



# 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.

### *Adoption support services*

## **9 Assessment of needs for adoption support services**

- (1) A local authority—
  - (a) must, on the request of a person mentioned in any of paragraphs (a) to (i) of subsection (3) of section 1, make an assessment of the needs of the person for adoption support services,
  - (b) may, on the request of a person mentioned in paragraph (j) of that subsection, make an assessment of the needs of the person for such services.
- (2) Where a local authority makes an assessment of the needs of a person for adoption support services under subsection (1), the authority must decide whether the needs of the person call for the provision of such services.
- (3) A local authority making an assessment of needs under subsection (1) must—
  - (a) do so in such manner as may be prescribed by regulations made by the Scottish Ministers, and
  - (b) have regard to such matters as may be so prescribed.

## **10 Provision of services**

- (1) On the request of a person mentioned in subsection (3) of section 1, a local authority must provide adoption services of a type mentioned in paragraph (d) of subsection (4) of that section to the person.

- (2) On the request of a person mentioned in paragraph (a), (c) or (g) of subsection (3) of section 1, a local authority—
- (a) must provide adoption services of a type mentioned in paragraphs (a) to (c) of subsection (4) of that section to the person, and
  - (b) may, without prejudice to subsection (4)(a), provide adoption support services to the person.
- (3) For the purposes of subsection (2), it is immaterial whether the local authority has made an assessment of the needs of the person under section 9(1)(a).
- (4) Where a local authority decides under section 9(2) that the provision of adoption support services is called for in respect of—
- (a) a person mentioned in any of paragraphs (a) to (i) of subsection (3) of section 1, the authority must provide the services to the person,
  - (b) a person mentioned in paragraph (j) of that subsection, the authority may provide the services to the person.

## **11 Urgent provision**

- (1) If in the opinion of a local authority a person mentioned in subsection (3) of section 1 requires adoption support services as a matter of urgency, nothing in section 9 prevents the authority from providing, or arranging for the provision of, those services for the person without first carrying out an assessment under that section of the person's needs for adoption support services.
- (2) If by virtue of subsection (1) a local authority provides, or arranges for the provision of, adoption support services the authority must, as soon as is reasonably practicable after such provision, make an assessment of the person's needs for adoption support services.

## **12 Power to provide payment to person entitled to adoption support service**

- (1) Subsection (2) applies where a local authority—
- (a) has, in respect of a person, an obligation to provide, or secure the provision of, an adoption support service under this Part, or
  - (b) has a power so to provide and determines it should provide.
- (2) Subject to subsection (4), the authority may, after having regard to the matters mentioned in subsection (3), provide the person with a payment instead of the service.
- (3) Those matters are—
- (a) the person's eligibility for assistance from any other body,
  - (b) where the person is so eligible, the availability to the person of that assistance at the time when the service might have been provided to the person by the authority,
  - (c) the ability of the authority to provide, or secure the provision of, the service, and
  - (d) the person's need for the service.
- (4) A payment under subsection (2) may be made subject to such conditions (including conditions as to repayment) as the authority considers reasonable.

- (5) In imposing conditions under subsection (4), the authority must have regard to the person's eligibility for assistance from any other body.

### *Regulations*

## **13 Regulations**

- (1) The Scottish Ministers may by regulations make provision for or in connection with—
- (a) determining in circumstances specified in the regulations which local authority is, or may become, responsible for—
    - (i) the provision of an adoption service,
    - (ii) the making of an assessment of needs under section 9(1)(a),
  - (b) determining the time at which, and the circumstances in which, a local authority's duty to provide an adoption service ends,
  - (c) specifying the circumstances in which a local authority may continue to provide an adoption service after the time determined by virtue of paragraph (b) has passed,
  - (d) specifying the arrangements a local authority may make when a person in respect of whom the authority provides, or has a power or a duty to provide, an adoption service moves outwith the authority's area,
  - (e) specifying the persons with whom such arrangements may be made,
  - (f) assessing the needs for adoption support services of persons who have moved or who intend to move—
    - (i) from one local authority area to another,
    - (ii) from outwith Scotland to Scotland.
- (2) The power conferred by subsection (1) may be exercised so as to make different provision for different adoption services.