

Briefing for the Public Petitions Committee

Petition Number: [PE01701](#)

Main Petitioner: Nathan Sparling

Subject: Adult Adoption (adoptions over the age of 18)

Calls on the Parliament to urge the Scottish Government to amend the Adoption and Children (Scotland) Act 2007, or introduce separate legislation, to allow for the adoption of individuals who are over the age of 18, in order to respect the right to a family life enshrined in the Human Rights Act 1998.

Background

Human rights

Article 8 of the [European Convention on Human Rights](#) (ECHR) provides a right to respect for one's "private and family life, his home and his correspondence". This is subject to certain restrictions that are "in accordance with law" and "necessary in a democratic society".¹

Depending on the individual circumstances, **family life** may be recognised as existing between a child and an adult who is not the biological parent, including where the adult is a step-parent.²

Article 8 is a **qualified right** under the Convention, meaning that a public authority can sometimes interfere with the right to respect for family life if it is in the interests of the wider community or to protect other people's rights.

¹ Article 8 is incorporated into Scots law by the Human Rights Act 1998 and the Scotland Act 1998.

² Murdoch, J. (2017) *Reed and Murdoch: Human Rights Law in Scotland*. 4th ed., para 6.13.

Scotland: adoption age requirements

In Scotland, any person **under the age of 18** who has never been married or registered as a civil partner may be adopted (Adoption and Children (Scotland) Act 2007, section 28(7)).

There is some limited flexibility around this age limit. Provided that the adoption proceedings began before the young person's eighteenth birthday, the relevant adoption order can be granted by the court **after** he or she reaches 18 (2007 Act, section 28(4)).

Scotland: step-parents

The Children (Scotland) Act 1995 (the 1995 Act) automatically gives (most) parents in Scotland a range of **parental responsibilities and rights** (PRRs) in respect of their children (sections 1 and 2).³

Most PRRs last until the young person reaches the **age of 16**, although the PRR (in respect of parental guidance) lasts until he or she reaches **18**.

Becoming a step-parent, whether through marriage, civil partnership or cohabitation **does not create automatic PRRs under the 1995 Act**.

Step-parents wishing to acquire PRRs in respect of their step-children have two main legal options. Both are only available where the step-child is under 18.⁴

Acquiring PRRs through the courts

The first option is to apply to the court under section 11 of the 1995 Act for an order granting them some, or all, of the PRRs. **On its own, this step does not remove the PRRs of an existing parent.**

Adoption by a step-parent

The other main option is **adoption of the child by a step-parent** under the 2007 Act (and associated secondary legislation).

³ Unmarried fathers only acquire PRRs where they are registered on their child's birth certificate; have reached an agreement with the child's mother or have been granted the rights by a court order (1995 Act, sections 3, 4 and 11).

⁴ As long as the adoption proceedings are begun before the step-child's eighteenth birthday the relevant adoption order can be granted by the court **after** he or she reaches 18 (2007 Act, section 28(4)).

The step-parent will acquire PRRs on adoption, sharing these with his spouse, civil partner or cohabitant (being the parent of the child). The other biological parent of the child, the parent who the step-parent effectively wants to replace, **loses his or her PRRs on adoption**. This is a key difference between adoption and the procedure under the 1995 Act.

Another consequence of the adoption is that the adopted child acquires **rights to inherit from the step-parent** on the step-parent's death. The **adopted child loses the right to inherit from the biological parent** the step-parent is effectively replacing.

The default position in law is that the biological parent who would lose PRRs under the adoption must consent. However, this consent may be dispensed with by the court in specified circumstances.⁵

Step-parent adoptions (of under 18s) make up **around 30% of all adoptions** in Scotland annually.⁶

Adult adoptions: other countries

A number of other countries in the world permit the adoption of over 18s (hereafter 'adult adoptions'), including **Japan**;⁷ most states in the **USA**; most provinces and territories in **Canada** and most states and territories in **Australia**.⁸

On the other hand, other legal systems prohibit it. For example, **New Zealand, South Africa and the rest of the UK**.⁹

Some legal systems support adult adoptions as a matter of principle (notably a number of states in the USA). However, other jurisdictions impose **significant restrictions** on the circumstances in which they can occur. For

⁵ For example, the parent cannot be found or is unable to satisfactorily discharge their PRRs (and is likely to continue to be unable to do so).

⁶ <https://www.nrscotland.gov.uk/statistics-and-data/statistics/statistics-by-theme/vital-events/general-publications/vital-events-reference-tables/2017/section-2-adoptions-and-registrations>

⁷ See, for example: <https://www.tofugu.com/japan/adult-adoption/>

⁸Blore, K. A gap in the Adoption Act 2009 (QLD): the case for allowing adult adoption. QUT Law Review, [S.I.], v. 10, n. 1, oct. 2010, pp 73–77; 78–81. Available at: <https://lr.law.qut.edu.au/article/view/10>

⁹Blore, K. *op cit*, pp 73–77; 78–81. Available at: <https://lr.law.qut.edu.au/article/view/10>

example, there might be a limited window of opportunity when the young person is between 18 and 21 (the position in Colorado).¹⁰

Another common requirement is **the existence of a parental or family relationship** between the participants in the adoption **during the period when the person being adopted was under 18** (Quebec; British Columbia; several states and territories in Australia; and a number of states in the USA).¹¹

Reasons for the adoption of an adult

In legal systems permitting adult adoptions in a wide range of circumstances, the reasons for the adoptions themselves vary widely. For example, adult adoptions have been used to give legal recognition to relationships between same sex couples (in states in America where same sex marriage is prohibited).¹²

More commonly, adoption of an adult has been used to formally recognise a non-sexual relationship of love and affection which has evolved during adulthood. This includes a bond that exists between long-term friends or between a carer and a dependent person.¹³

The creation of **inheritance rights** in favour of the adopted person is a key consequence of such adoptions. The extent to which this factor motivates the adoption varies in individual cases.¹⁴

An adult adoption can also take place in the context of a **pre-existing parental or family relationship**. Such adoptions can satisfy the practical and/or emotional needs of the participants.

For example, adult adoption can be used where the other biological parent has refused to give the necessary consent when the person wishing to be

¹⁰ Blore, K, *op cit*, p 79.

¹¹ Blore, K, *op cit*, p 74 and 78.

¹² See Ausness, R. (2010) *Planned Parenthood: Adult Adoption and the Right of Adoptees to Inherit*. (2016). Law Faculty Scholarly Articles 950. Available at: https://uknowledge.uky.edu/law_facpub/590/

The article notes that a US Supreme Court case greatly reduced the need for this form of adoption.

¹³Ausness, R. *op cit*, p 245.

¹⁴Ausness, R. *op cit*, pp 244–245. In Japan adult adoptions are common and often seem to be related to inheritance of the family business. See: <https://www.tofugu.com/japan/adult-adoption/>

adopted was under 18.¹⁵ Again, **inheritance rights** in favour of the adopted adult may be an important practical consideration in some cases.¹⁶

In terms of emotional needs, adoption might be regarded by participants as increasing the adopted person's sense of identity and sense of security associated with belonging to a family unit.¹⁷

Adult adoption might also be regarded by participants as giving appropriate legal recognition to the practical and emotional situation which has already existed for many years.¹⁸

Policy issues associated with adult adoptions

There are a number of policy issues associated with adult adoptions which have been explored by academics and legal practitioners. One key issue is **how to fit adult adoptions into a legal framework which assumes that PRRs come to an end at 16 (or, at the latest, 18)**. A new type of court order might be possible but this would require further discussion and policy development.¹⁹

An objection to adult adoption in principle is that the ethos of the current adoption system is focused on **safeguarding the welfare of a child**. Accordingly, an argument against adult adoption is that there is a dwindling welfare need once the young person reaches adulthood (hence why PRRs are age-limited).²⁰

Another consideration is whether **other legal steps could achieve similar ends** to adult adoption – such as **writing a will** benefiting a step-child or **formalising a change of surname** to match the step-parent's.²¹

¹⁵ And the court is not empowered to dispense with the consent or does not want to do so.

¹⁶ Ausness, R. *op cit*, p 244; Blore, K *op cit*, p 66. Other examples of circumstances where a parent may have to (or want to) act in respect of their child (as an adult) include medical emergencies and becoming a guarantor in respect of a loan (Blore, K, *op cit*, p 66).

¹⁷ Blore, K. *op cit*, pp 65–70 and 74.

¹⁸ Blore, K. *op cit*, pp 65 and 68.

¹⁹ Brown, L (2018) *Is there a case to be made for adult adoption in Scotland?* Available at: <https://www.harpermacleod.co.uk/hm-insights/2018/april/is-there-a-case-to-be-made-for-adult-adoption-in-scotland/>

²⁰ Brown, L, *op cit*. Blore, K, *op cit*, p 82.

²¹ Brown, L, *op cit*. Supporters of adult adoption argue these are not sufficient to satisfy the emotional and practical needs of the proposed participants in the adoption. See: Blore, *op cit* pp 66–68.

Other policy issues associated with adult adoption are analogous to issues arising in step-parent adoptions of under 18s. For example, the **permanence of adoption** makes it a very significant legal step, with consequences including the loss of the adopted person's statutory inheritance rights in respect of a biological parent.

Scottish Government Action

The **last major reform of adoption law was the 2007 Act** (and associated secondary legislation). The policy issue of whether to permit the adoption of over 18s was not considered in the child-focused consultation which preceded the Act or during the parliamentary passage of the Bill which became the Act.

The last major reform of PRRs was the **Family Law (Scotland) Act 2006** (which made changes to the 1995 Act). In its earlier White Paper on Family Law the then Scottish Executive explored the idea of step-parents being able to acquire PRRs through a simple agreement with the child's parents.²² (Such agreements exist in England and Wales).²³

However, concerns were expressed by stakeholders (including how to ensure children's views were protected in the process) and no relevant proposal was included in the Bill which became the 2006 Act.²⁴

Scottish Parliament Action

There was a recent PQ on the subject matter of the **current petition** as follows:

"To ask the Scottish Government whether it plans to amend the Adoption and Children (Scotland) Act 2007 to allow for persons over the age of 18 to be legally adopted. ([S5W-15067](#))

Maree Todd: The current legislation is designed to protect and safeguard children and provides a range of routes to allow any family composition to permanently claim a child. In Scotland family stability is gained through kinship care orders, permanence orders for foster care

²² Scottish Executive. (2000) *Parents and Children: a White Paper on Scottish Family Law*, paras 2.25–2.45 and proposal 2.

²³ Adoption and Children Act 2002, section 112, amending inserting section 4A of the Children Act 1989.

²⁴ Scottish Executive. (2004) *Family Matters: Improving Family Law in Scotland*, pp 32–38.

and residential care, as well as adoption - which is open to step parents and single or coupled adults.

Whilst the legislation does not extend to the adoption of individuals over 18, there is in place legislation to allow for individuals to change their names on birth certificates and for adults to make provision in wills for the sharing of property to non-biological members of their family.

We are constantly improving the procedures, services and support around adoption and permanence for children to ensure that Scotland has a modern, responsive and child-centred adoption system. There are no plans currently to extend the age of a child beyond 18 for this purpose.”

Sarah Harvie-Clark
Senior Researcher

30th August 2018

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