelings regarding the decision (taking account of the child's age and maturity),

(b) the child's religious persuasion, racial origin and cultural and linguistic background, and

(c) the likely effect on the child, throughout the child's life, of being an adopted person.

(5) In carrying out the duties imposed on it by subsections (2) to (4) an adoption agency must, before making any arrangements for the adoption of a child, consider whether adoption is likely best to meet the needs of the child or whether there is some better practical alternative for the child.

(6) If an adoption agency concludes that there is an alternative such as is mentioned in subsection (5), it must not make arrangements for the adoption of the child.

(7) A child who is at least 12 years old is presumed to be of sufficient age and maturity to form a view for the purposes of subsection (4)(a).

10 General considerations when placing child for adoption

- (1) Subsection (2) applies when an adoption agency is placing a child for adoption.
- (2) The agency must have regard, so far as is reasonably practicable, to—
- (a) the child's religious persuasion, racial origin and cultural and linguistic background, and
 - (b) the wishes and feelings of any relative of the child regarding the child.

Restrictions on arranging adoptions and placing for adoption

11 Restriction on arranging adoptions and placing children

- (1) A person other than a person falling within subsection (2) who—
- (a) makes arrangements for the adoption of a child, or
 - (b) places a child for adoption,
- commits an offence.
- (2) A person falls within this subsection if the person is—
- (a) an adoption agency, or
 - (b) a relative of the child to be adopted.
- (3) A person who receives a child placed in contravention of subsection (1) knowing that the placement is with a view to the person's adopting the child commits an offence.
- (4) A person who takes part in the management or control of a body of persons—
- (a) which exists wholly or partly for the purpose of making arrangements for the adoption of children, and
 - (b) which is not an adoption agency,
- commits an offence.
- (5) A person who commits an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 5 on the standard scale or both.
- (6) In any proceedings for an offence under subsection (4), proof of—
- (a) things done, or
 - (b) words written, spoken or published,
- by any person taking part in the management or control of the body of persons, or in making arrangements for the adoption of children on behalf of the body, is sufficient evidence of the purpose for which that body exists.
- (7) It is immaterial whether the actions mentioned in paragraphs (a) and (b) of subsection (6) are carried out in the presence of a party to the proceedings.

12 Adoption societies which are not registered adoption services

- (1) Subsection (2) applies where—
- (a) an adoption society is—

(i) a registered adoption society (within the meaning of section 2(2) of the 2002 Act), or

(ii) registered as respects Northern Ireland under Part III of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 (S.I. 2003/431), and

(b) the society is not a registered adoption service.

(2) Except to the extent that the society considers it necessary to do so in the interests of a person mentioned in section 3(1) of that Act or, as the case may be, Article 3 of the Northern Ireland Order, it must not act as an adoption society in Scotland.

(3) In relation to the provision of any particular service by an adoption society, the reference in subsection (1)(a)(i) to a registered adoption society does not include a voluntary organisation unless it is registered under Part 2 of the Care Standards Act 2000 (c.14) in respect of that service or a service which, in England, corresponds to that service.

13 Prohibition of certain payments

(1) This section applies to any payment (other than an excepted payment) which is made to any person for or in consideration of—

(a) the adoption by that person of a child,

(b) the giving by that person of any 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,

(d) the making by that person of any arrangements for the adoption of a child.

(2) Any person who—

(a) makes any payment to which this section applies,

(b) agrees or offers to make any such payment,

(c) receives, or agrees to receive, any such payment, or

(d) attempts to obtain any such payment,

commits an offence.

(3) A person who commits an offence under subsection (2) is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 5 on the standard scale or both.

(4) Where a person is convicted of an offence under subsection (2), the court may, without prejudice to any power which it has to make any other order in relation to the child as respects whom the offence was committed, order the child to be removed to a place of safety until—

(a) the child can be returned to the child's parent or guardian, or

(b) other arrangements can be made for the child.

(5) In this section—

“payment” includes reward,

“place of safety” has the meaning given by section 93(1) of the 1995 Act.

14 Excepted payments

- (1) A payment is an excepted payment if it is made by virtue of, or in accordance with provision made by virtue of this Act, the 2002 Act or the Northern Ireland Order.
- 5 (2) A payment is an excepted payment if—
- (a) it is made to an adoption agency by—
- (i) a parent or guardian of the child, or
- (ii) a person who adopts, or proposes to adopt, a child,
- in respect of expenses reasonably incurred by the agency in connection with the adoption, or proposed adoption, of the child,
- (b) it is made in respect of any legal or medical expenses incurred or to be incurred by any person in connection with an application which the person has made, or proposes to make, for an adoption order or an order under section 65,
- (c) it is authorised by the court to which an application for an adoption order is made,
- 15 (d) it is made by an adoption agency to another adoption agency in consideration of placing the child for adoption,
- (e) it is made by an adoption agency to a voluntary organisation for the time being approved for the purposes of this paragraph by the Scottish Ministers as a fee for the services of the organisation in putting the agency in touch with another adoption agency with a view to the making of arrangements between the adoption agencies for the adoption of a child.
- 20 (3) In this section, “payment” includes reward.

Pre-adoption requirements

15 Child to live with adopters before adoption order made

- 25 (1) Where—
- (a) subsection (2) applies, an adoption order may not be made in relation to a child unless the conditions in subsection (3) are met,
- (b) subsection (2) does not apply, an adoption order may not be made in relation to the child unless the conditions in subsection (4) are met.
- 30 (2) This subsection applies if—
- (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 applicant, or applicants, by an adoption agency.
- (3) The conditions are—
- 35 (a) that the child is at least 19 weeks old, and
- (b) that at all times during the period of 13 weeks immediately preceding the application the child’s home was with the applicants.
- (4) The conditions are—

- (a) that the child is at least 12 months old, and
- (b) that at all times during the period of 12 months immediately preceding the application the child's home was with the applicants.

(5) In relation to—

- (a) an adoption proposed to be effected by a Convention adoption order, or
- (b) an adoption of a child habitually resident outwith the British Islands which is proposed to be effected by an adoption order other than a Convention adoption order,

subsection (3)(b) has effect as if the reference to a period of 13 weeks were a reference to a period of 6 months.

16 Home visits

- (1) Where a child was placed for adoption with the applicants by an adoption agency, an adoption order may not be made unless the appropriate court is satisfied that the condition in subsection (2) is met.
- (2) The condition is that sufficient opportunities to see the child with the applicant or, in the case of an application by two applicants, both of them together in the home environment have been given to the agency.
- (3) Where the child was not placed for adoption with the applicants by an adoption agency, an adoption order may not be made unless the appropriate court is satisfied that the condition in subsection (4) is met.
- (4) The condition is that sufficient opportunities to see the child with the applicant or, in the case of an application by two applicants, both of them together in the home environment have been given to the local authority within whose area the home is.

17 Reports where child placed by agency

- (1) Subsection (2) applies where an application for an adoption order relates to a child placed for adoption by an adoption agency.
- (2) The agency must—
 - (a) submit to the court a report on—
 - (i) the suitability of the applicants, and
 - (ii) any other matters relevant to the operation of section 9, and
 - (b) assist the court in any manner the court directs.

18 Notification to local authority of adoption application

- (1) Subsection (2) applies where a child was not placed for adoption with the applicants by an adoption agency.
- (2) An adoption order may not be made in relation to the child unless the applicants have, at least 3 months before the application, given notice to the local authority within whose area the applicants reside of the intention to apply for the order.

19 Notice under section 18: local authority’s duties

- (1) This section applies where a local authority receives a notice under section 18 in respect of a child.
- (2) On receipt of the notice the authority must—
- (a) investigate the matter, and
- (b) submit to the court a report of the investigation.
- (3) The local authority must in particular investigate—
- (a) so far as is practicable, the suitability of the applicants and any other matters relevant to the operation of section 9 in relation to the application,
- (b) whether there has been a contravention of section 11 in relation to the child, and
- (c) whether there has been a failure to comply with section 12(2) in relation to the child.
- (4) If the authority knows that the child is in the care of another local authority, it must, before the expiry of the period of 7 days beginning with the day on which it receives the notice, give the other authority a copy of the notice.

Restrictions on removal of children placed for adoption

20 Restrictions on removal: child placed for adoption with consent

- (1) Subsection (2) applies where—
- (a) an adoption agency has placed a child for adoption with persons (“prospective adopters”), and
- (b) each parent or guardian of the child has, in accordance with such provision as may be made by regulations by the Scottish Ministers, consented to the placement (whether or not each parent or guardian knows the identity of the prospective adopters).
- (2) A parent or guardian of the child must not remove the child from the care and possession of the prospective adopters without the leave of—
- (a) the adoption agency, or
- (b) the appropriate court.
- (3) A person who removes a child in contravention of this section commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 5 on the standard scale or both.

21 Restrictions on removal: notice of intention to adopt given

- (1) Subsection (2) applies where—
- (a) persons (“prospective adopters”) give notice under section 18(2) in relation to a child, and
- (b) during the period of 5 years immediately preceding the giving of notice, the child’s home has been with the prospective adopters.

(2) Except where subsection (3) applies, a person may not remove the child from the care and possession of the prospective adopters during the period beginning with the giving of notice and ending with the relevant act.

(3) This subsection applies if—

- 5
- (a) the prospective adopters consent to the removal,
 - (b) a court having jurisdiction to make adoption orders grants leave for the removal,
 - (c) the child is arrested, or
 - (d) the removal is authorised by virtue of any enactment.

(4) For the purposes of subsection (2), “relevant act” means—

- 10
- (a) where before the expiry of the 3 month period the prospective adopters apply for an adoption order in relation to the child to whom the notice relates, the making of the application for the adoption order,
 - (b) where the prospective adopters do not apply for an adoption order before the expiry of that period, the expiry of that period.

15 (5) In this section, “3 month period” means the period of 3 months beginning with the day on which the local authority receives the notice.

(6) If during—

- (a) the 3 month period, or
- (b) the period of 28 days beginning with the expiry of the 3 month period,

20 the prospective adopters give a further notice under section 18(2) to a local authority in respect of the same child, subsection (2) does not apply.

(7) A person who removes a child in contravention of this section commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 5 on the standard scale or both.

22 Restrictions on removal: application for adoption order pending

(1) Subsection (2) applies where—

- 30
- (a) an application for an adoption order in relation to a child has been made to, but not determined by, the appropriate court, and
 - (b) during the period of 5 years immediately preceding the making of the application, the child’s home has been with the persons applying for the order (the “prospective adopters”).

(2) Except where subsection (3) applies, a person may not remove the child from the care and possession of the prospective adopters.

(3) This subsection applies if—

- 35
- (a) the prospective adopters consent to the removal,
 - (b) the court determining the application grants leave for the removal,
 - (c) the child is arrested, or
 - (d) the removal is authorised by virtue of any enactment.

- (4) A person who removes a child in contravention of this section commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 5 on the standard scale or both.

23 Scottish Ministers' power to amend period of time in sections 21 and 22

5 The Scottish Ministers may by order amend section 21(1)(b) or 22(1)(b) so as to substitute a different period for the period of 5 years mentioned in the section (or for a period substituted by virtue of this section).

24 Duty to give notice where child in care of other local authority

(1) Subsection (2) applies where—

10 (a) by virtue of section 21(1)(a), a local authority receives notice under section 18(2) in relation to a child, and

(b) the authority knows that the child is in the care of another local authority.

(2) The authority must, before the expiry of the period of 7 days beginning with the day on which the authority receives the notice, give a copy of the notice to the other authority.

25 Restrictions on removal of child in care of local authority

(1) Subsection (2) applies where—

(a) section 21(1) or 22(1) applies,

(b) before the child's home came to be with the prospective adopters, the child was in the care of a local authority, and

20 (c) the child remains in the care of a local authority.

(2) Except where subsection (3) applies, the local authority must not remove the child from the care and possession of the prospective adopters.

(3) This subsection applies if—

(a) the removal is made in accordance with section 27 or 28,

25 (b) an appropriate court grants leave for the removal, or

(c) the removal is authorised by virtue of Chapter 2 or 3 of Part II of the 1995 Act.

Return of children

26 Return of child removed in breach of certain provisions

30 (1) The relevant court may, on the application of a person from whose care and possession a child has been removed in breach of any of the relevant provisions, order the person who has so removed the child to return the child to the applicant.

(2) The relevant 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 care and possession in breach of any of the relevant provisions, by order direct that other person not to remove the child from the applicant's care and possession in breach of the provision concerned.

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(3) The "relevant court" is—

(a) if there is pending in respect of the child an application for an adoption order or a permanence order, the court in which the application is pending,

(b) in any other case—

(i) the Court of Session, or

(ii) the sheriff court of the sheriffdom within which the applicant resides.

(4) The relevant provisions are—

(a) sections 20, 21, 22 and 25,

(b) sections 30, 34, 35 and 36 of the 2002 Act,

(c) Articles 28 and 29 of the Northern Ireland Order.

27 Return of child placed for adoption by adoption agency

(1) This section applies where—

(a) in pursuance of arrangements made by an adoption agency or a registered adoption society for the adoption of a child by persons (the “prospective adopters”), the child has been delivered into the care and possession of the prospective adopters, and

(b) no adoption order has been made in relation to the child on the application of the prospective adopters.

(2) The prospective adopters may give notice to the agency or society of their intention not to retain the care and possession of the child.

(3) The agency or society may give notice to the prospective adopters of its intention not to allow the child to remain in the care and possession of the prospective adopters.

(4) If an application for an adoption order in relation to the child has been made by the prospective adopters, notice under subsection (3) may be given only with leave of the court which is hearing the application.

(5) Subsection (6) applies where—

(a) notice is given by virtue of subsection (2) or (3), or

(b) an application for an adoption order made by the prospective adopters is refused or withdrawn.

(6) The prospective adopters must, before the expiry of the relevant period, return the child to—

(a) the agency or, as the case may be, society, or

(b) a person nominated by the agency or, as the case may be, society for the purposes of this section.

(7) In subsection (6), “relevant period” means—

(a) in the case mentioned in paragraph (a) of subsection (5), the period of 7 days beginning with the day on which notice was given,

(b) in the case mentioned in paragraph (b) of that subsection—

(i) the period of 7 days beginning with the day on which the application was refused or withdrawn, or

(ii) if, before the expiry of the relevant period, the court makes an order extending that period for a period (not exceeding 6 weeks) specified in the order, the period so specified.

5 (8) A person who fails to return a child in contravention of this section commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 5 on the standard scale or both.

(9) The court by which a person is convicted by virtue of subsection (8) may order that the child in respect of whom the offence is committed be returned to the child's parent or guardian or, as the case may be, the adoption agency or registered adoption society.

10 (10) In this section "registered adoption society" has the meaning given by section 2(2) of the 2002 Act.

28 Return of child in care of local authority and not placed for adoption

(1) This section applies where—

15 (a) persons ("prospective adopters") give notice under section 18(2) in relation to a child,

(b) the child has a home with the prospective adopters,

(c) the child was not delivered into the care and possession of the prospective adopters in pursuance of arrangements made by an adoption agency or a registered adoption society for the adoption of the child by the prospective adopters, and

(d) the child is for the time being in the care of a local authority (the "relevant local authority").

(2) The prospective adopters may give notice to the relevant local authority of their intention not to retain the care and possession of the child.

25 (3) The authority may give notice to the prospective adopters of its intention not to allow the child to remain in the care and possession of the prospective adopters.

(4) Where notice is given by virtue of subsection (2) or (3) the prospective adopters must, before the expiry of the period of 7 days beginning with the day on which notice is given, return the child to—

30 (a) the authority, or

(b) a person nominated by the authority for the purposes of this section.

(5) If an application for an adoption order in relation to the child has been made by the prospective adopters, notice under subsection (3) may be given only with leave of the court which is hearing the application.

35 (6) If an application for an adoption order in relation to the child is refused or withdrawn, the child—

(a) must be returned to the relevant local authority only if the authority requires it, and

(b) where such a requirement is made, must be returned before the expiry of the period of 7 days beginning with the day on which the requirement is made.

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- (7) Where an application by the prospective adopters for an adoption order in relation to the child has been made but not disposed of, any right of the relevant local authority to require the child to be returned otherwise than by virtue of this section is suspended.
- (8) A person who fails to return a child in contravention of this section commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 5 on the standard scale or both.
- (9) The court by which a person is convicted by virtue of subsection (8) may order that the child in respect of whom the offence is committed be returned to the child's parent or guardian or, as the case may be, the relevant local authority.
- (10) In this section "registered adoption society" has the meaning given by section 2(2) of the 2002 Act.

Contravention of sections 30 to 36 of 2002 Act

29 Contravention of sections 30 to 36 of 2002 Act

- (1) A person who contravenes any of the provisions of the 2002 Act mentioned in subsection (2) commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 5 on the standard scale or both.
- (2) Those provisions are—
- (a) section 30(1), (2) and (3) (removal of child placed or who may be placed for adoption),
 - (b) sections 32(2)(b), 33(2) and 35(2) (return of child by prospective adopters),
 - (c) section 34(1) (removal of child in contravention of placement order),
 - (d) section 36(1) (removal of child in non-agency case), and
 - (e) section 36(5) (return of child to parent or guardian).

The making of adoption orders

30 Adoption orders

- (1) An adoption order is an order made by the appropriate court on an application under section 31 or 32 vesting the parental responsibilities and parental rights in relation to a child in the adopters or adopter.
- (2) The court must not make an adoption order unless it considers that it would be better for the child that the order be made than not.
- (3) An adoption order may contain such terms and conditions as the court thinks fit.
- (4) An adoption order may be made in respect of a person who is 18 years old if the application for the order was made when the person was under 18.
- (5) An adoption order may be made in respect of a child who is subject to a permanence order.
- (6) An adoption order may be made even if the child to be adopted is already an adopted child.
- (7) An adoption order may not be made in respect of a person who is or has been—

- (a) married, or
- (b) a civil partner.

31 Adoption by certain couples

(1) Where—

- 5 (a) each member of a relevant couple is at least 21 years old,
- (b) neither member of the couple is a parent of the child to be adopted, and
- (c) one of the conditions in subsection (2) is met,

an adoption order may be made on the application of the couple.

(2) Those conditions are—

- 10 (a) that a member of the couple is domiciled in a part of the British Islands,
- (b) that each member of the couple has been habitually resident in a part of the British Islands for a period of at least one year ending with the date of the application.

(3) A couple is “relevant” for the purposes of this section if its members are—

- 15 (a) persons who are married to each other,
- (b) persons who are civil partners of each other,
- (c) persons who are living together as if husband and wife in an enduring family relationship, or
- (d) persons who are living together as if civil partners in an enduring family relationship.

32 Adoption by one person

(1) An adoption order may be made on the application of a person (“A”) if—

- 25 (a) A is at least 21 years old,
- (b) subsection (2), (3), (4) or (5) applies,
- (c) one of the conditions in subsection (6) is met, and
- (d) where A is a natural parent of the child to be adopted, subsection (7) applies.

(2) This subsection applies if A is not a member of a relevant couple.

(3) This subsection applies if—

- 30 (a) A and another person (“B”) are a relevant couple,
- (b) B is at least 18 years old,
- (c) B is a parent of the child to be adopted,
- (d) parental responsibilities and parental rights in relation to the child are vested in B, and
- (e) B—
 - (i) is domiciled in a part of the British Islands, or

(ii) has been habitually resident in a part of the British Islands for a period of at least one year ending with the date of the application.

(4) This subsection applies if—

(a) A and B are—

(i) married to each other, or

(ii) civil partners of each other,

(b) B is not a parent of the child to be adopted, and

(c) the court is satisfied that—

(i) B cannot be found,

(ii) A and B have separated and are living apart and the separation is likely to be permanent, or

(iii) B is by reason of ill-health (whether physical or mental) incapable of making an application for an adoption order.

(5) This subsection applies if—

(a) A and B are a relevant couple by virtue of being members of a couple falling within paragraph (c) or (d) of subsection (3) of section 31,

(b) B is not a parent of the child to be adopted, and

(c) the court is satisfied that B is by reason of ill-health (whether physical or mental) incapable of making an application for an adoption order.

(6) Those conditions are—

(a) that A is domiciled in a part of the British Islands,

(b) that A has been habitually resident in a part of the British Islands for a period of at least one year ending with the date of the application.

(7) This subsection applies if the court is satisfied that—

(a) the other natural parent is dead,

(b) the other natural parent cannot be found,

(c) by virtue of section 28 of the Human Fertilisation and Embryology Act 1990 (c.37) (disregarding subsections (5A) to (5I) of that section), there is no other parent, or

(d) the exclusion of the other natural parent from the application for adoption is justified on some other ground.

33 Parental etc. consent

(1) An adoption order may not be made unless one of the five conditions is met.

(2) The first condition is that, in the case of each parent or guardian of the child, the appropriate court is satisfied—

(a) that the parent or guardian understands what the effect of making an adoption order would be and consents to the making of the order (whether or not the parent or guardian knows the identity of the persons applying for the order), or

(b) that the parent's or guardian's consent to the making of the adoption order should be dispensed with on the ground that—

- (i) the parent or guardian cannot be found or is incapable of giving consent, or
- (ii) the welfare of the child requires the consent to be dispensed with.

5 (3) The second condition is that a permanence order granting authority for the child to be adopted is in force.

(4) The third condition is that each parent or guardian of the child has consented under section 20 of the 2002 Act (advance consent to adoption), has not withdrawn the consent and does not oppose the making of the adoption order.

10 (5) The fourth condition is that—

(a) the child has been placed for adoption by an adoption agency (within the meaning of section 2(1) of the 2002 Act) with the prospective adopters in whose favour the adoption order is proposed to be made,

(b) the child was placed for adoption—

15 (i) under section 19 of the 2002 Act (placing children with parental consent) with the consent of each parent or guardian and the consent of the mother was given when the child was at least 6 weeks old, or

(ii) under an order made under section 21 of the 2002 Act (placement orders) and the child was at least 6 weeks old when the order was made, and

20 (c) no parent or guardian of the child opposes the making of the adoption order.

(6) The fifth condition is that an order under Article 17(1) or 18(1) of the Northern Ireland Order (orders declaring children free for adoption) is in force in relation to the child.

(7) Consent is ineffective for the purposes of subsection (2)(a) if given by the mother less than 6 weeks after the child's birth.

25 (8) A parent or guardian may not oppose the making of an adoption order under subsection (4) or (5) without leave of the court.

(9) The court must not give leave under subsection (8) unless satisfied that there has been a change of circumstances since the consent of the parent or guardian was given or, as the case may be, the order under section 21 of the 2002 Act was made.

30 (10) The withdrawal of—

(a) any consent to the placement of a child for adoption under section 19, or under an order under section 21, of the 2002 Act, or

(b) any consent given under section 20 of that Act,

is ineffective if the consent is given after an application for an adoption order is made.

35 **34 Consent of child aged 12 or over**

(1) An adoption order may not be made in respect of a child of or over the age of 12 years who is capable of consenting to the making of the order unless the child consents.

(2) If the court is satisfied that a child of or over the age of 12 years is incapable of consenting to the making of an adoption order, the court may dispense with the need for the child's consent.

35 Restrictions on making orders

- 5 (1) Except where subsection (2) applies, the court may not hear an application for an adoption order in relation to a child where a previous application falling within subsection (3) made in relation to the child by the same persons was refused by any court.
- (2) This subsection applies where—
- 10 (a) in refusing the previous application, the court directed that this section 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 hear the application.
- (3) An application falls within this subsection if it is an application for—
- 15 (a) an adoption order,
- (b) an adoption order as defined in section 46(1) of the 2002 Act,
- (c) an order made, or having effect as if made, under Article 12 of the Northern Ireland Order,
- (d) an order for adoption made in the Isle of Man,
- (e) an order for adoption made in any of the Channel Islands.

36 Contravention of section 13 no bar to making order

20 The court may make an adoption order in relation to a child even where it is found that the applicants have, as respects the child, contravened section 13.

Effect of order on existing rights etc.

37 Effect of order on existing rights etc.

- 25 (1) The making, by virtue of subsection (3) of section 32, of an adoption order does not affect the parental responsibilities and parental rights which immediately before the making of the order were vested in a parent of the adopted child as mentioned in paragraph (d) of that subsection.
- (2) Otherwise, the making of an adoption order extinguishes any parental responsibilities and parental rights relating to the child which immediately before the making of the order were vested in any person.
- 30 (3) Subject to subsection (4), the making of an adoption order extinguishes any duty owed to the child—
- (a) to pay or provide aliment in respect of any period occurring after the making of the order,
- (b) to make any payment arising out of parental responsibilities and parental rights in respect of such a period.
- 35 (4) The making of an adoption order does not extinguish a duty arising under a deed or 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 does not affect parental responsibilities and parental rights so far as they relate to any period before the making of the order.

38 Automatic revocation of supervision requirement

- (1) Subsection (2) applies where—
- (a) the child to be adopted is subject to a supervision requirement, and
- (b) the appropriate court is satisfied that, were it to make an adoption order in relation to the child, compulsory measures of supervision in respect of the child would no longer be necessary.
- (2) The supervision requirement ceases to have effect on the making of the adoption order.

Adoption records

39 Information to be kept about adoptions

The Scottish Ministers may make regulations for or in connection with specifying—

- (a) the information which an adoption agency must keep in relation to adoptions, and
- (b) the form and manner in which it must keep the information.

40 Disclosure of information kept under section 39

- (1) The Scottish Ministers may by regulations make provision for or in connection with the disclosure by adoption agencies to adopted persons and other persons of a description or descriptions specified in the regulations of information kept by virtue of section 39.
- (2) Regulations under subsection (1) may in particular include provision—
- (a) in circumstances specified in the regulations, conferring discretion on adoption agencies as to whether to disclose or withhold information,
- (b) specifying conditions which are to apply in relation to the disclosure of information, or information of a type so specified, to adopted persons of a description or descriptions so specified,
- (c) specifying circumstances in which information should not be disclosed to adopted persons of a description or descriptions so specified.

CHAPTER 3

STATUS OF ADOPTED CHILDREN

41 Meaning of “adoption” in Chapter

- (1) In this Chapter, “adoption” means—
- (a) adoption by an adoption order,
- (b) adoption by an adoption order as defined in section 46(1) of the 2002 Act,
- (c) adoption by an order made, or having effect as if made, under Article 12 of the Northern Ireland Order,

- (d) adoption by an order made in the Isle of Man or any of the Channel Islands,
- (e) a Convention adoption,
- (f) an overseas adoption, or
- (g) an adoption recognised by the law of Scotland and effected under the law of any other country;

and related expressions are to be interpreted accordingly.

- (2) References in this Chapter to adoption do not include an adoption effected before the day on which this Chapter comes into force.
- (3) Any reference in an enactment to an adopted person within the meaning of this Chapter includes a reference to an adopted child within the meaning of Part IV of the Adoption (Scotland) Act 1978 (c.28).

42 Status conferred by adoption

- (1) An adopted person is to be treated in law as if born as the child of the adopters or adopter.
- (2) If an adopted person is adopted—
 - (a) by a relevant couple, or
 - (b) by virtue of section 32(3), by a member of a relevant couple,the adopted person is to be treated as the child of the couple concerned.
- (3) An adopted person adopted by virtue of section 32(3) by a member of a relevant couple is to be treated in law as not being the child of any person other than the adopter and the other member of the couple.
- (4) Otherwise, an adopted person is to be treated in law as not being the child of any person other than the adopters or adopter.
- (5) Subsections (3) and (4) do not affect any reference in this Act to a person's natural parent or to any other natural relationship.
- (6) Subsection (7) applies where, in the case of a person adopted under a Convention adoption, the Court of Session is satisfied, on an application under this section—
 - (a) that under the law of the country in which the adoption was effected the adoption is not a full adoption,
 - (b) that—
 - (i) the consents mentioned in Article 4(c) and (d) of the Convention have not been given for a full adoption, or
 - (ii) the United Kingdom is not the receiving State (within the meaning of Article 2 of the Convention), and
 - (c) that it would be more favourable to the person for a direction to be given under that subsection.
- (7) The court may direct that subsection (4)—
 - (a) is not to apply, or
 - (b) is not to apply to such extent as may be specified in the direction.

- (8) In subsection (6), “full adoption” means an adoption by virtue of which the person falls to be treated in law as if the person were not the child of any person other than the adopters or adopter.
- (9) This section has effect from the date of the adoption.
- 5 (10) Subject to the provisions of this Chapter, this section—
- (a) applies for the interpretation of enactments or instruments passed or made before as well as after the adoption and so applies subject to any contrary indication, and
 - (b) has effect as respects things done, or events occurring, on or after the adoption.

43 Miscellaneous enactments

- 10 (1) Subject to subsection (2), section 42 does not apply—
- (a) for the purposes of determining the forbidden degrees of consanguinity and affinity in respect of the law relating to marriage or to the eligibility of persons to register as civil partners of each other, or
 - (b) in respect of the crime of incest.
- 15 (2) On the making of an adoption order, the adopter and the person adopted are deemed, for all time coming, to be within the forbidden degrees in respect of the law relating to marriage, to such eligibility and to incest.
- (3) Section 42 does not apply for the purposes of any provision of—
- (a) the British Nationality Act 1981 (c.61),
 - 20 (b) the Immigration Act 1971 (c.77),
 - (c) any instrument having effect under either of those Acts, or
 - (d) any other law for the time being in force which determines British citizenship, British overseas territories citizenship or British Overseas Citizenship.

44 Pensions

- 25 Section 42 does not affect entitlement to a pension which is payable to or for the benefit of a person and is in payment at the time of the person’s adoption.

45 Insurance

- (1) Subsections (2) and (3) apply where a child is adopted whose natural parent has effected an insurance with—
- 30 (a) a friendly society,
- (b) a collecting society, or
- (c) an industrial insurance company,
- for the payment on the death of the child of money for funeral expenses.
- (2) The rights and liabilities under the policy are by virtue of the adoption transferred to the adoptive parents.
- 35 (3) For the purposes of the enactments relating to such societies and companies, the adoptive parents are to be treated as the person who took out the policy.

- (4) Where the adoption is effected by an order made by virtue of section 32(3), the references in subsections (2) and (3) to the adoptive parents are to be read as references to the adopter and the other member of the relevant couple.

46 Succession and *inter vivos* deeds

5 Section 42 does not affect the law relating to adopted persons in respect of—

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

CHAPTER 4

POST-ADOPTION SERVICES

10

Post-adoption services

47 Post-adoption services

- (1) Post-adoption services are services (including, in particular, services of a type mentioned in subsection (2)) which are designed to meet the needs, in relation to adoption, of persons who are affected by the making of an adoption order.
- 15 (2) Those types of service are—
- (a) counselling and assistance for relevant persons,
 - (b) counselling for any other person—
 - (i) who is affected by an adoption, and
 - (ii) who has difficulties relating to adoption,
 - (c) the provision of information to relevant persons, and
 - (d) any other assistance, in relation to the making of an adoption order, which the local authority providing post-adoption services in a particular case considers appropriate in the circumstances of that case.
- 20 (3) For the purposes of paragraphs (a) and (c) of subsection (2), a person is relevant if the person falls within a class mentioned in subsection (4).
- 25 (4) Those classes are—
- (a) children who have been adopted (“adopted children”),
 - (b) persons who have adopted a child (“adoptive parents”),
 - (c) children of adoptive parents,
 - (d) children who have been treated by adoptive parents as children of the adoptive parents,
 - (e) natural parents of adopted children,
 - (f) persons who, before the adoption of a child, treated the child as a child of the persons,
 - (g) siblings (whether of the whole-blood or half-blood) of adopted children,
 - (h) natural grandparents of adopted children, and
- 30
- 35

- (i) former guardians of adopted children.
- (5) The Scottish Ministers may by regulations—
 - (a) amend subsection (2) by—
 - (i) adding further types of service,
 - (ii) modifying the types of service mentioned in that subsection, and
 - (b) make further provision about post-adoption services.

48 Assessment of needs

- (1) A local authority—
 - (a) must, on the request of a person falling within any of the classes mentioned in section 47(4), make an assessment of the needs of the person for post-adoption services, and
 - (b) must decide (having regard to the results of the assessment) whether the needs of the person call for the provision of any such services.
- (2) Subsection (3) applies where it appears to a local authority that a person (other than a person falling within any of the classes mentioned in section 47(4)) in respect of whom the authority is under a duty or has a power to provide, or secure the provision of, post-adoption services may be in need of such services.
- (3) The authority—
 - (a) may, on the request of the person, make an assessment of the needs of the person for such services, and
 - (b) where such an assessment is made, must decide (having regard to the results of the assessment) whether the needs of the person call for the provision of any such services.
- (4) Where a local authority is making an assessment of needs under this section, it must—
 - (a) do so in such manner as may be prescribed by regulations made by the Scottish Ministers, and
 - (b) have regard to such matters as may be so prescribed.

49 Provision of services

- (1) Where a local authority decides, by virtue of subsection (1)(b) of section 48, that the provision of post-adoption services is called for in respect of a person, the authority must provide the services to the person.
- (2) Where a local authority decides, by virtue of subsection (3)(b) of that section, that the provision of post-adoption services is called for in respect of a person, the authority may provide the services to the person.

50 Urgent provision

- 5
- (1) If in the opinion of a local authority a person requires post-adoption services as a matter of urgency, nothing in section 48 prevents the authority from providing, or arranging for the provision of, those services for the person without first carrying out an assessment under that section of the person's needs for post-adoption services.
 - (2) If by virtue of subsection (1) a local authority provides, or arranges for the provision of, post-adoption services the authority must as soon as practicable after such provision make an assessment of the person's needs for post-adoption services.

Care plans

10 **51 Care plans**

- 15
- (1) This section applies where—
 - 15 (a) a local authority has, by virtue of section 48(1), assessed the needs of a person for post-adoption services and decides that the provision of such services is called for in respect of the person, and
 - 20 (b) the person is a member of an adoptive family.
 - (2) Subject to subsection (4), the authority must prepare a care plan in respect of each member of the adoptive family.
 - (3) A care plan must, in relation to the person it concerns (“the person”)—
 - 25 (a) specify the needs of the person identified as a result of an assessment carried out by virtue of that section,
 - (b) record details of the post-adoption services the provision of which the authority decides is called for by virtue of that section,
 - (c) specify any other needs of the person identified by the authority,
 - (d) set out how the needs mentioned in paragraphs (a) and (c) may be met by the provision of post-adoption services,
 - 30 (e) record details of any previous assessment of needs in respect of the person made under section 48(1)(a),
 - (f) record details of any assessment of needs in respect of the person made under section 12A(1) of the Social Work (Scotland) Act 1968 (c.49),
 - 35 (g) where the person is a child who has been adopted, record details of any care plan prepared by a local authority in respect of the person under regulations made under section 17 of the 1995 Act,
 - (h) record details of any post-adoption services which—
 - (i) were provided to the person before the plan was prepared, or
 - (ii) are being provided to the person when the plan is prepared,
 - (i) specify any other matter which, in the opinion of the local authority preparing the plan, is relevant to the provision of post-adoption services to the person, and
 - (j) where there is no information to be included in the plan under any of paragraphs (a) to (i), record that fact.

- (4) The authority may, with the consent of each member of the adoptive family of or over the age of 12 years, prepare a single care plan in respect of all members of the adoptive family instead of preparing care plans in respect of each of them.
- (5) Subsection (3) applies to a single care plan prepared under subsection (4) as if—
- 5 (a) for the words “the person it concerns (“the person”)” there were substituted “each member of the adoptive family it concerns”,
- (b) for the words “the person” in paragraphs (a), (c), (e), (f), (h) and (i) there were substituted “each member”,
- 10 (c) for the words “the person” in paragraph (g), where they first occur, there were substituted “a member of the adoptive family”, and
- (d) for the words “the person” in that paragraph, where they second occur, there were substituted “that member”.
- (6) If in the opinion of the authority a member of the adoptive family of or over the age of 12 years is incapable of giving consent under subsection (4), the authority may dispense with the need for such consent.
- 15 (7) In this section, “adoptive family” means—
- (a) a child who has been adopted,
- (b) the person who has, or persons who have, adopted that child,
- (c) any—
- 20 (i) child of such a person or persons,
- (ii) other child who has been treated by the person or persons as a child of the person or persons,
- living in the same household as the person or persons.

52 **Duration of care plan**

- 25 (1) A care plan ceases to have effect on the occurrence of whichever of the events in subsection (2) first occurs.
- (2) Those events are—
- (a) the expiry of the period of 3 years beginning with the date of the making of the adoption order in respect of a child who is a member of the adoptive family in relation to which, or to any members of which, the care plan was prepared,
- 30 (b) the date on which such a child reaches the age of 18.

53 **Family member’s right to require review of care plan**

- (1) This section applies where a care plan is in force in respect of a member of an adoptive family or, as the case may be, an adoptive family.
- 35 (2) Subject to subsection (4), the person to whom the plan relates or, as the case may be, a member of the adoptive family to which the plan relates (in either case, “the relevant member”) may, if the relevant member believes the local authority is not complying with any of its obligations mentioned in the plan, require the authority to review the plan.

- (3) The authority may, in reviewing the plan, carry out a reassessment of the needs of the relevant member for post-adoption services.
- (4) A relevant member (other than the person who has, or persons who have, adopted the child) may not make a requirement under subsection (2) unless, in the opinion of the local authority, the member is capable of understanding the need for post-adoption services.
- (5) After reviewing the plan, the local authority must vary the plan to reflect any changes in—
- (a) the needs of any relevant member for post-adoption services identified as a result of a reassessment of needs made under subsection (3),
 - (b) the post-adoption services the local authority will provide.
- (6) In this section, any references to a reassessment of needs of a person include, where no assessment has been carried out by virtue of section 48(1)(a) in relation to the person, references to an assessment of needs of the person.

54 Other cases where authority under duty to review care plan

- (1) This section applies where a care plan is in force.
- (2) The local authority must review the plan—
- (a) from time to time, and
 - (b) at any time when the authority becomes aware of a change in the circumstances of a relevant member.
- (3) In reviewing the plan, the authority may make a reassessment of the needs of any relevant member.
- (4) After reviewing the plan, the authority must vary the plan to reflect any changes in—
- (a) the needs of any relevant member for post-adoption services identified as a result of a reassessment of needs made under subsection (3),
 - (b) the post-adoption services the local authority will provide.
- (5) In this section—
- (a) any references to a reassessment of needs of a person are to be construed in accordance with subsection (6) of section 53,
 - (b) “relevant member” has the same meaning as in that section.

Reassessment

55 Reassessment of needs for post-adoption services

- (1) This section applies where a care plan is in force.
- (2) Any relevant member aged 12 years or over may require the local authority which prepared the plan to make a reassessment of the member’s needs for post-adoption services.
- (3) The authority, having regard to the results of that reassessment, must decide whether the needs of the member call for the provision of such services.

- (4) Where the authority decides, by virtue of subsection (3), that the provision of post-adoption services is called for, the authority must provide the services.
- (5) Where the authority provides post-adoption services under subsection (4), it must vary the care plan to reflect any changes in the services the authority will provide.
- 5 (6) Where a local authority is making a reassessment of needs under this section, it must—
- (a) do so in such manner as may be prescribed by regulations made by the Scottish Ministers, and
- (b) have regard to such matters as may be so prescribed.
- (7) In this section—
- 10 (a) any references to a reassessment of needs of a person are to be construed in accordance with subsection (6) of section 53,
- (b) “relevant member” has the same meaning as in that section.

Directions

56 Care plans: directions

- 15 (1) The Scottish Ministers may give directions of a general or specific nature to a local authority as to the implementation of care plans.
- (2) A direction under subsection (1) may not require an authority—
- (a) to provide or, as the case may be, continue to provide, or
- (b) withhold provision of,
- 20 a particular post-adoption service.
- (3) The Scottish Ministers may vary or revoke any direction under subsection (1).

General

57 Guidance

- 25 (1) Subsection (2) applies where a local authority is carrying out its function under section 1 to provide or continue to provide post-adoption services or to secure the provision of such services.
- (2) The local authority must have regard to any guidance given by the Scottish Ministers.
- (3) Guidance such as is mentioned in subsection (2) may, in particular, contain provision in relation to—
- 30 (a) how a local authority should assess (or reassess) the needs of a person for post-adoption services,
- (b) how the power conferred by section 48(3)(a) should be exercised,
- (c) the classes of person in relation to whom that power should be exercised,
- (d) how care plans should be prepared and reviewed,
- 35 (e) how responsibility for the provision of post-adoption services should be transferred from one local authority to another.

- (4) The Scottish Ministers may vary or revoke any guidance such as is mentioned in subsection (2).

58 Regulations about adoption services and care plans

The Scottish Ministers may by regulations make provision for or in connection with—

- 5 (a) determining in circumstances specified in the regulations which local authority is, or may become, responsible for—
- (i) the provision of post-adoption services,
 - (ii) the making of an assessment of needs under section 48(1)(a),
- 10 (b) determining the time at which, and the circumstances in which—
- (i) a local authority's duty to provide pre-adoption services ends,
 - (ii) a local authority's duty to provide post-adoption services ends,
- (c) specifying the circumstances in which a local authority may continue to provide post-adoption services after the time determined by virtue of paragraph (b) has passed,
- 15 (d) specifying the arrangements a local authority may make when a person in respect of whom the authority provides, or has a power or a duty to provide, an adoption service moves outwith the authority's area,
- (e) specifying the persons with whom such arrangements may be made,
- 20 (f) assessing the needs for pre-adoption services of persons who have moved or who intend to move—
- (i) from one local authority area to another,
 - (ii) from outwith Scotland to Scotland,
- (g) specifying the way in which reviews of care plans should be carried out.

CHAPTER 5

REGISTRATION

59 Adopted Children Register and index

- 25 (1) The Registrar General must continue to maintain—
- (a) a register to be called the Adopted Children Register, and
 - (b) an index of the Adopted Children Register.
- 30 (2) No entries may be made in the Adopted Children Register other than entries—
- (a) directed to be made in it by adoption orders, or
 - (b) required to be made under schedule 1.
- (3) The provisions of the Registration of Births, Deaths and Marriages (Scotland) Act 1965 (c.49) with regard to the correction of errors in entries apply in relation to entries in the Adopted Children Register as they apply in relation to entries in any register of births.
- 35 (4) Schedule 1 (which makes provision about registration of adoptions and the amendment of adoption orders) has effect.

60 Searches and extracts

- (1) The terms, conditions and regulations as to payment of fees, form and authentication of documents and otherwise applicable under the Registration of Births, Deaths and Marriages (Scotland) Act 1965 (c.49) in respect of—

- 5 (a) searches in indexes kept by virtue of that Act by the Registrar General, and
(b) the supply from the General Register Office of extracts of entries in the registers of births, deaths and marriages,

apply in respect of searches in the index of the Adopted Children Register and supplies of extracts of entries in the Adopted Children Register.

- 10 (2) Where a person makes a request in accordance with those terms, conditions and regulations (including paying such fee as may be prescribed by those regulations), the Registrar General is, if the General Register Office is open for the purpose, to—

- (a) search (or permit the person to search) the index of the Adopted Children Register, and
15 (b) issue to the person an extract of an entry in the register.

61 Connections between the register and birth records

- (1) The Registrar General must make traceable the connection between any entry in the register of births which, by virtue of paragraph 2(2) of schedule 1 or any enactment at the time in force, has been marked “Adopted” and any corresponding entry in the Adopted Children Register.

- (2) Information kept by the Registrar General for the purposes of subsection (1) is not to be open to public inspection or search.

- (3) The Registrar General may disclose any such information only in accordance with subsection (4).

- 25 (4) Information is disclosed in accordance with this subsection if disclosed—

- (a) under an order of the Court of Session or a sheriff,
(b) to an adopted person who is at least 16 years old and to whom the information relates, or
(c) to a local authority, Board, registered adoption society or relevant adoption society which is providing counselling for any such adopted person.

- 30 (5) Where the Registrar General discloses information in accordance with subsection (4)(b), the Registrar must inform the adopted person that counselling services are available for the person—

- (a) if the person is in Scotland, from any local authority in Scotland,
35 (b) if the person is in England and Wales, from any local authority in England and Wales,
(c) if the person is in Northern Ireland, from any Board,
(d) if the person is in the United Kingdom and the person’s adoption was arranged by—

- (i) a registered adoption service, from that service,
- (ii) a registered adoption society, from that society, or
- (iii) a relevant adoption society, from that society.

(6) Where—

- (a) in accordance with subsection (4) information is disclosed to an adopted person who is in Scotland, or
- (b) such a person applies for information under—
 - (i) Schedule 2 to the 2002 Act, or
 - (ii) Article 54 of the Northern Ireland Order,

any body mentioned in subsection (7) from which the adopted person requests counselling must provide counselling for the person.

(7) Those bodies are—

- (a) any local authority in Scotland,
- (b) any registered adoption service, or
- (c) any registered adoption society or relevant adoption society in so far as (by virtue of section 12(2)) that society is acting as an adoption society in Scotland.

(8) In this section—

“Board” means a Health and Social Services Board established under Article 16 of the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265),

“local authority”, in relation to England and Wales, means—

- (a) any unitary authority, or
- (b) any county council so far as it is not a unitary authority,

“registered adoption society” has the meaning given by section 2(2) of the 2002 Act,

“relevant adoption society” means an adoption society registered under Article 4 of the Northern Ireland Order.

62 Admissibility of extracts as evidence

- (1) An extract of an entry in the Adopted Children Register issued by virtue of section 60(2)(b) is sufficient evidence of the adoption to which it relates.
- (2) Where an entry in the Adopted Children Register contains a record of—
 - (a) the date of birth, or
 - (b) the country of the birth,of the adopted person, an extract of the entry issued by virtue of that section is sufficient evidence of that date or, as the case may be, country.

63 Interpretation of Chapter

- (1) In this Chapter “Registrar General” means the Registrar General of Births, Deaths and Marriages for Scotland.
- (2) Any register, index or record maintained by virtue of section 59 or 61 or schedule 1 may be maintained in any form that the Registrar General considers appropriate.
- (3) References (however expressed) to entries in such a register, or to their amendment, cancellation or marking, are to be read accordingly.

CHAPTER 6

ADOPTIONS WITH A FOREIGN ELEMENT

Restrictions on movement of children

64 Restriction on bringing children into the United Kingdom

- (1) This section applies where a person who is habitually resident in the British Islands (the “British resident”)—
 - (a) brings, or causes another to bring, a child who is habitually resident outwith the British Islands into the United Kingdom for the purpose of adoption by the British resident, or
 - (b) at any time brings, or causes another to bring, into the United Kingdom a child adopted by the British resident under an external adoption effected within the period of 12 months ending with that time.
- (2) In subsection (1), the references to adoption, or a child adopted, by the British resident include a reference to adoption, or a child adopted, by the British resident and another person.
- (3) This section does not apply if the child is intended to be adopted under a Convention adoption order.
- (4) An external adoption means an adoption, other than a Convention adoption, of a child effected under the law of any country or territory outwith the British Islands, whether or not the adoption is—
 - (a) an adoption within the meaning of Chapter 3, or
 - (b) a full adoption (as defined in section 42(8)).
- (5) Regulations may require a person intending to bring, or to cause another to bring, a child into the United Kingdom in circumstances where this section applies—
 - (a) to apply to an adoption agency in the prescribed manner for an assessment of the person’s suitability to adopt the child, and
 - (b) to give the agency any information it may require for the purpose of the assessment.
- (6) Regulations may require prescribed conditions to be met in respect of a child brought into the United Kingdom in circumstances where this section applies.
- (7) In relation to a child brought into the United Kingdom for adoption in circumstances where this section applies, regulations may provide for any provision of Chapter 2 to apply with modifications or not to apply.

- (8) Regulations may provide for this section not to apply if—
- (a) the adopters or, as the case may be, prospective adopters of the child in question are—
 - (i) natural parents,
 - (ii) natural relatives, or
 - (iii) guardians,of the child (or one of them is), or
 - (b) the British resident in question is a step-parent of the child, and any prescribed conditions are met.
- (9) On the occasion of the first exercise of the power to make regulations under subsection (8)—
- (a) the regulations must not be made unless a draft of the regulations has been approved by a resolution of the Scottish Parliament, and
 - (b) accordingly section 109(4) does not apply to the statutory instrument containing the regulations.
- (10) In this section, “prescribed” means prescribed by regulations and “regulations” means regulations made by the Scottish Ministers.

65 Preliminary order where child to be adopted abroad

- (1) The appropriate court may, on an application by persons (“the prospective adopters”) who the court is satisfied intend to adopt a child under the law of a country or territory outwith the British Islands, make an order vesting parental responsibilities and parental rights in relation to the child in the prospective adopters.
- (2) If the court is satisfied that the prospective adopters would meet the requirements as to domicile, or habitual residence, in Scotland which they would require to meet if an adoption order were to be made on their application, the court may not make an order under this section.
- (3) An order under this section may not be made unless any requirements prescribed by regulations by the Scottish Ministers are satisfied.
- (4) An application for an order under this section may not be made unless at all times during the period of 10 weeks immediately preceding the application the child’s home was with the applicants.
- (5) Section 37 has effect in relation to an order under this section as it has effect in relation to adoption orders.
- (6) The Scottish Ministers may by regulations provide for any provision of this Act which relates to adoption orders to apply, with or without modifications, to orders under this section.

66 Restriction on removal of children for adoption outwith Great Britain

- (1) A person who takes or sends a protected child out of Great Britain to any place outwith the British Islands with a view to the adoption of the child by any person commits an offence.

- (2) A person who makes or takes part in any arrangements for transferring the care and possession of a protected child to another person, knowing that the other person intends to take or send the child out of Great Britain in circumstances which would constitute an offence under subsection (1), commits an offence.
- 5 (3) No offence is committed under subsection (1) if the child is taken or sent out of Great Britain under the authority of an order under—
- (a) section 65,
 - (b) section 84 of the 2002 Act, or
 - (c) Article 57 of the Northern Ireland Order.
- 10 (4) A person is deemed to take part in arrangements for transferring the care and possession of a child to another person for the purpose mentioned in subsection (2) if the person—
- (a) facilitates the placing of the child in the care and possession of the other person,
 - (b) initiates or takes part in negotiations the purpose or effect of which is—
 - 15 (i) the making of such arrangements, or
 - (ii) the conclusion of an agreement to transfer the care and possession of the child,
 - (c) causes any person to initiate or take part in any such negotiations.
- 20 (5) The Scottish Ministers may by regulations provide for subsections (1) to (3) to apply with modifications, or not to apply, if—
- (a) the prospective adopters are parents, relatives or guardians of the child (or one of them is), or
 - (b) the prospective adopter is a step-parent of the child,
- and any conditions prescribed by the regulations are met.
- 25 (6) On the occasion of the first exercise of the power to make regulations under subsection (5)—
- (a) the regulations must not be made unless a draft of the regulations has been approved by a resolution of the Scottish Parliament, and
 - 30 (b) accordingly section 109(4) does not apply to the statutory instrument containing the regulations.
- (7) In any proceedings under this section—
- (a) a report by a British consular officer or a deposition made before, and authenticated under the signature of, such an officer is (if proved that the officer or deponent cannot be found in the United Kingdom) sufficient evidence of the matters stated in the report or deposition, and
 - 35 (b) it is not necessary to prove the signature or official character of the person who bears to have signed the report or deposition.
- (8) A person who commits an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 5 on the standard scale or both.
- 40

- (9) In subsections (1) and (2), “protected child” means a child who is a British subject or a citizen of the Republic of Ireland.

67 Regulations under section 64: offences

- 5 (1) If a person brings, or causes another to bring, a child into the United Kingdom at any time in circumstances where section 64 applies, the person commits an offence—
- (a) if the person has not complied with any requirement imposed by virtue of subsection (5) of that section, or
- (b) if the person has not met any condition which the person is required to meet by virtue of subsection (6) of that section,
- 10 before that time, or before any later time which may be prescribed by regulations made by the Scottish Ministers.
- (2) A person who commits an offence under subsection (1) is liable—
- (a) on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both,
- 15 (b) on conviction on indictment to imprisonment for a term not exceeding 12 months, or a fine or both.

Adoptions from abroad: special restrictions

68 Declaration of special restrictions on adoptions from abroad

- 20 (1) This section applies if the Scottish Ministers have reason to believe that, because of practices taking place in a country or territory outwith the British Islands (the “relevant country”) in connection with the adoption of children, it would be contrary to public policy to further the bringing of children into the United Kingdom in the cases mentioned in subsection (2).
- (2) Those cases are—
- 25 (a) that a British resident wishes to bring, or cause another to bring, a child who is not a British resident into the United Kingdom for the purpose of adoption by the British resident and, in connection with the proposed adoption, there have been, or would have to be, proceedings in the relevant country or dealings with authorities or agencies there, or
- 30 (b) that a British resident wishes to bring, or cause another to bring, into the United Kingdom a child adopted by the British resident under an adoption effected, within the period of 12 months ending with the date of the bringing in, under the law of the relevant country.
- (3) The Scottish Ministers may by order declare, in relation to any relevant country, that special restrictions are to apply for the time being in relation to the bringing in of children in the cases mentioned in subsection (2).
- 35 (4) The Scottish Ministers must, as respects each relevant country in relation to which such a declaration has effect for the time being (a “restricted country”), publish reasons for making the declaration in relation to the country.
- 40 (5) The Scottish Ministers must publish a list of restricted countries (“the restricted list”) and keep the list up to date.

- (6) The reasons and the restricted list are to be published in whatever way the Scottish Ministers think appropriate for bringing them to the attention of adoption agencies and members of the public.
- (7) In this section, “British resident” means a person habitually resident in the British Islands.
- (8) Any reference in this section to adoption by a British resident includes adoption by a British resident and another person.

69 Review

- (1) The Scottish Ministers must keep under review, in relation to each restricted country, whether it should continue to be a restricted country.
- (2) If the Scottish Ministers determine, in relation to a restricted country, that there is no longer a reason to believe what is mentioned in subsection (1) of section 68, they must by order revoke the order containing the declaration made in relation to it under subsection (3) of that section.
- (3) In this section, “restricted country” has the same meaning as in section 68.

70 The special restrictions

- (1) The special restrictions mentioned in subsection (3) of section 68 are that the Scottish Ministers are not to take any step which they might otherwise have taken in connection with furthering the bringing of a child into the United Kingdom in the cases mentioned in subsection (2) of that section (whether or not that step is provided for by virtue of any enactment).
- (2) Nothing in subsection (1) prevents the Scottish Ministers from taking those steps if, in any particular case, the prospective adopters or, as the case may be, the adopters satisfy the Scottish Ministers that they should take those steps despite the special restrictions.
- (3) The Scottish Ministers may make regulations providing for—
- (a) the procedure to be followed by them in determining whether or not they are satisfied as mentioned in subsection (2),
 - (b) matters which they are to take into account when making such a determination (whether or not they also take other matters into account).

71 Imposition of extra conditions in certain cases

- (1) The Scottish Ministers may make regulations providing—
- (a) for them to specify in the restricted list, in relation to any restricted country, a step which is not otherwise provided for by virtue of any enactment but which, by virtue of the arrangements between the United Kingdom and that country, the Scottish Ministers normally take in connection with the bringing in of a child where that country is concerned, and
 - (b) that, if such a step has been so specified in relation to a restricted country, one or more conditions specified in the regulations are to be met in respect of a child brought into the United Kingdom in either of the cases mentioned in section 68(2) (reading the reference there to the “relevant country” as being to the restricted country in question).

- (2) Those conditions are in addition to any provided for by virtue of—
 (a) section 64, or
 (b) any other enactment.
- (3) A person who brings, or causes another to bring, a child into the United Kingdom commits an offence if the person has not met any condition which the person is required to meet by virtue of subsection (1)(b).
- (4) Subsection (3) does not apply if the step specified in the restricted list in relation to any country had already been taken before the publication of the restricted list.
- (5) A person who commits an offence under subsection (3) is liable—
 (a) on summary conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both,
 (b) on conviction on indictment to imprisonment for a term not exceeding 12 months or a fine or both.
- (6) In this section, “restricted country” and “restricted list” have the same meanings as in section 68.

Charging

72 Power to charge

- (1) This section applies to adoptions to which—
 (a) section 64 applies, or
 (b) regulations made under section 1 of the Adoption (Intercountry Aspects) Act 1999 (c.18) apply.
- (2) The Scottish Ministers may charge a fee to adopters for services provided or to be provided by them in relation to adoptions to which this section applies.
- (3) The Scottish Ministers may determine the level of fee as they see fit and may, in particular—
 (a) charge a flat fee or charge different fees in different cases or descriptions of case,
 (b) in any case or description of case, waive a fee.
- (4) The Scottish Ministers must secure that, taking one financial year with another, the income from fees under this section does not exceed the total cost to them of providing the services in relation to which the fees are imposed.
- (5) In this section, “financial year” means a period of 12 months ending with 31 March.
- (6) Any references in this section—
 (a) to adoptions include prospective adoptions, and
 (b) to adopters include prospective adopters.

Overseas adoptions

73 Meaning of “overseas adoption”

- (1) In this Act, “overseas adoption”—

(a) means an adoption of a description specified in regulations made by the Scottish Ministers (being a description of adoptions effected under the law of any country or territory outwith the British Islands), but

(b) does not include a Convention adoption.

5 (2) The Scottish Ministers may by regulations prescribe the requirements that ought to be met by an adoption of any description effected after the coming into force of the regulations for it to be an overseas adoption for the purposes of this Act.

10 (3) At any time when regulations under subsection (2) are in force, the Scottish Ministers must exercise their power under subsection (1) so as to secure that adoptions of any description effected after the coming into force of the regulations are not overseas adoptions for the purposes of this Act if they consider that such adoptions are not likely, within a reasonable time, to meet the requirements prescribed under subsection (2).

(4) Regulations under subsection (1) may contain provision as to the manner in which evidence of any overseas adoption may be given.

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

74 Annulment etc. of overseas adoptions

20 (1) The Court of Session may, on an application under this subsection, by order annul a Convention adoption or a Convention adoption order on the ground that the adoption or, as the case may be, order is contrary to public policy.

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

25 (a) order that an overseas adoption or a determination is to cease to be valid in Great Britain on the ground that the adoption or, as the case may be, 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.

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

(4) An order or decision of the High Court on an application under section 89(2) of the 2002 Act is to be recognised and to have effect as if it were an order or decision of the Court of Session on an application under subsection (2).

35 (5) Except as provided by this section, the validity of a Convention adoption, a Convention adoption order, an overseas adoption or a determination is not to be questioned in proceedings in any court in Scotland.

(6) In this section “determination” means such a determination as is mentioned in section 76.

75 Section 74: supplementary provision

40 (1) Any application for—

(a) an order under section 74, or

(b) a decision under subsection (2)(b) of that section,
is to be made in the manner prescribed in regulations made by the Scottish Ministers and
within such period as may be so prescribed.

5 (2) No application is to be made under section 74(1) in respect of an adoption unless
immediately before the application is made—

(a) the person adopted was habitually resident in Scotland, or

(b) the persons on whose application the adoption order was made were habitually
resident there.

10 (3) In deciding in pursuance of section 74 whether such an authority as is mentioned in
section 76 was competent to hear a particular case, a court is to 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 hear the case.

76 Effect of determinations and orders made outwith Scotland

(1) Subsection (2) applies where—

15 (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

20 (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

25 (ii) to give or review a decision revoking or annulling such an adoption or a
Convention adoption order,

makes a determination (“the relevant determination”) in the exercise of that power.

30 (2) Subject to section 74 and any subsequent determination having effect under this
subsection, the relevant determination has effect in Scotland for the purpose of effecting,
confirming or terminating the adoption in question or confirming its termination as the
case may be.

(3) Sections 37(2) to (4) and 45 apply in relation to a child who is the subject of an order
which—

(a) is similar to an order under section 65, and

35 (b) is made (whether before or after this Act has effect) in a part of the British Islands,
as those sections apply in relation to a child who is the subject of an adoption order.

CHAPTER 7

MISCELLANEOUS

Adoption allowances

77 Adoption allowances schemes

- 5 (1) Subject to subsection (3), an adoption agency which is—
- (a) a local authority must, within such period after the coming into force of this section as the Scottish Ministers may by order direct, prepare an adoption allowances scheme,
- (b) a registered adoption service may prepare such a scheme.
- 10 (2) An adoption allowances scheme is a scheme for or in connection with 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.
- 15 (3) The Scottish Ministers may by regulations make provision for or in connection with adoption allowances schemes.
- (4) Regulations under subsection (3) may in particular make provision for or in connection with specifying—
- (a) the procedure to be followed by an agency in determining whether a person should be paid an allowance,
- 20 style="padding-left: 40px;">(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
- 25 style="padding-left: 40px;">(f) the procedure to be followed by an agency in preparing, modifying or revoking an adoption allowances scheme.
- (5) Section 13 does not apply to any payment made in accordance with an adoption allowances scheme.

Disclosure of medical information about parents

78 Disclosure of medical information about parents of child

- 30 (1) The Scottish Ministers may by regulations make provision for or in connection with disclosure of information about the health of the natural parents of a child who is to be, may be or has been adopted (“the relevant child”).
- (2) In making regulations under subsection (1), the Scottish Ministers must secure that a person to whom information is disclosed by virtue of the regulations has a duty of confidentiality in relation to the information.
- 35 (3) Notwithstanding subsection (2), regulations under subsection (1) may include provision enabling a person to whom information is disclosed by virtue of the regulations, in such circumstances and to such an extent as may be specified in the regulations, to disclose the information to—
- 40

- (a) the relevant child,
 - (b) persons who are to or may adopt, or have adopted, the relevant child.
- (4) Regulations under subsection (1) may, in particular, include provision for or in connection with specifying—
- (a) the descriptions of person by whom, and to whom, information may be disclosed,
 - (b) the circumstances in which information may be disclosed,
 - (c) the type of information which may, or may not, be disclosed,
 - (d) the circumstances in which consent to disclosure of information need not be obtained,
 - (e) the processing of information by a person to whom information is disclosed.
- (5) In subsection (4)(e), “processing” has the same meaning as in section 1(1) of the Data Protection Act 1998 (c.28).

Payments in lieu of services

79 Power to provide payment to person entitled to adoption service

- (1) Subsection (2) applies where a local authority is, in respect of a person, unable to provide, or secure the provision of, an adoption service which—
- (a) the authority has an obligation to provide under this Part, or
 - (b) the authority has a power so to provide and determines it should provide.
- (2) Subject to subsection (4), the authority may, after having regard to the matters mentioned in subsection (3), provide the person with a payment instead of the service.
- (3) Those matters are—
- (a) the person’s eligibility for assistance from any other body, and
 - (b) where the person is so eligible, the availability to the person of that assistance at the time when the service would have been provided to the person by the authority had the authority been able to provide, or secure the provision of, the service.
- (4) A payment under subsection (2) may be made subject to such conditions (including conditions as to repayment) as the authority considers reasonable.
- (5) In imposing conditions under subsection (4), the authority must have regard to the person’s eligibility for assistance from any other body.

Evidence

80 Admissibility of certain documents as evidence

Any document which is receivable as evidence of any matter—

- (a) in England and Wales under section 77(4) and (5) of the 2002 Act, or
 - (b) in Northern Ireland under Article 63(1) of the Northern Ireland Order,
- is sufficient evidence in Scotland of the matter to which it relates.

Effect of orders, and placing for adoption, under 2002 Act

81 Effect of certain orders made in England and Wales

- (1) An adoption order (within the meaning of section 46(1) of the 2002 Act) has effect in Scotland as it has in England and Wales but as if any reference to the parental responsibility for the child were to the parental responsibilities and parental rights in relation to the child.
- (2) An order made under section 21 of that Act (placement orders), and the variation or revocation of such an order under section 23 or 24 of that Act, have effect in Scotland as they have in England and Wales but as if any reference to the parental responsibility for the child were to the parental responsibilities and parental rights in relation to the child.

82 Effect of placing for adoption etc. under 2002 Act

- (1) If—
- (a) a child is placed for adoption under section 19 of the 2002 Act (placing children with parental consent), or
- (b) an adoption agency is authorised to place a child for adoption under that section, sections 25 (parental responsibility) and 28(2) to (4) (further consequences of placement) of that Act have effect in Scotland as they have in England and Wales but with the modifications specified in subsection (2).
- (2) Those modifications are—
- (a) in section 25, any reference to the parental responsibility for the child is to be read as a reference to the parental responsibilities and parental rights in relation to the child, and
- (b) in section 28(2), the reference to the court is to be read as a reference to the appropriate court.

83 Further consequences of placement and placement orders

- (1) Subsection (2) applies where—
- (a) a child is placed for adoption under section 19 of the 2002 Act (placing children with parental consent), or
- (b) an adoption agency is authorised to place a child for adoption under that section.
- (2) No order under subsection (1) of section 11 of the 1995 Act (court orders relating to parental responsibilities etc.) of a kind mentioned in subsection (2)(c) (residence orders) of that section may be made in respect of the child.
- (3) On the making of an order under section 21 of the 2002 Act (a “placement order”) in respect of a child, any order under subsection (1) of section 11 of the 1995 Act of a kind mentioned in subsection (2)(c) to (f) (residence orders, contact orders, specific issue orders and interdicts in relation to parental responsibilities) of that section in respect of the child ceases to have effect.
- (4) Where a placement order is in force—
- (a) no such order as is mentioned in subsection (3) of this section, and
- (b) no order under section 55 of the 1995 Act (child assessment orders),

may be made in respect of the child.

PART 2

PERMANENCE ORDERS

The making of permanence orders

84 Permanence orders

- (1) The appropriate court may, on the application of an adoption agency which is a local authority (“the applicant”), make a permanence order in respect of a child (“the relevant child”).
- (2) A permanence order is an order consisting of—
 - (a) the mandatory provision,
 - (b) such of the ancillary provisions as the court thinks fit, and
 - (c) if the conditions in subsection (5) are met, provision granting authority for the relevant child to be adopted.
- (3) The mandatory provision is provision vesting in the applicant for the appropriate period—
 - (a) the responsibility mentioned in subsection (1)(b)(ii) of section 1 of the 1995 Act (parental responsibilities) of a parent of the relevant child to provide, in a manner appropriate to the stage of development of the child, guidance to the child, and
 - (b) the right mentioned in subsection (1)(a) of section 2 of that Act (parental rights) of a parent of the relevant child—
 - (i) to have the child living with the parent, or
 - (ii) otherwise to regulate the child’s residence.
- (4) The ancillary provisions are provisions—
 - (a) vesting in the applicant for the appropriate period—
 - (i) such of the parental responsibilities mentioned in section 1(1)(a), (b)(i), and (d) of the 1995 Act of a parent of the relevant child as the court considers appropriate,
 - (ii) such of the parental rights mentioned in section 2(1)(b) and (d) of that Act of a parent of the relevant child as the court considers appropriate,
 - (b) vesting in a person other than the applicant for the appropriate period—
 - (i) such of the parental responsibilities mentioned in section 1(1)(a), (b)(i), (c) and (d) of that Act of a parent of the relevant child as the court considers appropriate,
 - (ii) such of the parental rights mentioned in section 2(1)(b) to (d) of that Act of a parent of the relevant child as the court considers appropriate,
 - (c) specifying such arrangements for contact between the relevant child and any other person as the court considers appropriate and in the best interests of the child, and
 - (d) determining any question which has arisen in connection with—

- (i) any parental responsibilities or parental rights in relation to the relevant child,
- (ii) any other aspect of the care and welfare of the child.

(5) Those conditions are that—

- (a) the court is satisfied that the relevant child has been, or is likely to be, placed for adoption,
- (b) in the case of each parent or guardian of the child, the court is satisfied—
 - (i) that the parent or guardian understands what the effect of making an adoption order would be and consents to the making of such an order in relation to the child, or
 - (ii) that the parent’s or guardian’s consent to the making of such an order should be dispensed with on a ground mentioned in subsection (6), and
- (c) the court considers that it would be better for the child to grant authority for the child to be adopted than not to grant such authority.

(6) Those grounds are that—

- (a) the parent or guardian cannot be found or is incapable of giving consent, or
- (b) the welfare of the child requires the consent to be dispensed with.

(7) A permanence order may be made in respect of a child who is an adopted child.

(8) A permanence order may not be made in respect of a child who is or has been—

- (a) married,
- (b) a civil partner.

(9) In this section, “the appropriate period” means—

- (a) in the case of the responsibility mentioned in section 1(1)(b)(ii) of the 1995 Act, the period beginning with the making of the permanence order and ending with the day on which the relevant child reaches the age of 18,
- (b) in any other case, the period beginning with the making of the permanence order and ending with the day on which the relevant child reaches the age of 16.

85 Conditions and considerations applicable to making of order

(1) A permanence order may not be made in respect of a child who is of or over the age of 12 years and who is capable of consenting to the making of the order unless the child consents.

(2) If the court is satisfied that a child who is of or over the age of 12 years is incapable of consenting to the making of a permanence order, the court may dispense with the need for the child’s consent.

(3) The court may not make a permanence order in respect of a child unless it considers that it would be better for the child that the order be made than that it should not be made.

(4) In considering whether to make a permanence order and, if so, what provision the order should make, the court is to regard the need to safeguard and promote the welfare of the child as the paramount consideration.

(5) Before making a permanence order, the court must—

- (a) after taking account of the child’s age and maturity, so far as reasonably practicable—
- (i) give the child the opportunity to indicate whether the child wishes to express any views, and
 - (ii) if the child does so wish, give the child the opportunity to express them, and
- (b) have regard to—
- (i) any such views the child may express,
 - (ii) the child’s religious persuasion, racial origin and cultural and linguistic background, and
 - (iii) the likely effect on the child of the making of the order.
- (6) A child who is of or over the age of 12 years is presumed to be of sufficient age and maturity to form a view for the purposes of subsection (5)(a).

86 Representations

- (1) In any proceedings relating to an application for a permanence order, the appropriate court must permit any person mentioned in subsection (2) who wishes to make representations to the court to do so.
- (2) Those persons are—
- (a) the adoption agency making the application,
 - (b) the child or the child’s representative,
 - (c) any person who has parental responsibilities or parental rights in relation to the child,
 - (d) any other person who, in the opinion of the court, is able to demonstrate an interest.

Effect of order on existing orders

87 Effect of order on existing orders

- (1) This section applies where—
- (a) parental responsibilities or parental rights in relation to a child vest in a person by virtue of—
 - (i) an adoption order,
 - (ii) a permanence order, or
 - (iii) an order under section 11 of the 1995 Act (court orders relating to parental responsibilities etc.), (“the existing order”), and
 - (b) the appropriate court intends to make a permanence order (“the new order”) as respects the child.
- (2) On the making of the new order, the existing order is revoked.

- (3) In making the new order, the court must secure that the parental responsibilities or parental rights vesting by virtue of the existing order vest in a person under the new order.

Effect of marriage or civil partnership

88 Effect of marriage or civil partnership on order

- (1) Subsection (2) applies where—
- (a) a permanence order is in force in respect of a child, and
 - (b) the child enters into—
 - (i) a marriage, or
 - (ii) a civil partnership.
- (2) The order ceases to have effect on the child’s entering into the marriage or, as the case may be, the civil partnership.

Variation

89 Variation of ancillary provisions in order

- (1) This section applies where a permanence order which includes ancillary provisions is in force.
- (2) The appropriate court may, on an application by a person mentioned in subsection (3), vary such of the ancillary provisions as the court considers appropriate.
- (3) Those persons are—
- (a) the adoption agency on whose application the permanence order was made,
 - (b) if the child in respect of whom the order was made is—
 - (i) of or over the age of 12 years, or
 - (ii) under the age of 12 years but, in the court’s opinion (taking account of the child’s age and maturity), capable of understanding the effect of the order,
 - (c) any person in whom parental responsibilities and parental rights are vested by virtue of the order,
 - (d) any person in whom were vested, immediately before the making of the order, any parental responsibilities or parental rights which, by virtue of the making of the order, vest in another person,
 - (e) any person in whom were vested, immediately before a variation by virtue of this section of the order, parental responsibilities or parental rights which, by virtue of the variation, vest in another person.
- (4) In subsections (1) and (2), “ancillary provisions” has the same meaning as in section 84(4).
- (5) In this section, “vary” includes add to, omit, or amend; and “variation” is to be construed accordingly.

90 Amendment of order to grant authority for child to be adopted

- (1) This section applies where—
- (a) a permanence order in respect of a child is in force, and
 - (b) the order does not include provision granting authority for the child to be adopted.
- 5 (2) On the application of the adoption agency on whose application the order was made, the appropriate court may amend the order so as to include provision granting authority for the child to be adopted if (and only if)—
- (a) the court is satisfied that the child has been placed for adoption, or is likely to be placed for adoption,
 - 10 (b) the court is satisfied that the condition in subsection (3) or subsection (4) is met, and
 - (c) the court considers that it would be better for the child that authority for the child to be adopted is granted than that it should not be granted.
- 15 (3) The condition is that each parent or guardian of the child understands what the effect of making an adoption order would be and consents to the making of such an order in relation to the child.
- (4) The condition is that the consent of each parent or guardian should be dispensed with on the ground that—
- (a) the parent or guardian cannot be found or is incapable of giving consent, or
 - 20 (b) the welfare of the child requires the consent to be dispensed with.
- (5) In subsections (3) and (4), any reference to a parent or guardian of the child includes a reference to any person having parental responsibilities or parental rights in respect of the child.

91 Proceedings

- 25 (1) In any proceedings for variation of a permanence order by the adoption agency on whose application the order was granted, the appropriate court must permit any person who is affected by the order, and who wishes to make representations to the court, to do so.
- 30 (2) In any proceedings for variation of a permanence order by a person other than the adoption agency on whose application the order was granted, the appropriate court must permit any person mentioned in subsection (3) who wishes to make representations to the court to do so.
- (3) Those persons are—
- (a) the adoption agency on whose application the permanence order was made,
 - 35 (b) if the child in respect of whom the original order was made is—
 - (i) of or over the age of 12 years, or
 - (ii) under that age but, in the court's opinion (taking account of the child's age and maturity), is capable of understanding the effect of the order,that child,
 - 40 (c) any person in whom parental responsibilities and parental rights are vested by virtue of the order,

- (d) any person on whom a duty was imposed or power conferred by the order,
- (e) any person in whom were vested, immediately before the making of the order, any parental responsibilities or parental rights which, by virtue of the making of the order, vest in another person,
- 5 (f) any person in whom were vested, immediately before a variation by virtue of section 89 of the order, parental responsibilities or parental rights which, by virtue of the variation, vest in another person, and
- (g) any other person who, in the opinion of the court, is able to demonstrate an interest.
- 10 (4) A person other than the adoption agency on whose application a permanence order was granted may not apply to the court for a variation of the order without first obtaining the leave of the court.
- (5) If the court is satisfied that there has been a material change in the circumstances directly relating to any of the order’s provisions, it must grant that leave.
- 15 (6) In determining whether there has been a material change in circumstances, the court must have regard, in particular, to any aspect of—
- (a) the care and welfare of the child in respect of whom the permanence order was made, and
- (b) the circumstances of—
- 20 (i) a parent, or the parents, of the child,
- (ii) the child’s guardian, or
- (iii) any person mentioned in paragraph (e) or (f) of subsection (3).
- (7) In subsection (1), any references to an application for variation of a permanence order include references to an application to amend the order to include provision granting authority for the child to whom the order relates to be adopted.
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Duty of adoption agency to apply for variation or revocation

92 Duty of adoption agency to apply for variation or revocation

- (1) Subsection (2) applies where an adoption agency on whose application a permanence order was made determines that there has been a material change in the circumstances directly relating to any of the order’s provisions.
- 30 (2) The agency must, as soon as reasonably practicable, apply to the appropriate court for variation or, as the case may be, revocation of the order.
- (3) In subsection (2), “variation”, in relation to the permanence order, includes amendment of the order so as to include provision granting authority for the child to whom the order relates to be adopted.
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Revocation

93 Revocation

- (1) The appropriate court may, on an application by a person mentioned in subsection (2), revoke a permanence order if satisfied that it is appropriate to do so in all the circumstances of the case, including, in particular—
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- (a) a material change in the circumstances directly relating to any of the order’s provisions,
- (b) any wish by the parents or guardian of the child in respect of whom the order was made to have reinstated any parental responsibilities or parental rights vested in another person by virtue of the order.

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(2) Those persons are—

- (a) the adoption agency on whose application the order was made,
- (b) any other person affected by the order who has obtained the leave of the court to apply for revocation of the order.

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94 Revocation: order to be made under section 11 of 1995 Act

- (1) Subsection (2) applies where the appropriate court revokes a permanence order in respect of a child.
- (2) The court must at the same time make an order under section 11 of the 1995 Act—
 - (a) imposing on a person specified in the order parental responsibilities in relation to the child, and
 - (b) giving to such a person parental rights in relation to the child.

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Effect of subsequent adoption order on permanence order

95 Effect of subsequent adoption order on permanence order

- (1) Subsection (2) applies where—
 - (a) a permanence order is in force in respect of a child, and
 - (b) an adoption order is made in respect of the child.
- (2) The permanence order ceases to have effect on the making of the adoption order.

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Restriction on making certain orders under 1995 Act

96 Restriction on making of orders under section 11 of 1995 Act

After section 11 of the 1995 Act insert the following section—

“11A Restriction on making of orders under section 11

- (1) Subsection (2) applies where a permanence order (as defined in section 84(2) of the Adoption and Children (Scotland) Act 2006 (asp 00)) is in force in respect of a child.
- (2) The court may not, under subsection (1) of section 11 of this Act, make an order such as is mentioned in any of paragraphs (a) to (e) of subsection (2) of that section.”.

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Rules of procedure

97 Permanence orders: rules of procedure

- (1) Provision may be made by rules of court in respect of—
 - (a) applications for permanence orders,

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- (b) applications for variation, or revocation, of permanence orders,
(c) applications for leave to apply for such variation or revocation.
- (2) In the case of an application for a permanence order, rules must require—
- 5 (a) any person mentioned in subsection (3)(a) to be notified of the matters mentioned in subsection (4), and
(b) the person mentioned in subsection (3)(b) to be notified of the matter mentioned in paragraph (a) of subsection (4).
- (3) Those persons are—
- 10 (a) every person who can be found and whose consent to the making of the order is required to be given or dispensed with under this Act or, if no such person can be found, any relative prescribed by the rules who can be found,
(b) if the father of the child in relation to whom the order is to be made does not have, and has never had, parental responsibilities or parental rights in relation to the child, the father of the child (if he can be found).
- 15 (4) Those matters are—
(a) the date on which, and place where, the application will be heard,
(b) the fact that the person is entitled to be heard on the application,
(c) the fact that, unless the person wishes, or the court requires, the person need not attend the hearing.
- 20 (5) In subsection (1), any references to an application for variation of a permanence order include references to an application to amend the order to include provision granting authority for the child to whom the order relates to be adopted.

PART 3

MISCELLANEOUS

Provisions applicable to adoption orders and permanence orders

98 Notification of proposed application for order

- (1) Subsection (2) applies where—
- 30 (a) a local authority—
(i) proposes to make an application for a permanence order in respect of a child, or
(ii) becomes aware that an application for an adoption order in respect of a child in its area has been, or is to be, made,
(b) the father of the child is not married to the mother of the child on the relevant date,
35 (c) the father, never having had parental responsibilities or parental rights in relation to the child, does not have such responsibilities or rights on the relevant date, and
(d) the authority—
(i) knows the identity and whereabouts of the father, or

(ii) can, by taking such reasonable and practicable steps as are appropriate in the circumstances of the case, ascertain that information.

(2) The local authority must, on or after the relevant date—

(a) give notice to the father that—

(i) it proposes to apply for a permanence order,

(ii) an application for an adoption order has been made, or

(iii) an application for an adoption order is to be made,

as the case may be, and

(b) provide the father with prescribed information relating to the processes for applying for the order in question.

(3) Where a local authority is required to give notice under subsection (2)(a)(i), it must give the notice at least 4 weeks before the application for the permanence order is made.

(4) Where a local authority is required to give notice under sub-paragraph (ii) or (iii) of subsection (2)(a), it must give the notice as soon as reasonably practicable after it becomes aware that the application for an adoption order has been or, as the case may be, is to be made.

(5) In this section—

(a) “relevant date” means—

(i) the date on which the local authority determines it will make the application mentioned in sub-paragraph (i) of subsection (1)(a), or

(ii) the date on which the authority becomes aware of the application mentioned in sub-paragraph (ii) of that subsection,

as the case may be,

(b) “prescribed” means prescribed by regulations made by the Scottish Ministers.

99 Child subject to supervision requirement: duty to refer to Principal Reporter

(1) Subsection (2) applies where—

(a) a child is subject to a supervision requirement,

(b) a registered adoption service is satisfied that the best interests of the child would be served by placing the child for adoption, and

(c) it intends to place the child for adoption.

(2) The registered adoption service must refer the child’s case to the Principal Reporter.

(3) The Scottish Ministers may make regulations specifying by reference to the occurrence of an event or events described in the regulations the period of time during which a referral under this section is to be made.

(4) In subsection (2), “Principal Reporter” has the same meaning as in Part II of the 1995 Act.

100 Making of adoption order no longer to be bar to making of contact order

In section 11 of the 1995 Act (court orders relating to parental responsibilities etc.), in subsection (3)—

- (a) in paragraph (a), sub-paragraph (iii) is repealed,
- (b) after that paragraph insert—
- “(aa) that application for a contact order is made by a person whose parental responsibilities or parental rights in relation to the child were extinguished on the making of an adoption order;
- (ab) that application for an order under subsection (1) above (other than a contact order) is made by a person who has had, but for a reason other than is mentioned in subsection (4) below, no longer has, parental responsibilities or parental rights in relation to the child;”, and
- (c) in paragraph (b), for “such application” substitute “application for an order under subsection (1) above”.

101 Rules: appointment of *curators ad litem* and reporting officers

- (1) In the case of an application for a relevant order in relation to a child, rules of court must provide for the appointment, in such cases as are prescribed by the rules—
- (a) of a person to act as *curator ad litem* of the child on the hearing of the application, with the duty of safeguarding the interests of the child in such manner as may be so prescribed,
- (b) of a person to act as reporting officer for the purpose of witnessing agreements to adoption and performing such other duties as may be so prescribed.
- (2) Rules may in particular make provision—
- (a) enabling the reporting officer to be appointed before the application is made,
- (b) enabling the court to appoint the same person to be *curator ad litem* and reporting officer.
- (3) Rules may not make provision for—
- (a) the appointment of a person who is employed by an adoption agency which has placed a child for adoption to act as *curator ad litem* or reporting officer for the purposes of an application for an adoption order in respect of the child,
- (b) the appointment of a person who is employed by a local authority which is making (or has made) an application for a permanence order to act as *curator ad litem* or reporting officer for the purposes of the application.
- (4) A relevant order means—
- (a) an adoption order,
- (b) a permanence order, or
- (c) an order under section 65.

102 Proceedings to be in private

- (1) Any proceedings before the court relating to applications under any of the provisions mentioned in subsection (2) must be heard and determined in private unless the court otherwise directs.
- (2) Those provisions are—
- (a) section 26,

- (b) section 31,
- (c) section 32,
- (d) section 65,
- (e) section 84,
- 5 (f) section 89,
- (g) section 90, and
- (h) section 92.

Fostering allowances

103 Regulations about fostering allowances

- 10 (1) The Scottish Ministers may by regulations make provision for or in connection with payments by local authorities in respect of the placing of children by authorities under section 26(1)(a) of the 1995 Act (manner of provision of accommodation to child looked after by local authority).
- 15 (2) Regulations under subsection (1) may in particular include provision for or in connection with—
 - (a) specifying descriptions of person to whom payments may be made,
 - (b) specifying circumstances in which payments may be made,
 - (c) specifying rates of payment to be payable in such circumstances as may be specified in the regulations,
 - 20 (d) where a rate is so specified—
 - (i) requiring local authorities to pay at least that rate in the circumstances so specified,
 - (ii) recommending that local authorities pay at least that rate (“the recommended rate”) in the circumstances so specified,
 - 25 (e) where a recommended rate is payable, requiring local authorities which pay less than that rate to publish, in such manner as may be so specified, their reasons for doing so.

Evidence of consent

104 Evidence of consent

- 30 (1) If a document signifying any consent which is required by this Act to be given is witnessed in accordance with rules of court, it is sufficient evidence of the signature of the person by whom it was executed.
- (2) A document signifying any such consent which purports to be witnessed in accordance with rules is to 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 shown.
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Notices

105 Service of notices etc.

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

PART 4

GENERAL

106 Rules of procedure

- 5 (1) Provision may be made by rules of court in respect of any matter to be prescribed by rules made by virtue of this Act and dealing generally with all matters of procedure.
- (2) In the case of an application for an adoption order, the rules must require—
- 10 (a) any person mentioned in subsection (3) to be notified of the matters mentioned in subsection (4), and
- (b) the person mentioned in subsection (5) to be notified of the date on which, and place where, the application will be heard.
- (3) Those persons are—
- 15 (a) every person who can be found and whose consent to the making of the order is required to be given or dispensed with under this Act or, if no such person can be found, any relative prescribed by rules who can be found,
- (b) every person who has consented to the making of the order under section 20 of the 2002 Act (and has not withdrawn the consent) unless the person has given a notice under subsection (4)(a) of that section which has effect,
- (c) every person who, if leave were given under section 33(8), would be entitled to oppose the making of the order.
- 20 (4) Those matters are—
- (a) the date on which, and place where, the application will be heard,
- (b) the fact that the person is entitled to be heard on the application, and
- (c) the fact that, unless the person wishes, or the court requires, the person need not attend the hearing.
- 25 (5) The person is the father of the child to be adopted if he does not have, and has never had, parental responsibilities or parental rights in relation to the child (if he can be found).
- 30 (6) In the case of an application under section 65, rules of court must require every person who can be found, and whose consent 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 of the matters mentioned in subsection (4).

107 Offences by bodies corporate and partnerships

- 35 (1) 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, a relevant person, the relevant person as well as the body corporate is guilty of the offence and is liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were a relevant person.

(3) Where an offence under this Act committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, the partner as well as the partnership is guilty of the offence and is liable to be proceeded against and punished accordingly.

5 (4) In this section, “relevant person”, in relation to a body corporate, means a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity.

108 Ancillary provision

10 (1) The Scottish Ministers may by order make such incidental, supplementary, consequential, transitory, transitional or saving provision as they consider necessary for the purposes of, in consequence of or for giving full effect to this Act or any provision of it.

(2) An order under subsection (1) may modify any enactment (including this Act).

109 Orders and regulations

15 (1) Any power conferred by this Act on the Scottish Ministers to make orders or regulations is exercisable by statutory instrument.

(2) Any power conferred by this Act on the Scottish Ministers to make orders or regulations—

(a) may be exercised so as to make different provision for different purposes,

20 (b) includes power to make such incidental, supplementary, consequential, transitory, transitional or saving provision as the Scottish Ministers consider appropriate.

(3) Any power conferred by this Act on the Scottish Ministers to make orders or regulations (as well as being exercisable in relation to all cases to which it extends) may be exercised in relation to—

25 (a) those cases subject to specified exceptions, or

(b) a particular case or class of case.

(4) Subject to subsection (5), a statutory instrument containing an order or regulations made under this Act (other than an order under section 113) is subject to annulment in pursuance of a resolution of the Scottish Parliament.

30 (5) A statutory instrument containing—

(a) an order under section 23,

(b) regulations under—

(i) subsection (4) of section 6 which includes provision amending subsection (2) of that section,

35 (ii) subsection (4) of section 7 which includes provision amending subsection (3) of that section,

(iii) subsection (5) of section 47 which includes provision amending subsection (2) of that section,

40 (c) an order under section 108(1) which includes provision modifying an Act or an Act of the Scottish Parliament,

is not to be made unless a draft of the instrument has been laid before, and approved by resolution of, the Scottish Parliament.

110 Meaning of “appropriate court”

- (1) In this Act, “appropriate court”, as respects any application made by virtue of this Act, is to be construed as follows.
- (2) If the application relates to a child who is in Scotland when the application is made, the appropriate court is—
- (a) the Court of Session, or
 - (b) the sheriff court of the sheriffdom within which the child is.
- (3) If—
- (a) the application is for—
 - (i) an adoption order, or
 - (ii) a permanence order seeking provision granting authority for the child to whom the order relates to be adopted, and
 - (b) the child is not in Scotland when the application is made,
- the appropriate court is the Court of Session.

111 Interpretation

- (1) In this Act, unless the context otherwise requires—
- “the 1995 Act” means the Children (Scotland) Act 1995 (c.36),
- “the 2002 Act” means the Adoption and Children Act 2002 (c.38),
- “the Northern Ireland Order” means the Adoption (Northern Ireland) Order 1987 (S.I. 1987/2203),
- “adoption agency”—
- (a) means—
 - (i) a local authority, or
 - (ii) a registered adoption service, and
 - (b) in sections 11, 15, 17, 18, 20 and 64 includes—
 - (i) an adoption agency within the meaning of section 2(1) of the 2002 Act (adoption agencies in England and Wales), and
 - (ii) an adoption agency within the meaning of Article 3 of the Northern Ireland Order (adoption agencies in Northern Ireland),
- “adoption order” has the meaning given by section 30(1),
- “adoption society” means a body of persons whose functions consist of or include the making of arrangements for or in connection with the adoption of children,
- “adoptive family” has the meaning given by section 51(7); and “member”, in relation to an adoptive family, is to be construed accordingly,
- “British Islands” means the United Kingdom, the Channel Islands and the Isle of Man,

“child” means a person who is under 18 years,

“compulsory measures of supervision” has the same meaning as in Part II of the 1995 Act,

5 “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,

“Convention adoption” means an adoption effected under the law of a Convention country outwith the British Islands and certified in pursuance of Article 23(1) of the Convention,

10 “Convention adoption order” means an adoption order which, by virtue of regulations under section 1 of the Adoption (Intercountry Aspects) Act 1999 (c.18), is made as a Convention adoption order,

“Convention country” means any country or territory in which the Convention is in force,

15 “guardian” means a person appointed by deed or will or by a court of competent jurisdiction to be the guardian of the child,

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c.39),

“notice” means notice in writing,

20 “overseas adoption” has the meaning given by section 73,

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

“permanence order” has the meaning given by section 84(2),

25 “registered adoption service” has the meaning given by section 1(5),

“relative”, in relation to a child, means a grandparent, brother, sister, uncle or aunt (in each case whether of the full blood or half-blood or by affinity),

“supervision requirement” has the meaning given by section 93(1) of the 1995 Act,

30 “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, unless the context otherwise requires, references to adoption are to the adoption of children, wherever they may be habitually resident, effected under the law of any country or territory, whether within or outwith the British Islands.

35 (3) In this Act, references to an adoption service include references to part of such a service.

(4) In this Act, references to a relevant couple are to be construed in accordance with section 31(3).

(5) Subject to subsection (6), for the purposes of this Act, a person is deemed to make arrangements for the adoption of a child if—

40 (a) the person 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 intended to be effected in Great Britain or elsewhere),

(b) the person initiates or takes part in any negotiations the purpose or effect of which is the conclusion of any such agreement or the making of any such arrangement, or

(c) the person causes another person to act as mentioned in paragraph (a) or (b).

5 (6) The making under section 70 of the 1995 Act by a children's hearing of a supervision requirement which, in respect that it provides as to where the child is to reside, facilitates an adoption agency's placing the child for adoption does not constitute the making of such arrangements.

10 (7) Any reference in this Act to a child's 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) is a reference to the child's being looked after by a local authority and is to be construed in accordance with section 17(6) of the 1995 Act; and any reference to the authority in whose care a child is is to be construed accordingly.

112 Minor and consequential amendments and repeals

15 (1) Schedule 2 (which contains minor amendments and amendments consequential on the provisions of this Act) has effect.

(2) The enactments mentioned in the first column in schedule 3 (which include enactments that are spent) are repealed to the extent set out in the second column.

113 Short title and commencement

20 (1) This Act may be cited as the Adoption and Children (Scotland) Act 2006.

(2) The provisions of this Act (except this section and sections 108 and 109) come into force on such day as the Scottish Ministers may by order appoint.

(3) An order under subsection (2) may appoint different days for different purposes.

SCHEDULE 1
(introduced by section 59)

REGISTRATION OF ADOPTIONS

Registration of adoption orders

- 5 1 (1) Every adoption order must contain a direction to the Registrar General to make in the Adopted Children Register an entry in the form prescribed by regulations made by the Registrar General with the approval of the Scottish Ministers.
- (2) For the purposes of compliance with the requirements of sub-paragraph (1)—
- 10 (a) where the precise date of the child's birth is not proved to the satisfaction of the court—
- (i) the court is to determine the probable date of the child's birth, and
- (ii) the date so determined is to be specified in the adoption order as the date of the child's birth,
- 15 (b) where the country of birth of the child is not proved to the satisfaction of the court—
- (i) if it appears probable that the child was born in a part of the British Islands, the child is to be treated as having been born in Scotland,
- (ii) in any other case, the particulars of the country of birth may be omitted from the adoption order and from the entry in the Adopted Children Register,
- 20 (c) where—
- (i) the application for the adoption order specifies a name (or names) and surname as being those of the child, that name (or those names) and surname are to be recorded in the adoption order as the name (or names) and surname of the child,
- 25 (ii) no name (or names) or surname is so specified, the original name (or names) of the child and the surname of the applicant are to be recorded in the adoption order as the name (or names) and surname of the child.
- 2 (1) Sub-paragraph (2) applies where—
- 30 (a) on an application to the appropriate court for an adoption order in respect of a child, the identity of the child with a child to whom an entry in the register of births relates is proved to the satisfaction of the court, and
- (b) the child has not previously been the subject of an adoption order made by a court in Scotland under this Act or any enactment at the time in force.
- 35 (2) Any adoption order made in pursuance of the application must contain a direction to the Registrar General to secure that the entry in the register of births is marked with the word "Adopted".
- 3 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 Scotland under this Act or any enactment at the time in force, the order must contain a direction to the Registrar General to secure that the previous entry in the Adopted Children Register is marked with the word "Re-adopted".
- 40

- 4 (1) Where an adoption order is made, the clerk of the court which made the order must secure that the order is communicated to the Registrar General.
- (2) As soon as practicable after receipt of the communication, the Registrar General must secure that the direction contained in the order is complied with.

5 *Registration of adoptions in England, Northern Ireland, the Isle of Man and the Channel Islands*

- 5 (1) Sub-paragraphs (2) and (3) apply where the Registrar General is notified by the authority maintaining a register of adoptions in a part of the British Islands outwith Scotland that an order has been made in that part authorising the adoption of a child.
- 10 (2) If an entry in the register of births (and no entry in the Adopted Children Register) relates to the child, the Registrar General must secure that the entry is marked with the word “Adopted” followed by the name, in brackets, of the part of the British Islands in which the order was made.
- 15 (3) If an entry in the Adopted Children Register relates to the child, the Registrar General must mark the entry with the word “Re-adopted” followed by the name, in brackets, of the part of the British Islands in which the order was made.
- (4) Where, after an entry in either of the registers mentioned in sub-paragraphs (2) and (3) has been so marked, the Registrar General is notified by the authority concerned that—
- 20 (a) the order has been quashed,
- (b) an appeal against the order has been allowed, or
- (c) the order has been revoked,
- the Registrar General must secure that the marking is cancelled.
- (5) Where the marking of an entry in a register is cancelled under sub-paragraph (4), an extract of the entry is not to be treated as accurate unless both the marking and the cancellation are omitted from it.
- 25 (6) This paragraph applies in relation to orders corresponding to orders under section 65 as it applies in relation to orders authorising the adoption of a child except that any marking of an entry required by virtue of this sub-paragraph is to 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 part of the British Islands in which the order was made.
- 30

Registration of other adoptions

- 6 (1) If the Registrar General is satisfied, on an application under this paragraph, that the Registrar General has sufficient particulars relating to a child adopted under a registrable foreign adoption to enable an entry to be made in the Adopted Children Register for the child, the Registrar General must make the entry accordingly.
- 35 (2) If the Registrar General is also satisfied that an entry in the register of births relates to the child, the Registrar General must secure that the entry in that register is marked “Adopted” or “Re-adopted”, as the case may be, followed by the name, in brackets, of the country in which the adoption was effected.
- 40 (3) An application under this paragraph must be made in the prescribed manner by a prescribed person and the applicant must provide the prescribed particulars.

(4) An entry made in the Adopted Children Register by virtue of this paragraph must be made in the prescribed form.

(5) In this paragraph—

“prescribed” means prescribed by regulations made by the Registrar General with the approval of the Scottish Ministers,

“registrable foreign adoption” means an adoption which satisfies prescribed requirements and which is—

(a) adoption under a Convention adoption, or

(b) adoption under an overseas adoption.

Amendment of orders and rectification of registers

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

(2) The court by which an adoption order has been made may, if satisfied on the application of the adopter or the adopted person that before the expiry of the period of one year beginning with the date of the order any new name—

(a) has been given to the adopted person (whether in baptism or otherwise), or

(b) has been taken by the adopted person,

in place 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, as the case may be, adding that name in those particulars.

(3) The court by which an adoption order has been made may, if satisfied on the application of any person concerned that a direction for the marking of an entry in the register of births or the Adopted Children Register included in the order in pursuance of paragraph 2 or 3 was wrongly so included, revoke that direction.

(4) Where an adoption order is amended or a direction revoked under sub-paragraphs (1) to (3), the clerk of the court must secure that the amendment is communicated in the prescribed manner to the Registrar General.

(5) As soon as practicable after receipt of the communication, the Registrar General must secure that—

(a) the entry in the Adopted Children Register is amended accordingly, or

(b) the marking of the entry in the register of births or the Adopted Children Register is cancelled,

as the case may be.

(6) Where an adoption order is quashed or an appeal against an adoption order allowed by any court, the court must give directions to the Registrar General to secure that—

(a) any entry in the Adopted Children Register, and

(b) any marking of an entry in that register or, as the case may be, the register of births,

which was effected in pursuance of the order is cancelled.

- (7) Where an adoption order has been amended, any extract of the relevant entry in the Adopted Children Register which may be issued in pursuance of section 60 must be a copy of the entry as amended, without the reproduction of—
- (a) any note or marking relating to the amendment, or
- (b) any matter cancelled in pursuance of it.
- (8) Where the marking of an entry is cancelled, an extract of the entry is not to be treated as accurate unless both the marking and the cancellation are omitted from it.
- (9) If the Registrar General is satisfied—
- (a) that a registrable foreign adoption (as defined in sub-paragraph (5) of paragraph 6) has ceased to have effect (whether on annulment or otherwise), or
- (b) that any entry or mark was erroneously made in pursuance of that paragraph in the Adopted Children Register or the register of births,
- the Registrar General may secure that such alterations are made in those registers as the Registrar General considers are required in consequence of the adoption ceasing to have effect or to correct the error.
- (10) Where an entry in such a register is amended in pursuance of sub-paragraph (9), an extract of the entry is not to be treated as accurate unless it shows the entry as amended but without indicating that it has been amended.
- (11) In this paragraph, “prescribed” means prescribed by regulations made by the Registrar General with the approval of the Scottish Ministers.

Marking of entries on re-registration of birth

- 8 Without prejudice to any other provision of this Act, where—
- (a) an entry in the register of births has been marked in accordance with paragraph 5 or 6, and
- (b) the birth is re-registered under section 20(1) of the Registration of Births, Deaths and Marriages (Scotland) Act 1965 (c.49),
- the entry made on re-registration must be marked in the same way.

SCHEDULE 2
(introduced by section 112(1))

MINOR AND CONSEQUENTIAL AMENDMENTS

The Children (Scotland) Act 1995 (c.36)

- 1 (1) The Children (Scotland) Act 1995 is amended as follows.
- (2) In section 11 (court orders relating to parental responsibilities etc.)—
- (a) in subsection (4)—
- (i) for “(3)(a)(iii)” substitute “(3)(ab)”, and
- (ii) after paragraph (a) insert “or”,
- (b) in subsection (5), after “(3)(a)” insert “and (ab)”, and

(c) in subsection (6), for the words from “have” to the end substitute “has the meaning given by section 111 of the Adoption and Children (Scotland) Act 2006 (asp 00)”.

5 (3) In subsection (6) of section 17 (duty of local authority to child looked after by authority)—

(a) the word “or” after paragraph (c) is repealed, and

(b) after paragraph (d) add “; or

10 (e) in respect of whom a permanence order has, on an application by them under section 84 of the Adoption and Children (Scotland) Act 2006 (asp 00), been made and has not ceased to have effect.”.

(4) In section 73 (duration and review of supervision requirement)—

(a) in subsection (4), in paragraph (c), for sub-paragraphs (i) and (ii) substitute—

15 “(i) applying under section 84 of the Adoption and Children (Scotland) Act 2006 (asp 00) (“the 2006 Act”) for a permanence order;”,

(b) after that subsection insert—

“(4A) The Scottish Ministers may make regulations specifying by reference to the occurrence of an event or events described in the regulations the period of time during which a referral under subsection (4)(c) is to be made.”,

20 (c) in subsection (5), for “section 12 of the said Act of 1978” substitute “section 31 or 32 of the 2006 Act”,

(d) in subsection (8), in paragraph (a), after sub-paragraph (iv) insert—

“(iva)the case has been referred to him under section 99 of the Adoption and Children (Scotland) Act 2006 (asp 00),”,

(e) in subsection (13)—

25 (i) for the words from “section”, where it first occurs, to “1978” substitute “section 84 of the 2006 Act”, and

(ii) for “section 12” substitute “section 31 or 32”,

(f) after subsection (13) insert—

30 “(13A)A report drawn up under subsection (13) shall be in such form as may be prescribed by the Scottish Ministers.”, and

(g) in subsection (14), for the words from “section”, where it first occurs, to “1978”, substitute “31, 32 or 84 of the 2006 Act”.

SCHEDULE 3
(introduced by section 112(2))

REPEALS

<i>Enactment</i>	<i>Extent of repeal</i>
5 Adoption (Scotland) Act 1978 (c.28)	The whole Act except Part IV.
10 Children (Scotland) Act 1995 (c.36)	In section 11, in subsection (4), paragraphs (b) and (d) and the word “or” immediately preceding paragraph (d); and, in subsection (6), the words ““adoption agency” and”.
15	In section 16(4)(b)(i), the words “a parental responsibilities order.”.
	In section 26(1)(a), the words from “on” to “determine”.
	Sections 86 to 89.
	In section 93(1), the definition of parental responsibilities order.
Adoption and Children Act 2002 (c.38)	Sections 133 and 134.

Adoption and Children (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to restate and amend the law relating to adoption; to make other provision in relation to the care and possession of children; to enable provision to be made in relation to allowances for the fostering of children; and for connected purposes.

Introduced by: Peter Peacock
On: 27 March 2006
Supported by: Robert Brown
Bill type: Executive Bill

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