
SCOTTISH STATUTORY INSTRUMENTS

2009 No. 154

The Adoption Agencies (Scotland) Regulations 2009

PART IV

**DUTIES OF ADOPTION AGENCIES WHEN
CONSIDERING ADOPTION FOR A CHILD**

Duties of adoption agencies when considering adoption for a child

- 12.**—(1) This regulation applies where an adoption agency is considering adoption for a child.
- (2) The adoption agency must, so far as is reasonably practicable and in the child's best interests—
- (a) consult and take into account the views of—
 - (i) the child, taking account of their age and maturity; and
 - (ii) the child's parents and guardians if their whereabouts are known;
 - (b) take account of the child's religious persuasion, racial origin and cultural and linguistic background where known;
 - (c) obtain and record in writing the information in Parts II and III of Schedule 1;
 - (d) ensure that arrangements are made for the child to be examined by a registered medical practitioner; and
 - (e) obtain from the practitioner who has carried out the examination referred to in sub-paragraph (d) a written assessment of the child's health.
- (3) Where the adoption agency considers that adoption may be in the best interests of the child it must refer the case to the adoption panel for a recommendation.
- (4) Where a referral is made under paragraph (3) the adoption agency must provide the adoption panel with—
- (a) the medical report obtained in accordance with paragraph (2)(e);
 - (b) the information obtained in accordance with paragraph (2)(c);
 - (c) any representations received from the child or their parents or guardians; and
 - (d) any other information which the adoption agency considers relevant.

Adoption agency decisions

13.—(1) Where an adoption agency receives a recommendation from an adoption panel, following a referral, on a matter under regulation 6(2)(a), (b) or (e), the agency must make a decision on that matter within 14 days from the date of the recommendation.

(2) No member of the adoption panel which made the recommendation is to take part in the decision.

(3) On making its decision under paragraph (1) the adoption agency must take into account the recommendation of the adoption panel.

(4) Where an adoption agency makes a decision that is contrary to the recommendation of the adoption panel the adoption agency must record in writing the reasons for its decision.

(5) Paragraphs (6) and (7) apply where the child to whom the decision under paragraph (1) relates is subject to a supervision requirement.

(6) For the purpose of determining whether it is satisfied in accordance with section 73(4)(c)(i) or (v)(1) of the 1995 Act (duration and review of supervision requirement) that the best interests of the child would be served by an application for a permanence order or their placing the child for adoption an adoption agency which is a local authority must take into account any recommendation of the adoption panel under regulation 6(2) before making the decision.

(7) For the purpose of determining under section 106 of the Act (child subject to supervision requirement: duty to refer to Principal Reporter) whether the best interests of the child would be served by placing the child for adoption a registered adoption service must take into account any recommendation of the adoption panel under regulation 6(2) before making the decision.

Notification of adoption agency decisions

14.—(1) Where an adoption agency makes a decision under regulation 13(1) as to whether adoption is in the best interests of the child it must within 7 days of making the decision notify—

- (a) the child where, taking account of the child’s age and maturity, the adoption agency considers that the child is capable of understanding the effect of the decision;
- (b) the parent or parents of the child;
- (c) where the adoption agency considers it to be in the child’s interests any parent or parents of the child who do not have parental rights or parental responsibilities, if their whereabouts are known to the adoption agency;
- (d) the guardian of the child if their whereabouts are known to the adoption agency; and
- (e) any other relative of the child who has expressed a view on the placement of the child for adoption to the adoption agency.

(2) Where the adoption agency makes a decision under regulation 13(1) as to whether an application for a permanence order granting authority for the child to be adopted under section 80 of the Act should be made the adoption agency must notify—

- (a) the child, taking account of their age and maturity;
- (b) the parent or parents of the child;
- (c) where the adoption agency considers it to be in the child’s interests any parent or parents of the child who do not have parental rights or parental responsibilities if their whereabouts are known to the adoption agency; and
- (d) the guardian of the child if their whereabouts are known to the adoption agency.

(3) In paragraphs (1)(b) and (2)(b) “parent” means—

- (a) a parent who has any parental responsibilities or parental rights in relation to the child; or
- (b) a parent who, by virtue of a permanence order granted under section 80 of the Act which does not include provision granting authority for the child to be adopted, has no such responsibilities or rights.

(1) section 73(4) of the 1995 Act is amended by the 2007 Act, section 120(1), Schedule 2, paragraph 9.

Decision that adoption should not proceed or to make an application under section 80 of the Act

15.—(1) Where the adoption agency makes a decision under regulation 13(1) that adoption is not in the best interests of the child and there is a better and practicable alternative to adoption the adoption agency shall take such steps, if any, in relation to the case as it considers appropriate and in the best interests of the child.

(2) Where a registered adoption service makes a decision under regulation 13(1) that an application for a permanence order granting authority for the child to be adopted should be made under section 80 of the Act, the registered adoption service must refer the case to the local authority for the area in which the child resides.

Provision of information to parents: decision by adoption agency to make arrangements for adoption

16.—(1) This regulation applies where the adoption agency—

- (a) makes a decision under regulation 13(1) that adoption is in the best interests of the child; and
- (b) proposes to make arrangements for the adoption of the child.

(2) The adoption agency must, within 7 days of making the decision, provide each parent or guardian of the child with—

- (a) a memorandum in the form set out in Schedule 2;
- (b) a certificate in the form set out in Schedule 3; and
- (c) a certificate in the form set out in Schedule 4.

(3) The adoption agency must take such steps as are reasonably practicable to ensure that—

- (a) each parent or guardian signs and returns to the adoption agency a certificate in the form set out in Schedule 3 or a form to like effect which certifies that they have read and understood the memorandum; and
- (b) each parent or guardian completes and signs the certificate in the form set out in Schedule 4 and returns it to the adoption agency within 28 days.

(4) Paragraph (5) applies where the adoption agency is aware of the identity of a parent who does not have parental responsibilities or parental rights in respect of the child.

(5) The adoption agency must, so far as it considers reasonably practicable to do so, make enquiries and—

- (a) obtain in respect of the parent the information in Part III of Schedule 1; and
- (b) ascertain, where possible, whether the parent intends to make an application for any parental responsibilities or parental rights in relation to the child or enter into a parental responsibilities agreement under section 4 of the 1995 Act.

Provision of information to parents: decision of adoption agency that an application under section 80 of the Act should be made

17.—(1) This regulation applies where an adoption agency makes a decision under regulation 13(1) that—

- (a) adoption is in the best interests of the child; and
- (b) an application for a permanence order with authority for the child to be adopted should be made under section 80 of the Act.

- (2) The adoption agency must, within 7 days of making the decision, provide each parent or guardian of the child with—
- (a) a memorandum in the form set out in Schedule 5;
 - (b) a certificate in the form set out in Schedule 6; and
 - (c) a certificate in the form set out in Schedule 7.
- (3) The adoption agency must take such steps as are reasonably practicable to ensure that—
- (a) each parent or guardian signs and returns to the adoption agency a certificate in the form set out in Schedule 6 or a form to like effect which certifies that they have read and understood the memorandum; and
 - (b) each parent or guardian completes and signs the certificate in the form set out in Schedule 7 and returns it to the adoption agency within 28 days.
- (4) Paragraph (5) applies where the adoption agency is aware of the identity of a parent who does not have parental responsibilities or parental rights in respect of the child.
- (5) The adoption agency must, so far as it considers it reasonably practicable to do so make enquiries and—
- (a) obtain in respect of the parent the information in Part III of Schedule 1; and
 - (b) ascertain, where possible, whether the parent intends to make an application for any parental responsibilities or parental rights in relation to the child or enter into a parental responsibilities agreement under section 4 of the 1995 Act.

Duties of adoption agencies: placing the child for adoption

- 18.—**(1) An adoption agency must not place or secure the placing of a child with any prospective adopter unless the adoption agency—
- (a) is satisfied that the placement is in the best interests of the child;
 - (b) is satisfied that placement of the child with the prospective adopter is in the best interests of the child;
 - (c) has, so far as is reasonably practicable, obtained the information in Schedule 1;
 - (d) has, so far as is reasonably practicable, obtained a report prepared within the previous 12 months by a registered medical practitioner as to the health of the child;
 - (e) has obtained a report prepared within the previous 12 months by a registered medical practitioner as to the health of each prospective adopter;
 - (f) has (or has had) the prospective adopter interviewed;
 - (g) is satisfied that the premises within which the prospective adopter intends that the child shall reside are suitable for the needs of the child;
 - (h) has made inquiries and has in particular inquired of every relevant local authority to satisfy itself that it would not be detrimental to the welfare of the child—
 - (i) for the child to reside with the prospective adopter in the premises proposed for the child's home; and
 - (ii) for the proposed adoption to proceed;
 - (i) has prepared a report with its observations on the matters referred to in sub paragraphs (a) to (h) and has passed that report and all information obtained by it by virtue of this regulation to the adoption panel or to another adoption agency;
- (2) Subject to paragraph (3) in addition to securing the report referred to in paragraph (1)(d), that adoption agency must ensure that arrangements are made for such medical investigations and

tests as are considered necessary to be carried out in respect of the child and obtain from a registered medical practitioner a report based on those investigations and tests.

(3) Paragraph (2) does not apply where such investigations and tests have already been carried out in respect of the child and a report on their findings has been made available to the agency.

(4) Wherever practicable any report prepared in accordance with paragraph (2) shall be included in the report obtained by the adoption agency under paragraph (1)(d).

(5) In order to satisfy itself as to the matter referred to in paragraph (1)(g) the adoption agency must arrange for the premises to be visited on its behalf.

(6) In paragraph (1)(h) a “relevant local authority” is the local authority for the area in which—

- (i) the child is resident;
- (ii) the prospective adopter is resident;
- (iii) the premises referred to in that paragraph are situated.