

# **ADOPTION AND CHILDREN (SCOTLAND) ACT 2007**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Chapter 4**

#### ***Adoption Support Plans***

#### ***Section 45 - Adoption support plans***

167. This section applies when a local authority has carried out an assessment of needs for a person who is a member of a “relevant family” under section 9, and has decided that the provision of adoption support services is called for.
168. Subsection (2) places a duty on a local authority to prepare an adoption support plan for each member of the relevant family.
169. Subsection (3) outlines the information that must be included in an adoption support plan. Each plan must specify the needs of the individual to whom it relates; set out how those needs may be met by the provision of adoption support services; record details of any previous assessment of needs for that person made under section 9(1)(a); record the details of any assessment of needs made under section 12A(1) of the Social Work (Scotland) Act 1968 (duty of local authority to assess needs); record details of any care plan prepared under regulations made under section 17 of the 1995 Act (duty of local authority to children looked after by them); record the details of any adoption support services which were being provided before the adoption support plan was made or are to be provided when the adoption support plan is made; and it must specify any other matter which the local authority considers to be relevant to the provision of adoption support services. Where there is no information of the type required in paragraphs (a) to (i) of subsection (3) relating to a person, an adoption support plan must, under paragraph (j), record that fact.
170. Subsection (4) allows the local authority, subject to relevant consent from the relevant family, to prepare a single adoption support plan in respect of all members of the relevant family instead of an individual plan for each member. Subsection (5) applies subsection (3) to a single adoption plan but with adjusted wording as appropriate to reflect that the single plan will relate to all members of the relevant family.
171. By virtue of subsection (6), where the local authority considers that a member of a relevant family who is aged 12 or over is incapable of giving the consent required by subsection (4), the authority is not required to obtain that person’s consent to the preparation of a single plan.
172. Subsection (7) defines ‘relevant family’ for the purposes of this section. This includes children who have been placed for adoption, persons with whom a child has been placed for adoption, children who have been adopted and persons who have adopted a child. The definition also includes the children of people who have adopted a child or who

have had a child placed for adoption with them, and any other person in the same household whom the persons have treated as one of their children.

#### ***Section 46 - Duration***

173. Subsections (1) and (2) provide that an adoption support plan will cease to have effect upon the occurrence of the first of the following events: the preparation of a further plan in respect of the person or the members of the relevant family; or the date on which the adopted child reaches the age of 18. This does not affect any continuing right to adoption support itself.

#### ***Section 47 - Family member's right to require review of plan***

174. Where an adoption support plan is in place and a member of the relevant family considers that the local authority is failing to comply with the terms of the adoption support plan, under subsection (2) the member can request that a local authority reviews the adoption support plan. Subsection (3) allows the authority, when reviewing a plan, to reassess the need of the member for adoption support services.
175. By virtue of subsection (4), the persons who are able to request a review under subsection (2) are the persons with whom the child has been placed for adoption, the persons who have adopted the child or a member of the relevant family who the local authority considers is capable of understanding the need for adoption support services. All members of the relevant family, including children, are able to request a review as long as they are able to understand the need for adoption support services. A request for review of an adoption support plan will normally be made by either adoptive parents or the adopted child. The adoptive parents can request a review on behalf of the adopted child if, in the opinion of the local authority, the child is not capable of understanding the need for adoption support services.
176. Subsection (5) imposes a duty on local authorities, following a review under subsection (2), to vary the adoption support plan to reflect any changes in the reassessed needs of a person and in the adoption support services that will be provided.
177. The effect of subsection (6) is that the section applies equally to members of a relevant family who have not had their needs for adoption support services assessed under section 9(1)(a). In this case, references to "reassessment" of a member's needs are to be read as references to an "assessment".

#### ***Section 48 - Other cases where authority under duty to review plan***

178. Where an adoption support plan is in force subsection (2) places a duty on a local authority to review the plan "from time to time" and when it becomes aware of a change in circumstances of a member of a family to which such a plan relates.
179. When reviewing the adoption support plan under subsection (2), subsection (3) allows a local authority to reassess the need for adoption support services of any member of the adoptive family to which the plan relates.
180. Subsection (4) places a duty on a local authority to vary an adoption support plan to reflect the changes in the reassessed needs of a relevant person under subsection (3) and changes to the adoption support services provided by the local authority.
181. By virtue of subsection (5) "relevant member" has the same meaning as in section 47(6). As in section 47, references to a reassessment of needs include an assessment of needs if such an assessment has not been carried out in respect of the relevant member.

***Section 49 - Reassessment of needs for adoption support services***

182. Where an adoption support plan is in force, subsection (2) provides that any member of a relevant family aged 12 or over may request that a local authority carry out a reassessment of that person's need for adoption support services.
183. Subsection (3) places a duty on local authorities, following a reassessment, to decide whether or not there is a need for adoption support services.
184. Subsection (4) requires a local authority to provide adoption support services where they consider there is a need.
185. Subsection (5) places a duty on a local authority which is providing adoption support services by virtue of subsection (4) to vary the adoption support plan to reflect any changes in the support that will be provided.
186. Other than the persons with whom a child has been placed for adoption or who have adopted a child, subsection (6) allows a member of a relevant family to request a reassessment of their need for adoption support services only if they are capable of understanding the need for such services. This ensures that anyone, including a child, is able to request a reassessment, but only if the person is capable of understanding the need for adoption support services. Persons with whom a child has been placed or who have adopted a child are unaffected by this provision and have an absolute right to request a reassessment of needs.
187. Subsection (7) provides that where a local authority is making a reassessment of needs it should do so in such a manner and having regard to such matters as are prescribed by regulations made by the Scottish Ministers. Subsection (8) makes the same provision as subsection (5) of section 48 in relation to the meaning of "relevant member" and "reassessment of needs".

***Section 50 - Implementation of plans: directions***

188. This section allows the Scottish Ministers to give directions of a general or specific nature to a local authority with regard to the implementation of adoption support plans. Such directions may not require an authority to provide, continue to provide, or withhold provision of a particular adoption support service.
189. By virtue of subsection (3) the Scottish Ministers may vary or revoke any such direction made under subsection (1).

***(a) Section 51 - Guidance***

190. This section places a duty on local authorities to have regard to any guidance issued by the Scottish Ministers (and which may be varied or revoked by the Scottish Ministers) when preparing or reviewing adoption support plans.

***Section 52 - Regulations about reviews of adoption support plans***

191. This section gives the Scottish Ministers power to make regulations specifying the way in which reviews of adoption support plans are to be carried out.