

Adoption and Children (Scotland) Act 2007

2007 asp 4

PART 1

ADOPTION

CHAPTER 7

MISCELLANEOUS

Adoption allowances

71 Adoption allowances schemes

- (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.
- (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.
- (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,
 - (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,

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- (d) the procedure for review, variation and termination of allowances,
- (e) the information about allowances which is to be supplied by an agency to a person who intends to adopt a child, and
- (f) the procedure to be followed by an agency in preparing, modifying or revoking an adoption allowances scheme.

Commencement Information

- I1** S. 71(1)(a)(3)(4) in force at 20.4.2009 for specified purposes by [S.S.I. 2009/147](#), [art. 2](#), [Sch.](#)
- I2** S. 71(1)(a)(3)(4) in force at 28.9.2009 in so far as not already in force by [S.S.I. 2009/267](#), [arts. 1\(2\), 2](#) (with [arts. 3-21](#)) (as amended (7.5.2012) by [S.S.I. 2012/99](#), [art. 2](#))
- I3** S. 71(1)(b)(2) in force at 28.9.2009 by [S.S.I. 2009/267](#), [arts. 1\(2\), 2](#) (with [arts. 3-21](#)) (as amended (7.5.2012) by [S.S.I. 2012/99](#), [art. 2](#))

Prohibited payments

72 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 of a child with a view to the adoption of the child, or
 - (d) the making by that person of any arrangements for the adoption of a child.
- (2) Any person who—
 - (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 [F1202(1) of the Children’s Hearings (Scotland) Act 2011 (asp 1)].

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Textual Amendments

- F1** Words in s. 72(5) substituted (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Modification of Primary Legislation\) Order 2013 \(S.S.I. 2013/211\)](#), art. 1, **Sch. 1 para. 17(4)**

Commencement Information

- I4** S. 72 in force at 28.9.2009 by [S.S.I. 2009/267](#), **arts. 1(2), 2** (with [arts. 3-21](#)) (as amended (7.5.2012) by [S.S.I. 2012/99](#), art. 2)

73 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.
- (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 59,
 - (c) it is authorised by the court to which an application for an adoption order is made,
 - (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.
- (3) In this section, “payment” includes reward.

Commencement Information

- I5** S. 73 in force at 28.9.2009 by [S.S.I. 2009/267](#), **arts. 1(2), 2** (with [arts. 3-21](#)) (as amended (7.5.2012) by [S.S.I. 2012/99](#), art. 2)

Disclosure of medical information about parents

74 Disclosure of medical information about parents

- (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”).

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- (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.
- (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—
- (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.
- [^{F2}(5) In subsection (4)(e), “processing” has the same meaning as in Parts 5 to 7 of the Data Protection Act 2018 (see section 3(4) and (14) of that Act).]

Textual Amendments

- F2** S. 74(5) substituted (25.5.2018) by [Data Protection Act 2018 \(c. 12\)](#), s. 212(1), **Sch. 19 para. 148** (with ss. 117, 209, 210); [S.I. 2018/625](#), reg. 2(1)(g)

Commencement Information

- I6** S. 74 in force at 20.4.2009 for specified purposes by [S.S.I. 2009/147](#), art. 2, **Sch.**
- I7** S. 74 in force at 28.9.2009 in so far as not already in force by [S.S.I. 2009/267](#), **arts. 1(2), 2** (with arts. 3-21) (as amended (7.5.2012) by [S.S.I. 2012/99](#), art. 2)

Restrictions on arranging adoptions and placing for adoption

75 Restriction on arranging adoptions and placing children

- (1) Subject to subsection (2), a person other than an adoption agency who—
- (a) makes arrangements for the adoption of a child, or
 - (b) places a child for adoption,
- commits an offence.
- (2) Subsection (1) does not apply if the person proposing to adopt the child or, as the case may be, the person with whom the child is placed is—
- (a) a parent of the child,
 - (b) any other relative of the child, or
 - (c) where a parent of the child is a member of a relevant couple, the other member of the couple.

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- (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.

Commencement Information

18 S. 75 in force at 28.9.2009 by [S.S.I. 2009/267](#), [arts. 1\(2\), 2](#) (with [arts. 3-21](#)) (as amended (7.5.2012) by [S.S.I. 2012/99](#), art. 2)

76 Adoption societies which are not registered adoption services

- (1) Subsection (2) applies where—
- (a) an adoption society is—
 - (i) a registered adoption society, 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 [^{F3}the 2002 Act] or, as the case may be, Article 3 of the Northern Ireland Order, it must not act as an adoption society in Scotland.

Textual Amendments

F3 Words in s. 76(2) substituted (27.1.2010) by [Adoption and Children \(Scotland\) Act 2007 \(Modification of Enactments\) Order 2010 \(S.S.I. 2010/21\)](#), art. 1, [Sch. para. 8\(4\)](#)

Commencement Information

19 S. 76 in force at 28.9.2009 by [S.S.I. 2009/267](#), [arts. 1\(2\), 2](#) (with [arts. 3-21](#)) (as amended (7.5.2012) by [S.S.I. 2012/99](#), art. 2)

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

77 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.

Modifications etc. (not altering text)

- C1** S. 77(1) applied (with modifications) (6.4.2010) by [The Human Fertilisation and Embryology \(Parental Orders\) Regulations 2010 \(S.I. 2010/985\)](#), regs. 1(1), 4, **Sch. 3**

Commencement Information

- I10** S. 77 in force at 28.9.2009 by [S.S.I. 2009/267](#), **arts. 1(2)**, 2 (with **arts. 3-21**) (as amended (7.5.2012) by [S.S.I. 2012/99](#), art. 2)

78 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.

Commencement Information

- I11** S. 78 in force at 28.9.2009 by [S.S.I. 2009/267](#), **arts. 1(2)**, 2 (with **arts. 3-21**) (as amended (7.5.2012) by [S.S.I. 2012/99](#), art. 2)

79 Further consequences of placement and placement orders

- (1) Subsection (2) applies where—

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- (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 [F436 of the Children’s Hearings (Scotland) Act 2011 (asp 1)] (child assessment orders),
- may be made in respect of the child.

Textual Amendments

- F4** Words in s. 79(4)(b) substituted (24.6.2013) by [The Children’s Hearings \(Scotland\) Act 2011 \(Modification of Primary Legislation\) Order 2013 \(S.S.I. 2013/211\)](#), art. 1, **Sch. 1 para. 17(5)**
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Commencement Information

- I12** S. 79 in force at 28.9.2009 by [S.S.I. 2009/267](#), **arts. 1(2), 2** (with **arts. 3-21**) (as amended (7.5.2012) by [S.S.I. 2012/99](#), art. 2)

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 14(3A) inserted by [2020 asp 16 s. 30\(5\)](#)
- s. 14(4A)-(4C) inserted by [2020 asp 16 s. 2\(2\)\(c\)](#)
- s. 84(5A)(5B) inserted by [2020 asp 16 s. 2\(3\)\(c\)](#)