

ADOPTION AND CHILDREN (SCOTLAND) ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Chapter 1

The Adoption Service

Section 1 - Duty of local authority to provide adoption service

21. Subsection (1) places a duty on local authorities to provide an adoption service or, to the extent that they already do so, continue to do so. In practice it is likely that all local authorities will provide their own adoption services, but they may contract with another provider which is a registered adoption service to provide these services, as set out at section 2(2).
22. For the purposes of this Act, ‘adoption service’ is defined as services designed to meet the needs in relation to adoption of the persons mentioned in section 1(3).
23. These persons, listed in subsection (3), are: (a) children who may be adopted (for the purposes of providing adoption support, this includes children who have been placed for adoption); (b) persons who have been adopted (this category includes adults who were adopted as children, as well as children who have been adopted); (c) parents and guardians of children who may be adopted (for the purposes of providing adoption support, this includes children who have been placed for adoption); (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 children who may be adopted and persons who have been adopted; (g) persons who may adopt a child; (h) persons who have adopted a child; (i) in relation to persons mentioned in (g) or (h), children of, or children treated as children of, such persons (this includes children of the family of adoptive parents); and (j) any other persons who are affected by the placing, proposed placing or adoption of a child.
24. By virtue of subsection (4), an adoption service includes or consists of arrangements for assessing children who may be adopted; arrangements for assessing prospective adopters; arrangements for placing children for adoption; the provision of information about adoption to any of the persons mentioned in section 1(3); and adoption support services.
25. Subsection (5) defines adoption support services as consisting of or including counselling to any of the persons mentioned in section 1(3); guidance about adoption to such persons; and any other assistance in relation to the adoption process that the local authority providing an adoption service in a particular case considers relevant to that case.

Section 2 - Carrying out of duties imposed by section 1

26. Subsection (1) places a duty on local authorities to provide adoption support services in a way that takes account of other services that they provide in carrying out functions which they have under any of the enactments mentioned in section 5(1B) of the Social Work (Scotland) Act 1968, in particular those relating to children. All local authority functions that relate to children should be coordinated in order to provide a cohesive service in the context of adoption support services.
27. Under subsection (2) a local authority may carry out its obligation to provide or continue to provide an adoption service by entering into arrangements with a “registered adoption service” for the provision of the service on its behalf. By subsection (3), a “registered adoption service” means an adoption service within the meaning given by section 2(11) (b) of the Regulation of Care (Scotland) Act 2001, which is registered under that Act.

Section 4 - Local authority plans

28. Section 4 sets out local authorities’ duties in relation to plans for provision of their adoption service. The wording parallels that in section 19 of the 1995 Act (*local authority plans for services for children*). Subsection (1) places a duty on local authorities to prepare and publish plans for the provision of the adoption service which they are required to provide under section 1(1).
29. Subsection (2) places a duty on local authorities to review the plans created under subsection (1) “from time to time” and to modify or replace completely the plans and publish them as necessary.
30. Subsection (3) places a duty on local authorities to consult a range of bodies and organisations in making or reviewing plans under subsection (1) or subsection (2). The bodies and organisations that should be consulted are the Health Board in the relevant local authority area, any voluntary organisations which may represent the interests of a person who is likely to use the adoption service, any voluntary organisations which may provide an adoption service and any other persons that may be prescribed by regulations made by Scottish Ministers.+
31. Subsection (4) allows a local authority to incorporate a plan that is to be published under subsection (1) into any plan published by the local authority in connection with services for children. Under subsection (5) it is not necessary to publish an adoption services plan separately where it is incorporated in this way.
32. By virtue of subsection (6) the duty to review and modify or replace plans and the right not to publish a separate plan under subsection (5) will apply to any modified or replacement plan as well as plans originally created under subsection (1).

Section 5 - Guidance

33. This section relates to any guidance issued by the Scottish Ministers concerning the provision of an adoption service. Subsection (2) places a duty on local authorities providing an adoption service to have regard to any such guidance. Subsection (3) specifies what may be included in such guidance. It may include information on how a local authority should assess or re-assess a person’s need for adoption support services; how a local authority’s power to assess a person’s needs under section 9(1) should be exercised; how a local authority should decide the classes of person who may be eligible for an assessment of needs under section 9(1); and how responsibility for providing an adoption service should be transferred between local authorities.
34. By virtue of subsection (4) the Scottish Ministers may vary or revoke any such guidance.

Section 6 - Assistance in carrying out functions under sections 1 and 4

35. Subsection (1) allows a local authority to require assistance from an “appropriate person” in carrying out any function set out at section 1 or 4.
36. Subsection (2) sets out the circumstances in which an appropriate person may refuse to comply with a request made by a local authority under subsection (1). These include where it would not be reasonably practical to do so, where it would be incompatible with the person’s functions, statutory or not, and where the person’s functions (when the person is not a natural person) would be unduly prejudiced.
37. Subsection (3) defines an “appropriate person” as including another local authority, a Health Board and such other person as may be prescribed, by regulations made by Scottish Ministers, as an “appropriate person”.

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

38. This section provides a new definition of “adoption service” in sections 2(11) and 2(12) of the Regulation of Care (Scotland) Act 2001 as a consequence of the provisions of the Act.

Section 8 - Adoption agencies: regulations about carrying out of functions

39. Subsection (1) gives the Scottish Ministers the power to make regulations relating to a registered adoption service carrying out its functions.
40. Subsection (2) gives the Scottish Ministers the power to make regulations relating to a local authority carrying out its functions of making or participating in arrangements for the adoption of children.
41. Subsection (3) sets out matters which regulations made under this section may, in particular, include being the 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 and the period within which such an application must be made.

Section 9 - Assessment of needs for adoption support services

42. This section relates to the assessment of needs for adoption support services. By virtue of subsection (1), a local authority must provide an assessment of needs for adoption support services when requested to do so by people listed in any of paragraphs (a) to (i) of section 1(3). These include the child, the child’s family and the child’s adoptive family. The local authority may provide such an assessment for a person listed at paragraph (j) of section 1(3), namely any other person affected by placing of a child for adoption, proposed placing or adoption itself.
43. Subsection (2) provides that where a local authority carries out an assessment under subsection (1), it must decide whether the provision of adoption support services is required.
44. Subsection (3) provides that an assessment carried out under this section must be done in such a manner as may be prescribed in regulations made by the Scottish Ministers.

Section 10 - Provision of services

45. Subsection (1) provides that on the request of a person mentioned in section 1(3) a local authority must provide adoption services of a type listed in section 1(4)(d) to that person, namely information about adoption. Subsection (2)(a) provides that on the request of a person mentioned in section 1(3)(a), (c) or (g) (children who may be adopted, parents and guardians of such children and persons who may adopt a child) a local authority

must provide adoption services of a type mentioned in section 1(4)(a), (b) or (c) to that person, namely arrangements for assessing children who may be adopted, arrangements for assessing prospective adopters and arrangements for placing children for adoption. Subsection (2)(b) allows a local authority also to provide adoption support services to such a person.

46. By virtue of subsection (3), services can be provided under subsection (2) whether or not an assessment of needs has been carried out. This will allow an authority to provide counselling at the same time as making the assessments or arrangements mentioned above without first undertaking an assessment of needs.
47. By virtue of subsection (4)(a), where a local authority has decided under section 9(2) that the provision of adoption support services is required following an assessment of needs carried out for a person listed in section 1(3)(a) to (i), the authority must provide the service to that person; subsection (4)(b) provides that where an assessment of needs reveals that a service is called for in respect of a person mentioned in section 1(3)(j) (any other person affected), the authority has discretion whether to provide the service to that person.

Section 11 - Urgent provision

48. While section 9 makes provision for assessment of needs for adoption support services of persons mentioned in section 1(3), section 11(1) allows a local authority that considers that such a person requires adoption support services as a matter of urgency to provide these services without first carrying out an assessment of the person's need for support.
49. Where support has been provided under this section without an assessment of needs, subsection (2) places a duty on a local authority to carry out such an assessment as soon as is practicable after the support has been provided. This does not apply where a service is provided without an assessment of needs under section 10(2)(b).

Section 12 - Power to provide payment to person entitled to adoption support service

50. This section relates to the payment of money in lieu of the provision of an adoption support service by a local authority. It applies where a local authority has an obligation to provide, or secure the provision of, an adoption support service, or has a power to do so and decides that it should provide such services.
51. Subsection (2) gives local authorities power to provide a payment to the person instead of providing specific services having had regard to certain matters set out in subsection (3).
52. The matters to which a local authority must have regard include the person's eligibility for assistance from another source and the availability of such assistance at the time when the service would have been provided by the local authority.
53. Under subsections (4) and (5), a local authority may make payment subject to such conditions (including conditions concerning repayment) as the authority considers reasonable, taking account of the person's eligibility for assistance from any other body.

Section 13 -- Regulations

54. This section gives the Scottish Ministers the power to make regulations relating to various aspects of the provision of an adoption service.
55. In subsection (1), paragraph (a) enables regulations to determine which local authority is responsible for the provision of an adoption service and the making of an assessment of needs.

*These notes relate to the Adoption and Children (Scotland) Act
2007 (asp 4) which received Royal Assent on 15 January 2007*

56. Paragraph (b) enables regulations to determine when and under what circumstances a local authority's duty to provide an adoption service ends.
57. Paragraph (c) enables provision to be made about the circumstances in which a local authority can continue to provide an adoption service after the duty to provide such a service has ended.
58. Paragraph (d) enables regulations to specify the arrangements that may be made by a local authority when a person to whom it is supplying an adoption service moves outwith the authority's area.
59. Paragraph (e) enables regulations to specify with whom arrangements under paragraph (d) can be made.
60. Paragraph (f) enables regulations to be made concerning the assessment of needs for adoption support services of someone who has moved or intends to move from one local authority area to another or from outwith Scotland to Scotland.
61. Regulations made under this section can be exercised to make different provision for different adoption services.