



# Adoption (Scotland) Act 1978

## 1978 CHAPTER 28

### PART II

#### ADOPTION ORDERS

##### *Freeing for adoption*

#### **18 Freeing child for adoption**

- (1) Where, on an application by an adoption agency, an authorised court is satisfied in the case of each parent or guardian of the child that—
  - (a) he freely, and with full understanding of what is involved, agrees generally and unconditionally to the making of an adoption order, or
  - (b) his agreement to the making of an adoption order should be dispensed with on a ground specified in section 16(2),the court shall, subject to subsection (8), make an order declaring the child free for adoption.
- (2) No application shall be made under subsection (1) unless—
  - (a) it is made with the consent of a parent or guardian of a child, or
  - (b) the adoption agency is applying for dispensation under subsection (1)(b) of the agreement of each parent or guardian of the child, and the child is in the care of the adoption agency.
- (3) No agreement required under subsection (1)(a) shall be dispensed with under subsection (1)(b) unless the child is already placed for adoption or the court is satisfied that it is likely that the child will be placed for adoption.
- (4) An agreement by the mother of the child is ineffective for the purposes of this section if given less than 6 weeks after the child's birth.
- (5) On the making of an order under this section, the parental rights and duties relating to the child vest in the adoption agency, and subsections (2) and (3) of section 12 apply as if the order were an adoption order and the agency were the adopters.

- (6) Before making an order under this section, the court shall satisfy itself, in relation to each parent or guardian who agrees to the adoption of the child, that he has been given an opportunity of making, if he so wishes, a declaration that he prefers not to be involved in future questions concerning the adoption of the child; and any such declaration shall be recorded by the court.
- (7) Before making an order under this section in the case of an illegitimate child whose father is not its guardian, the court shall satisfy itself in relation to any person claiming to be the father that either—
  - (a) he has no intention of applying for custody of the child under section 2 of the Illegitimate Children (Scotland) Act 1930, or
  - (b) if he did apply for custody under that section the application would be likely to be refused.
- (8) An order under this section shall not be made in relation to a child who is a minor unless with the consent of the child; except that where the court is satisfied that the minor is incapable of giving his consent to the making of the order, it may dispense with that consent.

## **19 Progress reports to former parent**

- (1) This section and section 20 apply to any person (" the former parent") who was required to be given an opportunity of making a declaration under section 18(6) but did not do so.
- (2) Within the 14 days following the date 12 months after the making of the order under section 18, the adoption agency in which the parental rights and duties were vested on the making of the order, unless it has previously by notice to the former parent informed him that an adoption order has been made in respect of the child, shall by notice to the former parent inform him—
  - (a) whether an adoption order has been made in respect of the child, and (if not)
  - (b) whether the child has his home with a person with whom he has been placed for adoption.
- (3) If at the time when the former parent is given notice under subsection (2) an adoption order has not been made in respect of the child, it is thereafter the duty of the adoption agency to give notice to the former parent of the making of an adoption order (if and when made), and meanwhile to give the former parent notice whenever the child is placed for adoption or ceases to have his home with a person with whom he has been placed for adoption.
- (4) If at any time the former parent by notice makes a declaration to the adoption agency that he prefers not to be involved in future questions concerning the adoption of the child—
  - (a) the agency shall secure that the declaration is recorded by the court which made the order under section 18, and
  - (b) the agency is released from the duty of complying further with subsection (3) as respects that former parent.

## **20 Revocation of s. 18 order**

- (1) The former parent, at any time more than 12 months after the making of the order under section 18 when—
  - (a) no adoption order has been made in respect of the child, and
  - (b) the child does not have his home with a person with whom he has been placed for adoption,may apply to the court which made the order for a further order revoking it on the ground that he wishes to resume the parental rights and duties.
- (2) While the application is pending the adoption agency having the parental rights and duties shall not place the child for adoption without the leave of the court.
- (3) Where an order freeing a child for adoption is revoked under this section—
  - (a) the parental rights and duties relating to the child are vested in the individual or, as the case may be, the individuals in whom they vested immediately before that order was made ;
  - (b) if the parental rights and duties, or any of them, vested in a local authority or voluntary organisation immediately before the order freeing the child for adoption was made, those rights and duties are vested in the individual or, as the case may be, the individuals in whom they vested immediately before they were vested in the authority or organisation; and
  - (c) any duty extinguished by virtue of section 12(3)(b) of the Adoption Act 1976 or of section 12(3)(b) is forthwith revived,but the revocation does not affect any right or duty so far as it relates to any period before the date of the revocation.
- (4) Subject to subsection (5), if the application is dismissed on the ground that to allow it would contravene the principle embodied in section 6—
  - (a) the former parent who made the application shall not be entitled to make any further application under subsection (1) in respect of the child, and
  - (b) the adoption agency is released from the duty of complying further with section 19(3) as respects that parent.
- (5) Subsection (4)(a) shall not apply where the court which dismissed the application gives leave to the former parent to make a further application under subsection (1), but such leave shall not be given unless it appears to the court that because of a change in circumstances or for any other reason it is proper to allow the application to be made.

## **21 Transfer of parental rights and duties between adoption agencies**

On the joint application of an adoption agency in which the parental rights and duties relating to a child who is in Scotland are vested under section 18(5) or this section or under section 18(5) or 21 of the Adoption Act 1976, and any other adoption agency, an authorised court may if it thinks fit by order transfer the parental rights and duties to the latter agency.