

ADOPTION AND CHILDREN (SCOTLAND) ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 3

Miscellaneous

Section 105 - Notification of proposed application for order

349. This section applies where a local authority proposes to apply for a permanence order or becomes aware that an application for an adoption order for a child in its area is planned and the following three conditions are all met. The first of these conditions is that the father of the child is not married to the mother of the child on the “relevant date” (i.e. when the local authority decides to apply for the permanence order or becomes aware of the planned application for an adoption order. The second condition is that on the relevant date the father of the child does not have, and has never had, parental responsibilities and parental rights in regard to the child. The third condition is that the local authority knows the identity and whereabouts of the father or is able to find out this information using reasonable and practicable steps.
350. Under subsection (2), where this section applies, a local authority must notify the father either that it proposes to apply for a permanence order or that an adoption order application has been, or is to be, made. The local authority must also provide the father with specific information, as prescribed in regulations about the processes of applying for the order in question. The local authority must provide notice at least 4 weeks before the relevant date on which it intends to apply for the permanence order or as soon as is reasonably practicable when it becomes aware of the application, or intended application, for the adoption order.

Section 106 - Child subject to supervision requirement: duty to refer to Principal Reporter

351. This section provides that, where a registered adoption service intends to place for adoption a child who is subject to a supervision requirement under the 1995 Act, the registered adoption service must refer the case to the Principal Reporter. Subsection (3) gives the Scottish Ministers the power to make regulations specifying a time period in which such a referral should be made.

Section 107 - Making of adoption order no longer to be bar to making of contact order

352. Section 11 of the Children (Scotland) Act 1995 (court orders relating to parental responsibilities etc) is amended by this section. That section prevented persons who have lost parental responsibilities and parental rights through the making of an adoption order, a freeing order, a parental responsibilities order or a parental order by virtue of

the Human Fertilisation and Embryology Act 1990 from applying for a contact order in respect of the child under section 11(2)(d) of the 1995 Act. The amendment allows persons who have lost their parental responsibilities and parental rights by virtue of the making of an adoption order to apply for a contact order with the leave of the court.

Section 108 - Rules: appointment of curators ad litem and reporting officers

353. By virtue of this section, a court can appoint a curator *ad litem* or a reporting officer to act in an application for a relevant order (defined by subsection (4) as an adoption order, a permanence order or an order under section 65 of the Act) in such cases as are prescribed by rules. Paragraphs (a) and (b) of subsection (1) outline the roles of these officers: a curator *ad litem* will act to safeguard the interests of the child during proceedings; a reporting officer will witness agreements to adoption and perform other duties that may be prescribed.
354. Subsection (2) provides that the rules made under subsection (1), may, in particular, make provision enabling the reporting officer to be appointed before the application is made and enabling the court to appoint the same person as curator *ad litem* and reporting officer.
355. Under subsection (3), any rules made under subsection (1) may not allow any person who is employed by the adoption agency which has applied for an adoption order in respect of the child to be appointed as a curator *ad litem* or reporting officer. Similarly, rules may not allow any person who is employed by the local authority who has applied for a permanence order in respect of the child to be appointed as a curator *ad litem* or reporting officer.

Section 109 - Proceedings to be in private

356. By virtue of this section, any proceedings before the court in relation to any of sections 24, 29, 30, 59, 80, 92, 93 and 99 of this Act must be heard and determined in private, unless the court specifies otherwise.

Section 110 - Allowances for care of certain children: regulations

357. Subsections (1) and (2) give the Scottish Ministers power to make regulations making provision about payments by a local authority in respect of a child if (a) he or she is placed by the local authority under section 26(1)(a) of the Children (Scotland) Act 1995 or (b) the child is required by virtue of section 70(3)(a) of that Act to reside with a person other than a parent of the child or, (c) were the child not residing with a relative, the child would be a 'looked after' child under section 25(1) of the 1995 Act.
358. By virtue of subsection (3) these regulations may, in particular, specify descriptions of persons to whom payments may be made; specify circumstances in which payments may be made; and specify rates of payments, including minimum required or recommended rates in specified circumstances and a requirement for local authorities who do not comply with the recommended rates to publish their reasons for not doing so.
359. By virtue of subsection (4) the child does not cease to be a child placed under section 26(1)(a) of the 1995 Act simply because a permanence order gives parental responsibilities or parental rights to a member of the family with whom the child is placed. Under subsection (5) a child does not fall within subsection (2)(c) if the relative is a guardian of the child (parents are already excluded by not being covered by the definition of 'relative' in section 119(1)). Subsection (6) provides that it is immaterial for the purposes of paragraph (c) of subsection (2) if the relative has any parental responsibilities or rights in relation to the child.

Section 111 - Evidence of consent

360. By virtue of subsection (1), any document signifying consent required by this Act, if witnessed in accordance with rules of the court, is sufficient evidence of the signature of the person by whom it was executed. Any such document which purports to be witnessed in accordance with rules is presumed to have been executed and witnessed on the date and place specified in the document, unless otherwise shown.

Section 112 - Service of notices etc.

361. This section provides that any notice or information required to be given under the Act may be sent by post.

Section 113 - Admissibility of certain documents as evidence

362. By virtue of this section any document which is receivable as evidence of any matter in England and Wales under section 77(4) and (5) of the Adoption and Children Act 2002 (adopted children register), or in Northern Ireland under Article 63(1) of the Adoption (Northern Ireland) Order 1987 (evidence of adoptions, etc.) is considered sufficient evidence in Scotland of the matter to which it relates.