

CHILDREN AND YOUNG PEOPLE (SCOTLAND) ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 14 – Adoption Register

Section 75 – Scotland’s Adoption Register

190. This section amends the Adoption and Children (Scotland) Act 2007 by inserting a new Chapter 1A into Part 1.

Section 13A – Scotland’s Adoption Register

191. Subsection (1) provides that the Scottish Ministers must make arrangements for the establishment and maintenance of a register to be known as Scotland’s Adoption Register (“the Register”) for the purposes of facilitating adoption.
192. Subsection (2) provides that the Scottish Ministers may, by regulations, prescribe information relating to adoption which is, or types of information relating to adoption which are, to be included in the Register. This may include information relating to: children who adoption agencies consider should be placed for adoption; persons considered by adoption agencies as suitable to have a child placed with them for adoption; matters relating to such children or persons which arise after information about them is included in the Register; children outwith Scotland who may be suitable for adoption; or prospective adopters outwith Scotland. It provides that the Scottish Ministers may, by regulations, provide for how information is to be retained in the Register and make such further provision in relation to the Register as they consider appropriate.
193. Subsection (3) provides that the Register is not to be open to public inspection or search. The information on the Register cannot be accessed or searched by anyone other than the Scottish Ministers, or the Registration organisation on behalf of the Scottish Ministers.
194. Subsection (4) provides that information is to be kept in the Register in any form the Scottish Ministers consider appropriate.

Section 13B – Registration organisation

195. Subsection (1) provides that arrangements made by the Scottish Ministers under the previous section may, in particular: authorise an organisation to perform the Scottish Ministers’ functions in respect of the Register (other than functions of making subordinate legislation) and provide for payments to be made by the Scottish Ministers to an organisation so authorised. Section 13B(2) requires Scottish Ministers to publish arrangements under section 13A(1) so far as they authorise an organisation to perform the functions of Scottish Ministers in respect of the Register.

196. Subsection (3) provides that an organisation authorised in pursuance of subsection (1) must perform functions delegated to it in accordance with any directions (general or specific) given by the Scottish Ministers.

Section 13C – Supply of information for the Register

197. Subsection (1) provides that an adoption agency must provide the Scottish Ministers with such information as may be prescribed in regulations made under section 13A(2) about children who it considers ought to be placed for adoption or persons who were included in the Register as such children; and persons who it considers as suitable to have a child placed with them for adoption or persons who were included in the Register as such persons. Subsection (2) provides that regulations made under section 13A(2) may: provide that information is to be provided to a registration organisation in pursuance of subsection (1) instead of to the Scottish Ministers; provide for how and by when that information is to be provided; prescribe circumstances in which an adoption agency, despite the requirement to provide information in subsection (1) is not to disclose information of the type prescribed for the purposes of that subsection.

Section 13D – Disclosure of information

198. Subsection (1) provides that it is an offence to disclose any information derived from the Register other than in accordance with the regulations under section 13A(2). Subsection (2)(a) provides that the regulations under section 13A(2) may authorise the Scottish Ministers or a registration organisation to disclose information derived from the Register to an adoption agency for the purposes of helping it to find someone with whom it would be appropriate to place a child for whom the agency is acting, or to find a child who is appropriate for adoption by someone for whom the agency is acting. Subsection (2)(b) provides that regulations may authorise the Scottish Ministers or registration organisation to disclose this information: to any person (whether or not established or operating in Scotland) specified in the regulations, for any purpose connected with the performance of functions by the Scottish Ministers or a registration organisation in pursuance of this Chapter; for the purpose of enabling the information to be entered in a register which is maintained in respect of England, Wales or Northern Ireland and which contains information about children who are suitable for adoption or prospective adopters; for the purpose of enabling or assisting that person to perform any functions which relate to adoption; for use for statistical or research purposes; or for any other purpose relating to adoption.
199. Subsection (3) provides that regulations made under section 13A(2) may set out terms and conditions on which information may be disclosed in pursuance of this section; specify steps to be taken by an adoption agency in respect of information received in pursuance of subsection (2); and authorise an adoption agency to disclose information derived from the Register for purposes relating to adoption.
200. Subsection (4) provides that subsection (1) (the offence provision) does not apply to a disclosure of information by or with the authority of the Scottish Ministers.
201. Subsection (5) provides that a person who is guilty of an offence under subsection (1) is liable on summary conviction to imprisonment for a term not exceeding 3 months, or a fine not exceeding level 5 on the standard scale, or both.

Section 13E – Fees and other payments

202. This section provides that regulations made under section 13A(2) may prescribe: a fee which is to be paid by an adoption agency when providing information in pursuance of section 13C(1); a fee which is to be paid to the Scottish Ministers or a registration organisation in respect of a disclosure of information made in pursuance of section 13D(2), (3)(c) or (4); and such other fees to be paid by adoption agencies, or payments to be made by them, in relation to the Register as the Scottish Ministers consider appropriate.

Section 13F – Use of an organisation as agency for payments

203. Subsection (1) provides that the Scottish Ministers may by regulations authorise a registration organisation or any other person to act as agent for the payment or receipt of sums payable by adoption agencies to other adoption agencies and may require adoption agencies to pay or receive such sums through the organisation.
204. Subsection (2) provides that a registration organisation or other person authorised under subsection (1) is to perform the functions exercisable under subsection (1) in accordance with any directions given by the Scottish Ministers.

Section 13G - Supplementary

205. Section 13G provides that nothing authorised or required to be done by virtue of this new Chapter of the 2007 Act constitutes an offence under section 72(2) or 75(1) of that Act. Section 72(2) of the 2007 Act provides it is an offence to make, agree or offer to make, receive or agree to receive, or attempt to obtain certain payments in relation to the adoption of a child. Section 75(1) of the 2007 Act provides that it is an offence to make arrangements for the adoption of a child or to place a child for adoption (this does not apply to adoption agencies).