

## SCHEDULES

### SCHEDULE 2

Section 98(1).

#### AMENDMENTS OF THE ADOPTION (SCOTLAND) ACT 1978

- 1 The Adoption (Scotland) Act 1978 shall be amended in accordance with this Schedule.
- 2 In section 1(2) (facilities to be provided as part of adoption service)—
  - (a) paragraph (a) shall cease to have effect; and
  - (b) for paragraph (c) substitute—
    - “(bb) counselling and assistance (but, without prejudice to sections 51 to 51B, not assistance in cash) to children who have been adopted and to persons who have adopted a child; and
    - (c) counselling for other persons if they have problems relating to adoption.”.
- 3 In section 3(3) (factors to be considered by Secretary of State in considering application for approval of adoption society), after paragraph (a) insert—
  - “(aa) the procedures in accordance with which the applicant deals with, or as the case may be proposes to deal with, complaints arising in relation to its exercise of its functions and, where the applicant is already an approved adoption society, the manner in which it deals with particular complaints,”.
- 4 Section 8 (direction where adoption society inactive or defunct) shall cease to have effect.
- 5 In section 9 (regulations relating to an adoption agency’s exercise of its functions)—
  - (a) in subsection (2), at the end add—

“including, without prejudice to the generality of this subsection, regulations as to procedures for dealing with complaints arising in relation to such exercise.”; and
  - (b) after subsection (3) insert—

“(3A) Regulations under this section may make provision—

    - (a) as to the determination by an adoption agency of whether, as regards a child for whose adoption it proposes to make arrangements, any such agreement as is mentioned in sections 16(1)(b)(i) and 18(1)(a) is likely to be forthcoming and as to a period by the end of which, if they have determined that the agreement is unlikely to be forthcoming and if no application has been made for an adoption order in relation to the child, application for an order under section 18(1) shall require to be made in relation to him; and

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- (b) where the case of a child for whose adoption an adoption agency proposes to make arrangements is referred under section 73(4)(c)(ii) or (iii) of the Children (Scotland) Act 1995 to the Principal Reporter (within the meaning of Part II of that Act), as to circumstances in which and, on the occurrence of such circumstances, a period by the end of which, if no application has been made for an adoption order in relation to the child, application for an order under section 18(1) shall require to be made in relation to him.”.
- 6 In section 11(3) (offence of receiving child illegally placed for adoption), for paragraph (c) substitute—
  - “(c) both receives a child placed with him in contravention of subsection (1) and knows that the placement is with a view to his adopting the child.”.
- 7 In section 12 (adoption orders)—
  - (a) in subsection (1)—
    - (i) for the words “rights and duties relating” substitute “responsibilities and parental rights in relation”; and
    - (ii) at the end add—
 

“; except that an adoption order may be made in relation to a person who has attained the age of 18 years if the application for it was made before such attainment.”;
  - (b) in subsection (2), for the words “rights and duties” substitute “responsibilities and parental rights”;
  - (c) in subsection (3)—
    - (i) in paragraph (a), for the words “right or duty” substitute “responsibility or parental right”; and
    - (ii) in paragraph (b)(ii), for the words “rights and duties” substitute “responsibilities and parental rights”; and
  - (d) at the end add—
 

“(9) Where a court making an adoption order in relation to a child who is subject to a supervision requirement is satisfied that, in consequence of its doing so, compulsory measures of supervision in respect of the child are no longer necessary, it may determine that the child shall forthwith cease to be subject to that requirement.”.
- 8 In section 14 (adoption by married couple)—
  - (a) in subsection (1), the words from “subject” to “certain cases)” shall cease to have effect; and
  - (b) in subsection (2), after paragraph (b) add—
 

“, or

    - (c) both of them were habitually resident in any of the places mentioned in paragraph (a) above throughout the period of one year which ends with the date of their application”.
- 9 In section 15 (adoption by one person)—
  - (a) in subsection (1), the words from “subject” to “certain cases)” shall cease to have effect; and

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(b) in subsection (2), after paragraph (b) add—

“, or

(c) he was habitually resident in any of the places mentioned in paragraph (a) above throughout the period of one year which ends with the date of his application”.

10 In section 16 (provision for parental agreement to adoption order)—

(a) for subsection (2) substitute—

“(2) The grounds mentioned in subsection (1)(b)(ii) are, that the parent or guardian—

(a) is not known, cannot be found or is incapable of giving agreement;

(b) is withholding agreement unreasonably;

(c) has persistently failed, without reasonable cause, to fulfil one or other of the following parental responsibilities in relation to the child—

(i) the responsibility to safeguard and promote the child’s health, development and welfare; or

(ii) if the child is not living with him, the responsibility to maintain personal relations and direct contact with the child on a regular basis;

(d) has seriously ill-treated the child, whose reintegration into the same household as the parent or guardian is, because of the serious ill-treatment or for other reasons, unlikely.”; and

(b) subsection (5) shall cease to have effect.

11 In section 18 (making and effect of orders freeing for adoption)—

(a) in subsection (1), after the word “agency” insert “which is a local authority”;

(b) for subsection (5) substitute—

“(5) On the making of an order under this section, the parental responsibilities and parental rights in relation to the child are transferred to the adoption agency.”;

(c) for subsection (7) substitute—

“(7) Before making an order under this section in the case of a child whose father is not, and has not been, married to the mother and does not have any parental responsibilities or parental rights in relation to the child, the court shall satisfy itself in relation to any person claiming to be the father that—

(a) he has no intention of applying for, or, if he did so apply, it is likely that he would be refused, an order under section 11 of the Children (Scotland) 1995 Act (orders in relation to parental responsibilities and parental rights); and

(b) he has no intention of entering into an agreement with the mother under section 4(1) of that Act (acquisition by natural father by agreement of such responsibilities and

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rights), or, if he has such an intention, that no agreement under that subsection is likely to be made.”; and

(d) at the end add—

“(9) Where a court making an order under this section in relation to a child who is subject to a supervision requirement is satisfied that, in consequence of its doing so, compulsory measures of supervision in respect of the child are no longer necessary, it may determine that the child shall forthwith cease to be subject to that requirement.”.

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In section 19 (progress reports)—

(a) in subsection (1)—

(i) for the words “(“the former parent”)” substitute “(in this section and in section 20 referred to as the “relevant parent”); and

(ii) for the words “did not do so” substitute—

“either—

(a) did not do so; or

(b) having done so, subsequently by written notice under this subsection to the adoption agency to which the parental responsibilities and parental rights have been transferred, has withdrawn such declaration.”;

(b) in subsection (2)—

(i) for the words “in which the parental rights and duties were vested” substitute “to which the parental responsibilities and parental rights were transferred”; and

(ii) for the word “former”, in both places where it occurs, substitute “relevant”;

(c) in subsection (3)—

(i) for the word “former”, wherever it occurs, substitute “relevant”; and

(ii) for the words “have his home with a person with whom he has been placed for adoption” substitute “be placed with a person with a view to his being adopted by that person”; and

(d) in subsection (4)—

(i) for the words “the former” substitute “the relevant”;

(ii) after paragraph (b) add—

“but a declaration under this subsection may be withdrawn in the same way as may a declaration under subsection (6) of section 18, in which event the agency shall no longer be so released”; and

(iii) for the words “that former” substitute “that relevant”.

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In section 20 (revocation of order under section 18)—

(a) in subsection (1)—

(i) for the word “former” substitute “relevant”; and

(ii) for the words “rights and duties” substitute “responsibilities and parental rights”;

(b) after subsection (1) insert—

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- “(1A) The adoption agency, at any time after the making of the order under section 18 when the conditions mentioned in paragraphs (a) and (b) of subsection (1) above are satisfied, may apply to the court which made the order for a further order revoking it.”;
- (c) in subsection (2)—
- (i) for the words “the application” substitute “an application under subsection (1) or (1A)”;
- (ii) for the words “rights and duties” substitute “responsibilities and parental rights”;
- (d) for subsection (3) substitute—
- “(3) Where an order freeing a child for adoption is revoked under this section, the court shall, by an order under section 11 of the Children (Scotland) Act 1995 determine on whom are to be imposed the parental responsibilities, and to whom are to be given the parental rights, in relation to the child.”;
- (e) in subsection (4)—
- (i) for the words “if the application” substitute “if an application under subsection (1)”;
- (ii) in paragraph (a), for the word “former” substitute “relevant”;
- (f) in subsection (5), for the word “former” substitute “relevant”.
- 14 In section 21 (variation of order under section 18 so as to substitute one adoption agency for another)—
- (a) in subsection (1)—
- (i) for the words “rights and duties” substitute “responsibilities and parental rights”;
- (ii) for the words “in which they are vested under” substitute “to which they are transferred by virtue of”;
- (b) in subsection (3)—
- (i) for the words “rights and duties” substitute “responsibilities and parental rights”;
- (ii) for the words “vested in” substitute “been transferred to”.
- 15 After section 22 insert—

**“22A Children subject to supervision requirements.**

- (1) An approved adoption society shall refer the case of a child who is subject to a supervision requirement to the Principal Reporter where it is satisfied that the best interests of the child would be served by its placing the child for adoption and it intends so to place him.
- (2) On a case being referred to him under subsection (1), the Principal Reporter shall arrange for a children’s hearing to review the supervision requirement in question and shall make any arrangements incidental to that review.
- (3) Subsections (9), (13) and (14) of section 73 of the Children (Scotland) Act 1995 (which provide, respectively, for acting on the review of a supervision requirement, a report by a children’s hearing and consideration of that report) shall apply in relation to a children’s hearing arranged under this section as

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those subsections apply in relation to one arranged by virtue of subsection (4)(c)(iii) of that section.

(4) In this section “Principal Reporter” has the same meaning as in Part II of the Children (Scotland) Act 1995.”.

16 In section 24 (restrictions on making adoption orders), for subsection (2) substitute—

“(2) 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 51.

(3) In considering whether to make an adoption order or an order under section 18(1), the court shall regard the welfare of the child concerned as its paramount consideration and shall not make the order in question unless it considers that it would be better for the child that it should do so than that it should not.”.

17 In section 25(1) (making of interim order and preconditions for so doing)—

(a) for the words “of sections 16(1) and 22(1) are complied with” substitute—

“—

(a) of section 16(1); and

(b) in a case where the child was not placed with the applicant by an adoption agency, of section 22(1),

are complied with”; and

(b) for the words “vesting the custody of the child in” substitute “giving parental responsibilities and parental rights to”.

18 After section 25 insert—

**“25A Timetable for resolving question as to whether agreement to adoption order etc. should be dispensed with.**

In proceedings in which the question arises as to whether the court is satisfied as is mentioned in section 16(1)(b)(ii) or 18(1)(b), the court shall, with a view to determining the question without delay—

(a) draw up a timetable specifying periods within which certain steps must be taken in relation to those proceedings; and

(b) give such directions as it considers appropriate for the purpose of ensuring, so far as is reasonably practicable, that the timetable is adhered to.”.

19 In section 27 (restrictions on removal of a child by a parent or guardian who has agreed to an adoption order or to an order freeing the child for adoption)—

(a) for subsections (1) and (2), substitute—

“(1) Where—

(a) an adoption agency has placed a child with a person with a view to his being adopted by the person; and

(b) the consent of each parent or guardian of the child has been duly obtained to that placement (whether or not in knowledge of the identity of the person),

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- any such parent or guardian shall not be entitled to remove the child from the care and possession of the person without the leave either of the adoption agency or of the court.
- (2) The reference in subsection (1) to consent having been duly obtained is to its having been obtained in accordance with such regulations as may be made by the Secretary of State for the purposes of this section.”; and
- (b) in subsection (3), for the words “contravenes subsection (1) or (2)” substitute “removes a child in contravention of subsection (1)”.
- 20 In section 28 (restriction on removal of child from care and possession of applicant for adoption order etc.)—
- (a) in subsection (4), for the words from “, in terms of” to the end substitute “under or by virtue of Chapter 2 or 3 of Part II of the Children (Scotland) Act 1995”; and
- (b) in subsection (5), the words “or of a voluntary organisation” and “or the organisation” shall cease to have effect.
- 21 Sections 32 to 37 (protected children) shall cease to have effect.
- 22 In section 45(5) (restrictions as to persons to whom information contained in the Adopted Children Register or in certain other registers or books may be provided, including a restriction as to the minimum age which an adopted person must be for it to be provided to him), for the word “17” substitute “16”.
- 23 In section 49(1) (adoption of children abroad), for the words “vesting in him the parental rights and duties relating” substitute “transferring to him the parental responsibilities and parental rights in relation”.
- 24 In section 51 (prohibition on certain payments)—
- (a) in subsection (1), after the word “section” insert “and of section 51A(3)”;
- (b) in subsection (2), for the words “the court may order any child in respect of whom the offence was committed” substitute “without prejudice to any power which the court has to make any other order in relation to the child as respects whom the offence was committed, it may order him”;
- (c) in subsection (5)—
- (i) at the beginning insert “Subject to section 51B,”; and
- (ii) at the end add “(including any such payment made by virtue of section 51B)”;
- (d) subsections (6)(a) and (7) to (11) shall cease to have effect.
- 25 After section 51 insert—

#### **“51A Adoption allowances schemes**

- (1) Subject to subsection (2), an adoption agency which is—
- (a) a local authority shall, within such period after the coming into force of this section as the Secretary of State may by order direct;
- (b) an approved adoption society may,
- prepare a scheme (in this section and in section 51B referred to as an “adoption allowances scheme”) for the payment by the agency of allowances to any person who has adopted, or intends to adopt, a child in any case where

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arrangements for the adoption were made, or as the case may be are to be made, by the agency.

- (2) The Secretary of State may make regulations as respects adoption allowances schemes; and without prejudice to the generality of this subsection such regulations may in particular make provision as to—
- (a) the procedure to be followed by an agency in determining whether a person should be paid an allowance;
  - (b) the circumstances in which an allowance may be paid;
  - (c) the factors to be taken into account in determining the amount of an allowance;
  - (d) the procedure for review, variation and termination of allowances;
  - (e) the information about allowances which is to be supplied by an agency to a person who intends to adopt a child; and
  - (f) the procedure to be followed by an agency in drawing up, in making alterations to, or in revoking and replacing, an adoption allowances scheme.
- (3) Section 51(1) shall not apply to any payment made in accordance with an adoption allowances scheme (including any such payment made by virtue of section 51B).

### **51B Transitional provisions as respects adoption allowances**

After the coming into force of section 51A—

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

- 26 In section 58 (curators *ad litem* and reporting officers), in subsection (2)(c), for the words “rights and duties relating” substitute “responsibilities and parental rights in relation”.
- 27 In section 59(4) (disapplication of provisions regarding rules), for the words “, 11 and 32 to 37” substitute “and 11”.
- 28 In section 60(3) (affirmative procedure for certain orders), the words “or 51(9)” shall cease to have effect.
- 29 In section 65 (interpretation)—
- (a) in subsection (1)—
    - (i) in the definition of “adoption order”, in each of paragraphs (b) and (c), for the words “and 30 to 32” substitute “30 and 31”;
    - (ii) after the definition of “child” insert—
 

““compulsory measures of supervision” has the same meaning as in Part II of the Children (Scotland) Act 1995;”;



- (iii) in the definition of “guardian”, paragraph (b) shall cease to have effect;
- (iv) in the definition of “local authority”, the words “, 35(1)” shall cease to have effect;
- (v) after the definition of “overseas adoption” insert—

““parent” means, irrespective of whether or not they are, or have been, married to each other—

- (a) the mother of the child, where she has parental responsibilities or parental rights in relation to him;
- (b) the father of the child where he has such responsibilities or rights; and
- (c) both of his parents, where both have such responsibilities or rights;

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

- (vi) in the definition of “relative” for the words from “and any person” to the end substitute “where he is not a parent within the meaning of this Act, and any person who would be a relative within the meaning of this definition if the father were such a parent;” and
- (vii) after the definition of “specified order” insert—

““supervision requirement” has the same meaning as in Part II of the Children (Scotland) Act 1995;”;

- (b) in subsection (3), for the words “44 of the Social Work (Scotland) Act 1968” substitute “70 of the Children (Scotland) Act 1995”; and
- (c) after subsection (5) add—

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