

ADOPTION AND CHILDREN (SCOTLAND) ACT 2007

EXPLANATORY NOTES

THE ACT

3. The Adoption and Children (Scotland) Act 2007 modernises, improves and extends the system of adoption in Scotland. Previous legislation relating to adoption lay mainly in the Adoption (Scotland) Act 1978 (which was based on the Adoption Act 1976).
4. Previous legislation relating to other aspects of adoption is contained in the Children (Scotland) Act 1995 (the “1995 Act”). Legislation relating to intercountry and overseas adoption lies in the Adoption (Intercountry Aspects) Act 1999.
5. The Act repeals and replaces the Adoption (Scotland) Act 1978, apart from Part IV, which makes provision in respect of the status of children adopted under that Act. Part IV remains in force in order to ensure that the status of such children is unaffected by the repeal of that Act and its replacement by the Adoption and Children (Scotland) Act 2007. The Act also amends the 1995 Act.
6. The Act maintains the existing adoption service and local authorities continue to have a duty to provide an adoption service for placing children with adopters and assessing adopters. A wider range of people are able to adopt. Provisions modernise and improve the existing service and the broader services available to children who cannot live with their original families. The Act introduces a new court order for accommodating such children (a “permanence order”). Provisions in the Act improve access to a broader range of support services for people affected by adoption, including members of adoptive and original families. The Act contains provisions to ensure that people are able to gain access to services and will be given clear information about the services that will be provided to them by adoption agencies. The Act reproduces existing provisions for intercountry and overseas adoptions, but introduces new restrictions on bringing children into the country in certain circumstances and gives the Scottish Ministers the power to charge for the processing of intercountry adoption casework.
7. The key provisions of the Act are:
 - Unmarried couples are able to adopt jointly.
 - Local authorities have a duty to provide a range of adoption services, the meaning of which may be expanded by secondary legislation.
 - People directly affected by an adoption (including the child, parents and adoptive parents) have a right to adoption support services, which include both services provided before an adoption order is made and after the making of the order.
 - The provision of adoption services is a clearly stated part of the adoption process, which will inform people about the services that are available to them, how they should go about accessing them, and for how long these services are available.

A new type of order, the permanence order, is introduced for children who cannot live with their families. This replaces freeing orders (provided for by section 18 of the Adoption (Scotland) Act 1978) and parental responsibilities orders (provided for by section 86 of the 1995 Act). The permanence order allows parental responsibilities and parental rights relating to residence and guidance to pass to the local authority and other relevant parental responsibilities and parental rights to be granted to appropriate people, including the child's parents. The permanence order provides flexibility to adapt to a child's changing circumstances.

8. The Act is in 4 parts. These are:

Part 1 – Adoption

9. **Part 1** makes provision for the adoption of children and is divided into 7 chapters. Chapter 1 requires the provision of adoption services by local authorities. Local authorities may use “registered adoption services” i.e. voluntary organisations to provide these services. “Adoption services” are defined in section 1 of the Act and those persons who may receive them are listed in subsection (3) of that section.
10. **Chapter 1** also provides the Scottish Ministers with the power to make regulations relating to the provision of adoption services by both local authorities and registered adoption services. The Scottish Ministers may also issue guidance in relation to the assessment of needs and local authorities are obliged to have regard to this. This Chapter also enables local authorities to make payments in lieu of adoption support services.
11. **Chapter 2** sets out the adoption process, including the conditions that must be met before an application for an adoption may be granted, the categories of person that are eligible to make an application for an adoption order, restrictions on removing children who have been placed with prospective adopters, and the legal effect of adoption orders. The Chapter also provides for information about adoptions to be kept by adoption agencies and the disclosure of such information.
12. **Chapter 3** makes provision for the legal status of adopted children.
13. **Chapter 4** provides for adoption support plans, which will be used to detail the specific adoption support services to which people will have access after an assessment of needs has been made under section 9
14. **Chapter 5** relates to the registration of adoption orders. It requires the Registrar General of Births, Deaths and Marriages for Scotland to continue to maintain the Adopted Children Register and makes provision for linking records in that register with records in the register of births.
15. **Chapter 6** makes provision in respect of adoptions with a foreign element. It places restrictions on the adoption of children from outside the United Kingdom and on the adoption of children from the United Kingdom outwith this country, and gives the Scottish Ministers the power to charge for processing casework for certain types of adoption with a foreign element.
16. **Chapter 7** relates to miscellaneous issues, including adoption allowances schemes, restrictions as to who may arrange adoptions or place children for adoption, and provides for the effect of certain orders and the placing of children for adoption under the Adoption and Children Act 2002.

Part 2 – Permanence Orders

17. **Part 2** of the Act relates to permanence orders. These are designed to provide long-term security for children who cannot live with their family. A permanence order is also capable of including authority for a child to be adopted. Part 2 establishes the structure of a permanence order, including provision for the distribution of

parental responsibilities and parental rights, and also provides for its effect as regards supervision requirements and other types of existing order, and the variation and revocation of permanence orders.

Part 3 – Miscellaneous

18. **Part 3** contains a range of provisions, some of which apply to both adoption orders and permanence orders, including a requirement to notify the father of a child where that father has never had parental responsibilities and parental rights that an application for either type of order is to be made. This Part also contains section 107, a provision which amends section 11 of the 1995 Act to allow people who have lost parental responsibilities and parental rights as the result of the making of an adoption order to make an application under that section for a contact order in respect of the child that has been adopted. In terms of section 110, the Scottish Ministers have power to make regulations to provide for allowances to be paid by local authorities in respect of certain children.

Part 4 – General

19. This contains a range of technical provisions, including provision for rules of procedure and offences by bodies corporate and partnerships.
20. The Act also contains 3 schedules, which respectively relate to the registration of adoptions, minor and consequential amendments and repeals.