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SCOTTISH STATUTORY INSTRUMENTS

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**2009 No. 154**

**The Adoption Agencies (Scotland) Regulations 2009**

**PART I**  
**GENERAL**

**Citation and commencement**

1. These Regulations may be cited as the Adoption Agencies (Scotland) Regulations 2009 and come into force on 28th September 2009.

**Interpretation**

2. In these Regulations—

“the Act” means the Adoption and Children (Scotland) Act 2007;

“the 1995 Act” means the Children (Scotland) Act 1995(1);

“adoption panel” means an adoption panel established under regulation 3;

“legal adviser” means a member of the adoption panel appointed under regulation 5(2);

“medical adviser” means a member of the adoption panel appointed under regulation 5(1);

“relative” means a grandparent, brother, sister, uncle or aunt of the child (in the cases of a brother, sister, uncle or aunt, whether of the full-blood or half-blood); and includes a spouse or civil partner of any such grandparent, brother, sister, uncle or aunt.

**PART II**  
**ADOPTION PANELS**

**Appointment and composition of adoption panels**

3.—(1) Each—

(a) local authority; and

(b) registered adoption service which is carrying out or proposes to carry out functions specified in these Regulations,

must appoint a panel to be known as the “adoption panel” for the purpose of carrying out the functions conferred on it by regulation 6.

(2) The adoption panel must consist of at least 6 members.

(3) An adoption panel may be established jointly by any 2 or more adoption agencies which panel shall be known as a “joint adoption panel” and any reference to an adoption panel in these Regulations shall include a reference to a joint adoption panel.

(4) The persons appointed to an adoption panel shall include—

- (a) a medical adviser; and
- (b) a legal adviser.

(5) The adoption agency must—

- (a) be satisfied that the number of members and qualifications and experience of individual members of an adoption panel will enable it effectively to discharge its functions; and
- (b) review the membership of the panel from time to time.

(6) Where the adoption agency is of the opinion that any member of the adoption panel is unsuitable or unable to remain as a member it may terminate membership at any time by giving notice in writing with reasons.

#### **Meetings of the adoption panel and joint adoption panel**

4.—(1) No business shall be conducted by an adoption panel unless at least 3 of its members meet as the panel.

(2) The adoption panel may only make a recommendation referred to in regulation 6(2)(a) or (b) where—

- (a) a legal adviser is present at the meeting of the panel at which the recommendation is made; or
- (b) legal advice has been provided to the panel by such an adviser.

(3) The adoption panel must make a written record of its proceedings and the reasons for its recommendations.

(4) In paragraph (1) “members” does not include any legal adviser or medical adviser.

#### **Appointment of medical and legal advisers**

5.—(1) An adoption agency must appoint such number of persons with the qualifications specified in paragraph (3) as it considers necessary for the purpose of providing it with medical advice in connection with the exercise of its functions.

(2) An adoption agency must appoint such number of persons with the qualifications specified in paragraph (4) as it considers necessary for the purpose of providing it with legal advice in connection with the exercise of its functions.

(3) The qualifications referred to in paragraph (1) are that the person is a registered medical practitioner.

(4) The qualifications referred to in paragraph (2) are that the person is—

- (a) a solicitor; or
- (b) an advocate.

(5) In paragraph (4)—

“solicitor” means a person qualified to practice as a solicitor under section 4 of the Solicitors (Scotland) Act 1980(2); and

“advocate” means a practising member of the Faculty of Advocates.

## **Functions of the adoption panel**

- 6.—(1) The adoption panel must consider—
- (a) the case of every child;
  - (b) every proposed placement; and
  - (c) the case of every prospective adopter,
- referred to it by the adoption agency.
- (2) The adoption panel must make recommendations on the following matters:—
- (a) whether adoption is in the best interests of the child;
  - (b) whether an application for a permanence order granting authority for the child to be adopted should be made under section 80 of the Act;
  - (c) whether a prospective adopter is suitable or continues to be suitable to be an adoptive parent;
  - (d) whether a prospective adopter would be a suitable adoptive parent for a particular child; and
  - (e) any other matter referred to the adoption panel which is relevant to the adoption agency's functions under the Act.
- (3) Where an adoption panel makes a recommendation under paragraph (2)(a) that adoption is in the best interests of the child it must provide a written report of the consideration given by it to the alternatives to adoption.
- (4) Where an adoption panel makes a recommendation that there should be continued contact between the child and the child's parent or parents, it must provide a written report of the reasons why continued contact is in the best interests of the child.
- (5) Before making a recommendation under paragraph (2)(c) the adoption panel must give the prospective adopter the opportunity to meet with the adoption panel to discuss the matter with them.
- (6) Subject to paragraph (7) the adoption panel may make any of the recommendations in paragraph (2) at the same time or at different times.
- (7) Before making a recommendation specified in paragraph (2)(d) the adoption panel must—
- (a) at the meeting of the panel at which the recommendation is to be made, be satisfied that adoption is in the best interests of the child; or
  - (b) be satisfied that an adoption agency decision has been made under regulation 13 that adoption is in the best interests of the child; and
  - (c) in either case—
    - (i) at the meeting of the panel at which the recommendation specified in paragraph (2)(d) is to be made, make a recommendation that the prospective adopter is suitable to be an adoptive parent; or
    - (ii) be satisfied that an adoption agency decision has been made under regulation 8(1) or 9(5) that the prospective adopter is suitable to be an adoptive parent.
- (8) In carrying out its functions the adoption panel must have regard to—
- (a) the duties imposed on the adoption agency by section 14 of the Act;
  - (b) all the information and reports passed to it;
  - (c) any other information which may be provided to it on request; and
  - (d) where appropriate, any legal advice in relation to each case.
- (9) In paragraph (4) “parent” means a parent who has any parental responsibilities or parental rights in relation to the child.

## PART III

### ASSESSMENT OF PROSPECTIVE ADOPTERS

#### **Duties of adoption agencies: assessment of prospective adopters**

7.—(1) Each adoption agency must prepare and publish a statement of the general criteria applied by it for the purpose of determining whether any person may be accepted for assessment as an adoptive parent.

(2) Each adoption agency must from time to time review the general criteria prepared by it under paragraph (1).

(3) In considering any application by a person to be assessed by the adoption agency as an adoptive parent the adoption agency must—

- (a) apply the general criteria under paragraph (1); and
- (b) undertake any further steps which it considers necessary to consider and make a determination on the application.

(4) Where the adoption agency determines that a person should not be accepted for assessment as an adoptive parent it must give notice in writing of its determination to that person.

(5) Where the adoption agency determines that a person should be accepted for assessment as an adoptive parent it must—

- (a) so far as is reasonably practicable obtain the information in Part I of Schedule 1;
- (b) assess the case and prepare a report on the assessment;
- (c) refer the case to the adoption panel for a recommendation on whether the prospective adopter is suitable to be an adoptive parent;
- (d) provide all relevant information obtained under sub-paragraph (a) and a copy of the report on the assessment to the adoption panel at the same time as making the referral;
- (e) notify the prospective adopter that the case has been referred to the adoption panel; and
- (f) provide the prospective adopter with a copy of the report provided to the adoption panel which report shall exclude any information provided by any person in confidence.

#### **Approval of prospective adopters**

8.—(1) Where an adoption agency receives a recommendation from the adoption panel under regulation 6(2)(c) or (d) it must make a decision on whether the prospective adopter is suitable to be an adoptive parent within 14 days of the date the recommendation was made.

(2) No member of the adoption panel which made the recommendation is to take part in the decision.

(3) Where an adoption agency makes a decision that a person is suitable to be an adoptive parent it must be satisfied that—

- (a) it has taken into account the recommendations made by the adoption panel; and
- (b) the prospective adopter is a suitable person with whom to place a child or children.

(4) Where the adoption agency makes a decision that is contrary to the recommendation of the adoption panel the agency must record in writing the reasons for that decision.

(5) Where the decision is that the prospective adopter is suitable to be an adoptive parent the adoption agency must notify in writing the prospective adopter of the decision within 14 days of making that decision.

(6) Where the decision is that the prospective adopter is not suitable to be an adoptive parent the adoption agency must—

- (a) notify the prospective adopter in writing of the decision within 7 days of making the decision;
- (b) send with the notification—
  - (i) its reasons for the decision; and
  - (ii) where the adoption panel’s recommendation was that the prospective adopter was suitable to be an adoptive parent, a copy of that recommendation;
- (c) inform the prospective adopter in writing that they may require the decision to be reviewed within 28 days of the date of notification (the “28 day period”); and
- (d) invite the prospective adopter to submit to the adoption agency any representations regarding the decision within the 28 day period.

### **Review of adoption agency decisions**

**9.**—(1) Where a prospective adopter has, within the 28 day period referred to in regulation 8(6) (c), required a review of the decision made under regulation 8(1) the adoption agency must refer the case to the adoption panel for a recommendation.

(2) A referral under paragraph (1) must be made to a differently constituted adoption panel.

(3) Where a referral is made under paragraph (1) the adoption agency must provide the adoption panel with—

- (a) a copy of its decision and reasons made under regulation 8(4);
- (b) the report provided to the adoption panel under regulation 7(5)(d);
- (c) any representations received by the adoption agency from the prospective adopter; and
- (d) any other relevant information.

(4) The adoption panel must consider the case referred to it under paragraph (1) and make a fresh recommendation to the adoption agency as to whether the prospective adopter is suitable to be an adoptive parent.

(5) The adoption agency must—

- (a) make a decision (the “reviewed decision”) within 14 days of the date the fresh recommendation was made under paragraph (4); and
- (b) notify the prospective adopter of its reviewed decision within 7 days of making the reviewed decision.

(6) Where the reviewed decision is that the prospective adopter is not suitable to be an adoptive parent the notification under paragraph (5)(b) must—

- (a) state the reasons for the reviewed decision; and
- (b) where the adoption panel’s fresh recommendation was that the prospective adopter was suitable to be an adoptive parent, include a copy of the adoption panel’s fresh recommendation.

### **Review without request**

**10.**—(1) Where an adoption agency has made a decision to approve a person as an adoptive parent that agency must, where paragraph (2) or (3) applies, carry out a review of the approval of the prospective adopter by complying with the requirements in paragraph (4).

(2) This paragraph applies where no child has been placed for adoption within 2 years from the date the adoption agency made the decision to approve that person as an adoptive parent under regulation 8(1) or 9(5)(a).

(3) This paragraph applies where—

- (a) the adoption agency has placed a child or children with the prospective adopter in accordance with regulation 18;
- (b) no application for an adoption order has been made in respect of the child; and
- (c) the adoption agency considers that a review of the prospective adopter’s approval is necessary or appropriate to safeguard or promote the welfare of the child.

(4) The requirements are—

- (a) to re-assess the prospective adopter’s suitability to become an adoptive parent by making such enquiries and obtaining such information as the adoption agency considers necessary in order to review whether the prospective adopter continues to be suitable to be an adoptive parent; and
- (b) to seek and take into account the views of the prospective adopter.

(5) If, following the review, the adoption agency considers that the prospective adopter may no longer be suitable to be an adoptive parent it must—

- (a) prepare a report on the re-assessment (“the review report”);
- (b) notify the prospective adopter that the case is to be referred to the adoption panel;
- (c) send the prospective adopter a copy of the review report; and
- (d) invite the prospective adopter to submit any representations to the adoption agency within 14 days of the report being sent.

(6) At the end of the period of 14 days referred to in paragraph (5)(d) (or earlier if any representations of the prospective adopters are received before that period has expired) the adoption agency must send the review report, together with any such representations, to the adoption panel.

(7) When a referral to the adoption panel is made under paragraph (6) the adoption agency must—

- (a) notify the prospective adopter that the case has been referred to the adoption panel; and
- (b) provide the prospective adopter with a copy of the report provided to the adoption panel which report shall exclude any information provided by any person in confidence.

(8) The adoption panel must consider the review report, the representations made by the prospective adopter (if any), and any other information passed to it by the adoption agency and make a recommendation as to whether the prospective adopter continues to be suitable to be an adoptive parent.

### **Adoption agency decision on review**

**11.—**(1) Where an adoption agency receives a recommendation from the adoption panel under regulation 10(8), the adoption agency must make a decision on whether the prospective adopter continues to be suitable to be an adoptive parent within 14 days from the date of the recommendation.

(2) Regulations 8(2) to (6) and 9 shall apply to that recommendation or, as the case may be, decision as if—

- (a) references to the recommendation of an adoption panel were references to a recommendation under regulation 10(8);
- (b) in regulation 9(1) and (3) references to a decision were to a decision under paragraph (1); and

- (c) the reference to the report provided to the adoption panel under regulation 7(5)(d) were a reference to the report provided to the panel under regulation 10(5)(a).

## PART IV

### DUTIES OF ADOPTION AGENCIES WHEN CONSIDERING ADOPTION FOR A CHILD

#### **Duties of adoption agencies when considering adoption for a child**

- 12.**—(1) This regulation applies where an adoption agency is considering adoption for a child.
- (2) The adoption agency must, so far as is reasonably practicable and in the child's best interests—
- (a) consult and take into account the views of—
    - (i) the child, taking account of their age and maturity; and
    - (ii) the child's parents and guardians if their whereabouts are known;
  - (b) take account of the child's religious persuasion, racial origin and cultural and linguistic background where known;
  - (c) obtain and record in writing the information in Parts II and III of Schedule 1;
  - (d) ensure that arrangements are made for the child to be examined by a registered medical practitioner; and
  - (e) obtain from the practitioner who has carried out the examination referred to in sub-paragraph (d) a written assessment of the child's health.
- (3) Where the adoption agency considers that adoption may be in the best interests of the child it must refer the case to the adoption panel for a recommendation.
- (4) Where a referral is made under paragraph (3) the adoption agency must provide the adoption panel with—
- (a) the medical report obtained in accordance with paragraph (2)(e);
  - (b) the information obtained in accordance with paragraph (2)(c);
  - (c) any representations received from the child or their parents or guardians; and
  - (d) any other information which the adoption agency considers relevant.

#### **Adoption agency decisions**

- 13.**—(1) Where an adoption agency receives a recommendation from an adoption panel, following a referral, on a matter under regulation 6(2)(a), (b) or (e), the agency must make a decision on that matter within 14 days from the date of the recommendation.
- (2) No member of the adoption panel which made the recommendation is to take part in the decision.
- (3) On making its decision under paragraph (1) the adoption agency must take into account the recommendation of the adoption panel.
- (4) Where an adoption agency makes a decision that is contrary to the recommendation of the adoption panel the adoption agency must record in writing the reasons for its decision.
- (5) Paragraphs (6) and (7) apply where the child to whom the decision under paragraph (1) relates is subject to a supervision requirement.

(6) For the purpose of determining whether it is satisfied in accordance with section 73(4)(c)(i) or (v)(3) of the 1995 Act (duration and review of supervision requirement) that the best interests of the child would be served by an application for a permanence order or their placing the child for adoption an adoption agency which is a local authority must take into account any recommendation of the adoption panel under regulation 6(2) before making the decision.

(7) For the purpose of determining under section 106 of the Act (child subject to supervision requirement: duty to refer to Principal Reporter) whether the best interests of the child would be served by placing the child for adoption a registered adoption service must take into account any recommendation of the adoption panel under regulation 6(2) before making the decision.

### **Notification of adoption agency decisions**

**14.**—(1) Where an adoption agency makes a decision under regulation 13(1) as to whether adoption is in the best interests of the child it must within 7 days of making the decision notify—

- (a) the child where, taking account of the child’s age and maturity, the adoption agency considers that the child is capable of understanding the effect of the decision;
- (b) the parent or parents of the child;
- (c) where the adoption agency considers it to be in the child’s interests any parent or parents of the child who do not have parental rights or parental responsibilities, if their whereabouts are known to the adoption agency;
- (d) the guardian of the child if their whereabouts are known to the adoption agency; and
- (e) any other relative of the child who has expressed a view on the placement of the child for adoption to the adoption agency.

(2) Where the adoption agency makes a decision under regulation 13(1) as to whether an application for a permanence order granting authority for the child to be adopted under section 80 of the Act should be made the adoption agency must notify—

- (a) the child, taking account of their age and maturity;
- (b) the parent or parents of the child;
- (c) where the adoption agency considers it to be in the child’s interests any parent or parents of the child who do not have parental rights or parental responsibilities if their whereabouts are known to the adoption agency; and
- (d) the guardian of the child if their whereabouts are known to the adoption agency.

(3) In paragraphs (1)(b) and (2)(b) “parent” means—

- (a) a parent who has any parental responsibilities or parental rights in relation to the child; or
- (b) a parent who, by virtue of a permanence order granted under section 80 of the Act which does not include provision granting authority for the child to be adopted, has no such responsibilities or rights.

### **Decision that adoption should not proceed or to make an application under section 80 of the Act**

**15.**—(1) Where the adoption agency makes a decision under regulation 13(1) that adoption is not in the best interests of the child and there is a better and practicable alternative to adoption the adoption agency shall take such steps, if any, in relation to the case as it considers appropriate and in the best interests of the child.



(2) Where a registered adoption service makes a decision under regulation 13(1) that an application for a permanence order granting authority for the child to be adopted should be made under section 80 of the Act, the registered adoption service must refer the case to the local authority for the area in which the child resides.

**Provision of information to parents: decision by adoption agency to make arrangements for adoption**

16.—(1) This regulation applies where the adoption agency—

- (a) makes a decision under regulation 13(1) that adoption is in the best interests of the child; and
- (b) proposes to make arrangements for the adoption of the child.

(2) The adoption agency must, within 7 days of making the decision, provide each parent or guardian of the child with—

- (a) a memorandum in the form set out in Schedule 2;
- (b) a certificate in the form set out in Schedule 3; and
- (c) a certificate in the form set out in Schedule 4.

(3) The adoption agency must take such steps as are reasonably practicable to ensure that—

- (a) each parent or guardian signs and returns to the adoption agency a certificate in the form set out in Schedule 3 or a form to like effect which certifies that they have read and understood the memorandum; and
- (b) each parent or guardian completes and signs the certificate in the form set out in Schedule 4 and returns it to the adoption agency within 28 days.

(4) Paragraph (5) applies where the adoption agency is aware of the identity of a parent who does not have parental responsibilities or parental rights in respect of the child.

(5) The adoption agency must, so far as it considers reasonably practicable to do so, make enquiries and—

- (a) obtain in respect of the parent the information in Part III of Schedule 1; and
- (b) ascertain, where possible, whether the parent intends to make an application for any parental responsibilities or parental rights in relation to the child or enter into a parental responsibilities agreement under section 4 of the 1995 Act.

**Provision of information to parents: decision of adoption agency that an application under section 80 of the Act should be made**

17.—(1) This regulation applies where an adoption agency makes a decision under regulation 13(1) that—

- (a) adoption is in the best interests of the child; and
- (b) an application for a permanence order with authority for the child to be adopted should be made under section 80 of the Act.

(2) The adoption agency must, within 7 days of making the decision, provide each parent or guardian of the child with—

- (a) a memorandum in the form set out in Schedule 5;
- (b) a certificate in the form set out in Schedule 6; and
- (c) a certificate in the form set out in Schedule 7.

(3) The adoption agency must take such steps as are reasonably practicable to ensure that—

- (a) each parent or guardian signs and returns to the adoption agency a certificate in the form set out in Schedule 6 or a form to like effect which certifies that they have read and understood the memorandum; and
  - (b) each parent or guardian completes and signs the certificate in the form set out in Schedule 7 and returns it to the adoption agency within 28 days.
- (4) Paragraph (5) applies where the adoption agency is aware of the identity of a parent who does not have parental responsibilities or parental rights in respect of the child.
- (5) The adoption agency must, so far as it considers it reasonably practicable to do so make enquiries and—
- (a) obtain in respect of the parent the information in Part III of Schedule 1; and
  - (b) ascertain, where possible, whether the parent intends to make an application for any parental responsibilities or parental rights in relation to the child or enter into a parental responsibilities agreement under section 4 of the 1995 Act.

#### **Duties of adoption agencies: placing the child for adoption**

**18.—**(1) An adoption agency must not place or secure the placing of a child with any prospective adopter unless the adoption agency—

- (a) is satisfied that the placement is in the best interests of the child;
- (b) is satisfied that placement of the child with the prospective adopter is in the best interests of the child;
- (c) has, so far as is reasonably practicable, obtained the information in Schedule 1;
- (d) has, so far as is reasonably practicable, obtained a report prepared within the previous 12 months by a registered medical practitioner as to the health of the child;
- (e) has obtained a report prepared within the previous 12 months by a registered medical practitioner as to the health of each prospective adopter;
- (f) has (or has had) the prospective adopter interviewed;
- (g) is satisfied that the premises within which the prospective adopter intends that the child shall reside are suitable for the needs of the child;
- (h) has made inquiries and has in particular inquired of every relevant local authority to satisfy itself that it would not be detrimental to the welfare of the child—
  - (i) for the child to reside with the prospective adopter in the premises proposed for the child's home; and
  - (ii) for the proposed adoption to proceed;
- (i) has prepared a report with its observations on the matters referred to in sub paragraphs (a) to (h) and has passed that report and all information obtained by it by virtue of this regulation to the adoption panel or to another adoption agency;

(2) Subject to paragraph (3) in addition to securing the report referred to in paragraph (1)(d), that adoption agency must ensure that arrangements are made for such medical investigations and tests as are considered necessary to be carried out in respect of the child and obtain from a registered medical practitioner a report based on those investigations and tests.

(3) Paragraph (2) does not apply where such investigations and tests have already been carried out in respect of the child and a report on their findings has been made available to the agency.

(4) Wherever practicable any report prepared in accordance with paragraph (2) shall be included in the report obtained by the adoption agency under paragraph (1)(d).

(5) In order to satisfy itself as to the matter referred to in paragraph (1)(g) the adoption agency must arrange for the premises to be visited on its behalf.

(6) In paragraph (1)(h) a “relevant local authority” is the local authority for the area in which—

(i) the child is resident;

(ii) the prospective adopter is resident;

(iii) the premises referred to in that paragraph are situated.

## PART V

### CONSENT CERTIFICATES

#### **Consent to placement of the child for adoption for the purposes of section 20 of the Act**

**19.** For the purpose of section 20(1)(b) of the Act consent to the placement of a child for adoption by each parent or guardian must be—

(a) made in the certificate in the form set out in Schedule 4 or Schedule 7;

(b) signed by the parent or guardian of the child; and

(c) returned to the adoption agency within 28 days from the date the parent or guardian received the certificate.

#### **Consent certificate: no consent or failure to return consent certificate**

**20.—**(1) This regulation applies where—

(a) an adoption agency does not receive the signed certificate referred to in regulation 16(3)(b) or 17(3)(b) within 28 days from the date the certificate was received by the parent or guardian;

(b) the adoption agency has not been able to carry out the duties referred to in paragraphs (2), (3) and (5) of regulation 16 or 17 because the parent or guardian of the child cannot be contacted from reasonable efforts being made to make contact by or on behalf of the adoption agency; or

(c) a parent or guardian has signed and returned a certificate under regulation 16(3)(b) or 17(3)(b) and subsequently notifies in writing to the adoption agency that their agreement is being withdrawn.

(2) Where the adoption agency is a registered adoption service it must—

(a) take such steps, in relation to the case as it considers appropriate and in the best interests of the child; and

(b) refer the case to the local authority for the area in which the child resides.

(3) Where the adoption agency is a local authority it must make a determination to proceed as though parental agreement is not forthcoming.

(4) Where the case is referred to a local authority under paragraph (2) that local authority must make a determination to proceed as though parental agreement is not forthcoming.

## PART VI

### APPLICATION FOR PERMANENCE ORDER

#### **Application for a permanence order: child not subject to supervision requirement**

**21.**—(1) This regulation applies where an adoption agency which is a local authority is considering making arrangements for adoption in respect of a child who is not subject to a supervision requirement.

(2) The adoption agency must make an application for a permanence order in accordance with paragraph (3) by the end of the period of 28 days from—

- (a) the receipt of the certificate specified in regulation 16(3)(b) or 17(3)(b) certifying that the parent or guardian does not agree with the decision; or
- (b) the date the adoption agency makes a determination to proceed under regulation 20 as though the parental agreement is not forthcoming.

(3) In making the application for a permanence order the local authority must, in that application, request that the order include—

- (a) ancillary provisions vesting in the local authority the parental responsibilities and parental rights referred to in section 82(1)(a) of the Act; and
- (b) provision granting authority for the child to be adopted.

(4) Paragraph (2) does not apply where an application for an adoption order has been made in relation to the child.

#### **Child subject to supervision requirement: referral to the Principal Reporter**

**22.**—(1) This regulation applies where—

- (a) an adoption agency which is a local authority is under a duty to refer the case of the child to the Principal Reporter under section 73(4)(c)(i) or (v) of the 1995 Act; or
- (b) an adoption agency which is a registered adoption service is under a duty to refer the case of a child to the Principal Reporter under section 106 of the Act.

(2) The referral to the Principal Reporter shall not be made unless the adoption agency—

- (a) has received the certificate referred to in regulation 16(3)(b) or 17(3)(b) confirming the agreement of each parent or guardian of the child to the decision of the adoption agency; or
- (b) regulation 20 applies.

(3) The referral to the Principal Reporter must be made in the form set out in Schedule 8 or in a form to like effect.

#### **Application for a permanence order: child subject to supervision requirement**

**23.**—(1) This regulation applies where an adoption agency which is a local authority, following a decision under regulation 13(1), is considering making arrangements for adoption in respect of a child who is subject to a supervision requirement.

(2) Where the adoption agency has made a determination to proceed as though parental consent is not forthcoming in accordance with regulation 20 the adoption agency must notify the Principal Reporter of its determination within 7 days from the date it made that determination.

(3) Where—

- (a) paragraph (2) applies; and

- (b) the adoption agency receives a report from a children's hearing under section 73(13) of the 1995 Act which provides advice in support of the decision of the adoption agency made under regulation 13(1) in relation to the child,

the adoption agency must, within a period of 28 days from the date it receives the report from the children's hearing, make an application for a permanence order in accordance with paragraph (7).

(4) Where the adoption agency receives a report from a children's hearing under section 73(13)(4) of the 1995 Act which provides advice which does not support the decision of the adoption agency made under regulation 13(1) in relation to the child the adoption agency must, within 28 days from the date it receives the report from the children's hearing, review its decision.

(5) In reviewing its decision under paragraph (4) the adoption agency must—

- (a) take into account the report from the children's hearing;
- (b) take into account any further recommendations it may wish to seek; and
- (c) notify the Principal Reporter of its decision.

(6) Where the adoption agency makes a decision that adoption remains in the best interests of the child following a review under paragraphs (4) and (5) it must make an application for a permanence order in accordance with paragraph (7) within 28 days from the date of the children's hearing.

(7) In making an application for a permanence order the local authority must, in that application, request that the order include—

- (a) ancillary provisions vesting in the local authority the parental responsibilities and the parental rights referred to in section 82(1)(a) of the Act; and
- (b) provision granting authority for the child to be adopted.

(8) Paragraphs (3), (4), (5) and (6) do not apply where an application for an adoption order has been made in relation to the child.

## PART VII

### PLACEMENT FOR ADOPTION

#### **Placement for adoption: notification and provision of information**

**24.—**(1) This regulation applies where an adoption agency makes a decision under regulation 8(1) that—

- (a) a prospective adopter is suitable to be an adoptive parent; and
- (b) the prospective adopter would be a suitable adoptive parent for a particular child.

(2) The adoption agency must provide the prospective adopter with—

- (a) written information about the child's background, parentage, health and mental and emotional development;
- (b) written advice about—
  - (i) the need to inform the child of their adoption and origins;
  - (ii) the rights of adopted persons over 16 to obtain information from the Registrar General under section 55(4) of the Act;
  - (iii) the rights of adopted persons to whom information is disclosed under section 55(4) of the Act to request and receive counselling;

- (iv) the availability of adoption support services on any problems relating to the adoption; and
- (c) a copy of the report as to the health of the child obtained under regulation 18(1)(d) and any report obtained under regulation 18(2).
- (3) The adoption agency must provide notification of the placement to—
  - (a) the local authority for the area in which the prospective adopter resides if different from the agency making the placement; and
  - (b) the Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978<sup>(5)</sup> which provides services under that Act in the area in which the prospective adopter resides.
- (4) In paragraph (3)—
  - (a) “notification” means notification in writing and shall include particulars of the placement;
  - (b) where the adoption agency’s medical adviser considers the child to have a problem of medical significance or additional support needs within the meaning of the Education (Additional Support for Learning) (Scotland) Act 2004<sup>(6)</sup> notification as required in paragraph (3) must be made before the placement.
- (5) When the child has been placed for adoption the adoption agency must notify—
  - (a) the parent or parents of the child;
  - (b) where the agency considers this to be in the child’s best interests, any parent or parents of the child who do not have parental responsibilities or parental rights if their whereabouts are known to the adoption agency; and
  - (c) the guardian of the child if their whereabouts are known to the adoption agency.
- (6) The adoption agency must send a written report as to the health of the child and the history of the child’s health to the prospective adopter’s registered medical practitioner before the proposed placement together with particulars of the proposed placement.
- (7) In paragraph (5)(a) “parent” means—
  - (a) a parent who has any parental responsibilities or parental rights in relation to the child; or
  - (b) a parent who, by virtue of a permanence order granted under section 80 of the Act which does not include provision granting authority for the child to be adopted, has no such responsibilities or rights.

### **Duties of adoption agency following placement for adoption**

- 25.**—(1) Where a child has been placed for adoption by an adoption agency with a prospective adopter the adoption agency must—
- (a) ensure that the child is visited on its behalf within one week of the placement and thereafter on such other occasions as the adoption agency considers necessary in order to supervise the child’s well being; and
  - (b) ensure that written reports on such visits are produced and retained on the child’s case record kept in accordance with regulation 27.
- (2) The requirement at paragraph (1)(a) will cease to apply where an adoption order is made vesting parental responsibilities and parental rights in relation to the child in the prospective adopter.

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(5) 1978 c. 29. Section 2 was amended by the National Health Service and Community Care Act 1990 c. 19, sections 28 and 66(1) and Schedule 9, the National Health Service Reform (Scotland) Act 2004 asp 7, section 11, schedule 1 and the [Smoking, Health and Social Care \(Scotland\) Act 2005 asp 13](#), section 42(1), schedule 2.

(6) 2004 asp 4.

### **Review of child’s case where no placement made within 6 months of permanence order granting authority to adopt being made**

26.—(1) This regulation applies where a permanence order granting authority for a child to be adopted has been granted and the child has not been placed for adoption in accordance with the Act and these Regulations after 6 months from the date that permanence order was granted.

(2) The adoption agency on whose application the permanence order was made must carry out a review of the child’s case by complying with the requirements in paragraph (3) as soon as reasonably practicable and thereafter at intervals of not more than 6 months until the child has been placed for adoption.

(3) The requirements are—

- (a) to consult and take into account the views of—
  - (i) the child, taking account of their age and maturity; and
  - (ii) any person with parental responsibilities or parental rights in respect of the child;
- (b) to assess—
  - (i) the child’s immediate and long-term needs;
  - (ii) the reason why no placement has been made; and
  - (iii) what action, if any, should be taken to safeguard and promote the child’s welfare.

(4) Following a review under paragraph (2) the adoption agency must make a written report containing the findings made under paragraph (3) and ensure that the report is produced and retained on the child’s case record kept in accordance with regulation 27.

## **PART VIII**

### **CASE RECORDS**

#### **Information to be kept about adoptions**

27.—(1) An adoption agency must create a case record in respect of—

- (a) a child in relation to whom an adoption panel has made a recommendation under regulation 6(2)(a) that adoption is in the best interests of the child (“an adopted child”); and
- (b) a prospective adopter.

(2) The following must be placed on the case record relating to an adopted child or a prospective adopter—

- (a) any information obtained by that adoption agency; and
- (b) any report, recommendation or decision made by that adoption agency, or by an adoption panel appointed by that agency,

under these Regulations, in respect of that adopted child or, as the case may be, that prospective adopter.

(3) An adoption agency must continue to keep the case record set up in respect of an adopted child or prospective adopter under the Adoption Agencies (Scotland) Regulations 1996(7).

(4) However an adoption agency is not required to keep any information falling within paragraph (2)(a) if the agency considers—

- (a) that it would be prejudicial to the adopted person’s welfare to keep it; or

- (b) that it would not be reasonably practicable to keep it.

**Form and manner in which information is kept**

**28.**—(1) Subject to the Adoption (Disclosure of Information and Medical Information about Natural Parents) (Scotland) Regulations 2009<sup>(8)</sup> any information, reports, recommendations or decisions referred to in regulation 27(2) must be treated by the adoption agency as confidential.

(2) The adoption agency must ensure that all case records, together with the indexes to them, are at all times kept in an accessible form in secure conditions and in particular that all appropriate measures are taken to prevent theft, unauthorised disclosure, damage, loss or destruction.

(3) Subject to the Adoption (Disclosure of Information and Medical Information about Natural Parents) (Scotland) Regulations 2009, an adoption agency must—

- (a) preserve the indexes to all its case records and the case records in respect of those cases in which an adoption order is made in secure conditions for at least 100 years;
- (b) preserve the case records in respect of a prospective adopter, in relation to whom an adoption order is not made, for at least 10 years; and
- (c) preserve other case records in secure conditions for so long as it considers appropriate.

(4) Case records and indexes to them may be preserved on computer records or such other system as reproduces the total contents of the case record or index.

St Andrew's House,  
Edinburgh  
22nd April 2009

*ADAM INGRAM*  
Authorised to sign by the Scottish Ministers