

ADOPTION AND CHILDREN (SCOTLAND) ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Chapter 7

Miscellaneous

Section 71 - Adoption allowances schemes

258. This section gives the Scottish Ministers the power to make regulations concerning the preparation of a scheme for the payment of allowances by a local authority or registered adoption service to a person who has adopted, or intends to adopt a child, through an adoption agency.
259. Subsection (1) provides that a local authority must, within such period as the Scottish Ministers direct, prepare an adoption allowances scheme. A registered adoption agency may prepare such a scheme.
260. Subsection (2) defines an adoption allowances scheme as a scheme for the payment by an agency, whether a local authority or registered adoption service, of allowances to any person who has adopted or intends to adopt a child where arrangements are made, or to be made, by the agency.
261. Subsection (3) enables the Scottish Ministers to make regulations in relation to adoption allowance schemes.
262. Subsection (4) sets out what such regulations may particularly include: the procedure to be followed to decide whether or not someone should be paid an adoption allowance; the circumstances in which an allowance can be paid; factors to be taken into account in deciding how much allowance should be paid; the procedure for review, variation and termination of any such allowance; the information about allowances that should be supplied to potential adopters; and the procedure to be followed in drawing up, making alterations to or revoking and replacing the scheme.

Section 72 - Prohibition of certain payments

263. Any person who makes any payment in relation to the adoption of a child, the giving of consent required in connection with the adoption of a child, the transfer of the care of a child with a view to his or her adoption, or the making of any arrangements for the adoption of that child commits an offence. By virtue of subsection (2), this section also applies to anyone who agrees or offers to make such a payment, receives or agrees to receive any such payment or attempts to obtain such a payment.
264. By virtue of subsection (3) a person who commits an offence under this section is liable to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the standard scale, or both.

265. By virtue of subsection (4), where a person has committed an offence under this provision the court can order that the child be removed to a place of safety (within the meaning of section 93(1) of the 1995 Act) until the child can be returned to his or her parent or guardian, or other arrangements can be made for the child.
266. By virtue of subsection (5), references to “payment” in this section include reward.

Section 73 - Excepted payments

267. This section relates to payments made in connection with adoptions which are not prohibited under section 72.
268. By virtue of paragraph (a) of subsection (2), a payment is excepted if it is made to an adoption agency by a parent or guardian of the child or by a person who adopts or proposes to adopt the child, in respect of expenses reasonably incurred by the agency in connection with the adoption or proposed adoption of the child. A payment is excepted by paragraph (b) if it is made in relation to legal or medical expenses incurred or to be incurred by any person in connection with an application which the person makes or intends to make for an adoption order or a preliminary order under section 59. Under paragraph (c), a payment is excepted if it is authorised by the court to which the adoption application was made. By virtue of paragraph (d), a payment is excepted if it is made by one adoption agency to another in consideration of placing the child for adoption. Paragraph (e) provides that a payment is excepted if it is made by an adoption agency to a voluntary organisation as a fee for the services of the organisation putting the adoption agency in touch with another agency.

Section 74 - Disclosure of medical information about parents of child

269. Subsection (1) gives the Scottish Ministers power to make regulations in relation to the disclosure of information about the health of the natural parents of a child who will be, may be, or has been adopted.
270. Any such regulations must ensure that a person to whom such information is disclosed is subject to a duty of confidentiality in respect of this information (subsection (2)).
271. However, by virtue of subsection (3), information may be disclosed to the child and to persons who are to, or may, adopt, or have already adopted the child.
272. Subsection (4) lists matters which any regulations made by virtue of subsection (1) may cover. These are: the types of persons by whom and to whom such information is to be disclosed; the circumstances in which this information is to be disclosed; the type of information which is or is not to be disclosed; the circumstances in which consent to the disclosure of such information is not required; and the processing of the information.

Section 75 - Restriction on arranging adoptions and placing children

273. By virtue of subsection (1), and subject to subsection (2), it is an offence for a person other than an adoption agency to make arrangements for the adoption of a child or to place a child for adoption.
274. Subsection (2) provides, however, that no offence will be committed if the prospective adopters or the person with whom the child is placed is a parent of the child, any other relative of the child or, where a parent of the child is a member of a relevant couple, the other member of the couple. “Relevant couple” has, by virtue of section 119(3), the meaning given in section 29(3).
275. Subsection (3) provides that it is an offence for a person to receive a child in contravention of subsection (1) knowing that the child has been placed for the purpose of adoption.

276. In terms of subsection (4), it is an offence for a person to manage or control a body which is not a registered adoption service or a local authority and the purpose of which is or includes making arrangements for the adoption of children.
277. Under subsection (5), any person who commits an offence under this section is punishable by imprisonment for a period of up to 3 months or a fine not exceeding level 5 on the standard scale or both.
278. By virtue of subsection (6), in proceedings under subsection (4), things done or words written, spoken or published by a person managing a body making arrangements for the adoption of children is sufficient evidence of the purpose of that body. By virtue of subsection (7), it does not matter if the acts listed in subsection (6) are not carried out in the presence of a party to the proceedings.

Section 76 - Adoption societies which are not registered adoption services

279. Under subsections (1) and (2), an adoption society which is registered in England and Wales or Northern Ireland, but not in Scotland, may not operate in Scotland unless it considers it necessary to do so in the interests of a person mentioned in section 3(1) of the Adoption and Children Act 2002 (“the 2002 Act”) (maintenance of adoption service) or Article 3 of the Adoption (Northern Ireland) Order 1987 (the adoption service).

Section 77 - Effect of certain orders made in England and Wales

280. Under section 77, an adoption order or placement order (including the variation or revocation of a placement order) made in England and Wales has the same effect in Scotland, with the exception that any reference made in the 2002 Act to the parental responsibility for the child is to be taken as a reference to the parental responsibilities and parental rights in relation to the child.

Section 78 - Effect of placing for adoption etc. under 2002 Act

281. **Section 78** provides that if a child is placed for adoption, or an adoption agency is authorised to place a child for adoption, with parental consent under the 2002 Act, the relevant provisions concerning parental responsibility and the further consequences of placement also have effect in Scotland with the exception that the appropriate terminology used in Scottish legislation is substituted. With regard to parental responsibility 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 with regard to the further consequences of placement the reference to the court is to be read as a reference to the appropriate court.

Section 79 - Further consequences of placement and placement orders

282. Under section 79, if a child is placed for adoption, or an adoption agency is authorised to place a child for adoption, with parental consent under the 2002 Act, no residence order under section 11(2)(c) of the 1995 Act (court orders relating to parental responsibilities etc) may be made in respect of the child.
283. Subsection (3) specifies that if a placement order is made for a child under the 2002 Act, any residence order, contact order, specific issue order or interdict in relation to parental responsibilities made under the 1995 Act ceases to have effect. Subsection (4) specifies that where a placement order is in force, none of the previously mentioned orders under the 1995 Act may be made in respect of a child and additionally, a child assessment order may not be made.