

## SCHEDULE 5

### MEMORANDUM

#### FREEING OF CHILDREN FOR ADOPTION

This memorandum is addressed to the parent or guardian of a child where an application is to be made to the court requesting that the child be “freed for adoption”. This includes the father and mother of a child even though they do not have parental responsibilities or rights in relation to the child. If any part of this memorandum is not clear to you, you should consult the adoption agency. You may seek advice from the adoption agency on any matter connected with the adoption of your child, and you may also wish to consult your solicitor. This memorandum is intended for guidance only and is not to be regarded as an authoritative interpretation of the law.

**1.** If the court makes an order (called a “freeing order”):

- your responsibilities and rights as a parent or guardian will be transferred to the adoption agency;
- the adoption agency will then proceed to make arrangements for the child to be placed for adoption as quickly as possible;
- you will no longer be required to contribute financially to the upkeep of your child;
- the person wishing to adopt your child will apply to the court in due course and the court, if on investigation considers that this is in your child’s best interests, will make an adoption order without being required to consult you first.

**2.** If you wish your child to be brought up in a particular religious faith you should inform the adoption agency and it will take your wishes into account in selecting new parents for him as far as possible. The adoption agency is obliged, however, to make the welfare of the child its paramount consideration. At your request, the adoption agency will be able to tell you if there are any adoption societies which specialise in arranging adoptions with families of a particular faith and if so it will try to meet your wishes if you wish such a society to arrange for your child’s adoption.

**3.** The adoption agency needs to know whether each of the child’s parents or guardian agrees with its decision that the child should be freed for adoption. If you are a parent and have parental responsibilities and rights in relation to the child or are a guardian, you are asked to complete a certificate (Annex B enclosed) indicating whether you agree or disagree with the freeing application being made. Agreement is sought solely in relation to the adoption agency’s decision and is quite separate from the agreement required by the court (see paragraph 5) in the subsequent freeing application. You should read the certificate carefully, complete Part A or Part B and return it to the adoption agency within 28 days of receipt. If you do not indicate your agreement within 28 days, the adoption agency will be obliged to make the freeing application to the court within a set timescale determined by the circumstances of your child – the adoption agency or your solicitor will be able to advise you on how long this will take. If you do agree, and the adoption agency places your child with a person wishing to adopt him, then you will not be entitled to have your child returned to you without permission of the court or the adoption agency if you change your mind. If you change your mind, you should inform the agency at once.

**4.** The adoption agency has to apply to a court for a freeing order. Before making an order, the court will require to know whether you (except where you are a father or mother of the child who does not have parental responsibilities and rights) and any other parent or guardian of the child freely and with full understanding of what is involved, agree unconditionally to your child being adopted. The court will also have enquiries made to check that it is in the best interests of the child for him to be freed for adoption.

**5.** After the freeing application is made to the court, you will be asked to sign a form of agreement which can be shown to the court as evidence of your agreement. Do not sign the form of agreement

unless you are willing that the child should be adopted and you are also willing to give up your right to be party to the court proceedings when application is made for your child to be formally adopted in due course.

6. The court cannot make a freeing order without your agreement unless it dispenses with your agreement on certain grounds. The grounds on which a court can dispense with a parent's agreement are that he or she:–

- (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 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 re-integration into the same household as the parent or guardian is, because of the serious ill-treatment, or for other reasons, unlikely.

7. You are not allowed to receive any money for giving your agreement.

#### **Declaration by a relevant parent**

8. You will also be asked to decide whether you wish to be involved in any future questions concerning your child's adoption. If you decide that you do not, the adoption agency will ask you to sign a form declaring this. The form, called a "Declaration by a Relevant Parent", will then be given to the court, so that your wishes will be recorded by the court when the freeing order is made. If you make a "Declaration" you will not be given any more information after the freeing order is granted, and you will not be advised of any outcome of any adoption application. Where you have made a Declaration and subsequently change your mind, you may receive information about your child if you advise the adoption agency in writing.

#### **Your rights if you do not sign a "Declaration"**

9. If you do not sign a "Declaration", you have the right to be informed about future developments in relation to your child. It is likely that the adoption agency will tell you as soon as an adoption order is made. The adoption agency must write to you within one year and 2 weeks after the freeing order has been made, to tell you what has happened to your child – whether he has been adopted (if you have not already been told of this) or has been placed for adoption but not yet adopted or is still waiting to be placed with adopters. Thereafter the adoption agency has a duty to continue to notify you of any changes in your child's placement until he is adopted.

10. If the adoption agency has not been able to place your child with adopters within the 12 month period, you have the right to ask the court to revoke the freeing order. The adoption agency can also make such an application anytime after the freeing order is made. If the court agrees to do this as being in the best interests of your child, the responsibilities and rights of a parent are awarded to whoever the court considers most appropriate. Any duties relating to payments towards your child's maintenance which were extinguished by the freeing order will be automatically revived on the date when the court revokes that order. During the period when the court is considering your application the adoption agency will not be able to place your child for adoption without the court's permission.

11. If the court does not believe it to be in your child's interests for the freeing order to be revoked, you will not be able to make any further application for revocation unless the court permits this because of a change in circumstances or for any other reason. In such circumstances the adoption

agency will continue with its arrangements to find an adoptive home for the child and will not be required to provide you with any further information about his progress or situation.

**Birth records**

**12.** When an adoption order is made, the Registrar General for Scotland makes an entry in the Adopted Children Register showing the adopters as the parents of the child. A full extract and an abbreviated certificate of the entry in that Register (which takes the place of the child's original birth certificate) can be obtained by the adopters from General Register Office, New Register House, Edinburgh on payment of a fee. Where the child reaches the age of 16, he will be entitled to see his original entry in the birth register and to purchase a certificate of that entry if he so wishes. This means that when he is 16 he will be able to find out his original names as well as your name and your address when you registered his birth. Should you wish, the adoption agency will discuss with you the possible implications this may have for you in the future.

CERTIFICATE

**TO:** (name of Adoption Agency)

I hereby certify that I have received from you a memorandum headed "Freeing of Children for Adoption" from which I have detached this certificate of acknowledgement and that I have read the memorandum and understood it.

Signature .....

Name .....

Address .....

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Date .....