



Adoption and Children (Scotland) Act 2007

2007 asp 4

PART 1

ADOPTION

CHAPTER 1

THE ADOPTION SERVICE

The adoption service

1 Duty of local authority to provide adoption service

- (1) Each local authority must—
- (a) to the extent that it already provides an adoption service in its area, continue to do so, and
 - (b) to the extent that it does not provide such a service in its area, provide such a service there.
- (2) In this Act, “adoption service” means services designed to meet the needs, in relation to adoption, of persons mentioned in subsection (3).
- (3) Those persons are—
- (a) children who may be adopted
 - (b) persons who have been adopted,
 - (c) parents and guardians of children mentioned in paragraph (a),
 - (d) natural parents of persons who have been adopted,
 - (e) persons who, before the placing of a child for adoption or the adoption of a child, treated the child as their child,
 - (f) siblings (whether of the whole-blood or half-blood), natural grandparents and former guardians of—
 - (i) children mentioned in paragraph (a), or

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- (ii) persons mentioned in paragraph (b),
 - (g) persons who may adopt a child,
 - (h) persons who have adopted a child,
 - (i) in relation to persons mentioned in paragraph (g) or (h), children of, or children treated as children of, such persons, and
 - (j) any other persons who are—
 - (i) affected by the placing, or proposed placing, of a child for adoption, or
 - (ii) affected by an adoption.
- (4) An adoption service includes, in particular, services consisting of or including—
- (a) arrangements for assessing children who may be adopted,
 - (b) arrangements for assessing prospective adopters,
 - (c) arrangements for placing children for adoption,
 - (d) the provision of information about adoption to any of the persons mentioned in subsection (3), and
 - (e) adoption support services.
- (5) In this Act, “adoption support services” means services consisting of or including the provision of—
- (a) counselling to any of the persons mentioned in subsection (3),
 - (b) guidance about adoption to such persons,
 - (c) any other assistance in relation to the adoption process that the local authority providing an adoption service in a particular case considers appropriate in the circumstances of that case.

2 Carrying out of duties imposed by section 1

- (1) For the purpose of carrying out the duties imposed by section 1(1) efficiently and effectively, a local authority must have regard to—
- (a) the other services that it provides in its area in carrying out the functions of a local authority under any of the enactments mentioned in section 5(1B) of the Social Work (Scotland) Act 1968 (c. 49) (power of the Scottish Ministers to issue certain directions) including, in particular, those functions in so far as they relate to children, and
 - (b) any registered adoption service provided there.
- (2) A local authority may carry out the duties imposed by section 1(1) by securing the provision of its adoption service by a registered adoption service.
- (3) In this section, “registered adoption service” means an adoption service provided as mentioned in section 2(11)(b) of the Regulation of Care (Scotland) Act 2001 (asp 8) and registered under Part 1 of that Act.

3 Adoption service: regulations

The Scottish Ministers may by regulations—

- (a) amend subsection (4) or (5) of section 1 by—
 - (i) adding further services,
 - (ii) modifying the services mentioned in those subsections,
- (b) make further provision about adoption services.

4 Local authority plans

- (1) Before the expiry of such period as the Scottish Ministers may direct, each local authority must prepare and publish a plan for the provision of the adoption service which it is required by section 1(1) to continue to provide, or to provide, in its area.
- (2) Each local authority—
 - (a) must from time to time review the plan published by it under subsection (1), and
 - (b) may, having regard to any such review, prepare and publish—
 - (i) modifications of the plan, or
 - (ii) a plan in substitution for the plan.
- (3) In preparing a plan, or carrying out a review, under this section a local authority must consult—
 - (a) each Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978 (c. 29) which provides services under that Act in the area of the local authority,
 - (b) such voluntary organisations as appear to the authority to represent the interests of persons who use, or are likely to use, the adoption service in that area,
 - (c) such voluntary organisations as appear to the authority to provide services in that area which, were they to be provided by the authority, might be an adoption service, and
 - (d) such other persons as may be prescribed by regulations made by the Scottish Ministers.
- (4) A local authority may incorporate a plan published under subsection (1) in any plan published by the authority under section 19(1) of the 1995 Act (local authority plans for services for children).
- (5) Where a local authority incorporates a plan as mentioned in subsection (4), it need not separately publish a plan under subsection (1).
- (6) Subsections (2) and (5) apply to a plan modified or substituted under subsection (2) as they apply to a plan published under subsection (1).
- (7) The Scottish Ministers may give a local authority directions as to the carrying out of its functions under subsection (2).
- (8) The Scottish Ministers may vary or revoke any direction given under subsection (7).

5 Guidance

- (1) Subsection (2) applies where a local authority is carrying out its function under section 1 to continue to provide, or to provide, an adoption service or to secure the provision of such a service.
- (2) The local authority must have regard to any guidance given by the Scottish Ministers.
- (3) Guidance such as is mentioned in subsection (2) may, in particular, contain provision in relation to—
 - (a) how a local authority should assess (or reassess) the needs of a person for adoption support services,

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- (b) how the power conferred by section 9(1)(b) should be exercised,
 - (c) the classes of person in relation to whom that power should be exercised,
 - (d) how responsibility for the provision of an adoption service should be transferred from one local authority to another.
- (4) The Scottish Ministers may vary or revoke any guidance such as is mentioned in subsection (2).

6 Assistance in carrying out functions under sections 1 and 4

- (1) Where it appears to a local authority that an appropriate person could assist the authority in carrying out any of its functions under section 1 or 4, it may require the person to assist the authority in the way specified in the requirement.
- (2) An appropriate person need not comply with a requirement made by virtue of subsection (1) if—
- (a) it would not be reasonably practicable to do so,
 - (b) doing so would be incompatible with the person’s functions (whether statutory or otherwise), or
 - (c) where the person is not a natural person, doing so would unduly prejudice the carrying out of such functions.
- (3) For the purposes of this section, a person is “appropriate” if the person is—
- (a) another local authority,
 - (b) a Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978 (c. 29),
 - (c) such other person as may be prescribed by regulations made by the Scottish Ministers.

7 Meaning of “adoption service” in Regulation of Care (Scotland) Act 2001

In section 2 of the Regulation of Care (Scotland) Act 2001 (asp 8) (meaning of “care services”), for subsections (11) and (12) substitute—

- “(11) An adoption service is any service which is—
- (a) provided by a local authority under subsection (1) of section 1 of the Adoption and Children (Scotland) Act 2007 (asp 4); or
 - (b) provided by a person other than a local authority and which consists of, or includes, services mentioned in subsection (4) of that section (the reference in subsection (5) of that section to a local authority being taken, for the purposes of this paragraph, to be a reference to a person other than a local authority), (whether the person functions generally or in relation to a service provided, or to be provided, under that section).
- (12) For the purposes of subsection (11)(b) above—
- (a) the making by a person of arrangements for the adoption of a child by a relevant person, or
 - (b) the placing by a person of a child for adoption with a relevant person, is not an adoption service.
- (12A) In subsection (12) above, “relevant person” means—
- (a) a parent of the child,

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- (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.

(12B) In subsection (12A) above—

“relative” has the meaning given by section 119(1) of the Adoption and Children (Scotland) Act 2007 (asp 4),
“relevant couple” is to be construed in accordance with section 29(3) of that Act.”.

8 Adoption agencies: regulations about carrying out of functions

- (1) The Scottish Ministers may make regulations for any purpose relating to the carrying out of its functions by a registered adoption service.
- (2) The Scottish Ministers may make regulations with respect to the carrying out by local authorities of their functions in relation to adoption.
- (3) Regulations under this section may in particular make provision for or in connection with—
 - (a) specifying circumstances in which a local authority proposing to make arrangements for the adoption of a child must apply for a permanence order which includes provision granting authority for the child to be adopted,
 - (b) requiring such an application to be made within a period specified in the regulations.