



# Adoption (Scotland) Act 1978

## 1978 CHAPTER 28

### PART I

#### THE ADOPTION SERVICE

##### *The Adoption Service*

#### **1 Establishment of Adoption Service**

- (1) It is the duty of every local authority to establish and maintain within their area a service designed to meet the needs, in relation to adoption, of—
  - (a) children who have been or may be adopted;
  - (b) parents and guardians of such children; and
  - (c) persons who have adopted or may adopt a child ;and for that purpose to provide the requisite facilities, or secure that they are provided by approved adoption societies.
- (2) The facilities to be provided as part of the service maintained under subsection (1) include—
  - (a) temporary board and lodging where needed by pregnant women, mothers or children ;
  - (b) arrangements for assessing children and prospective adopters, and placing children for adoption;
  - (c) counselling for persons with problems relating to adoption.
- (3) The facilities of the service maintained under subsection (1) shall be provided in conjunction with the local authority's other social services and with approved adoption societies in their area, so that help may be given in a co-ordinated manner without duplication, omission or avoidable delay.
- (4) The services maintained by local authorities under subsection (1) may be collectively referred to as "the Scottish Adoption Service ", and a local authority or approved adoption society may be referred to as an adoption agency.

## 2 Local authorities' social work

The social services referred to in section 1(3) are the functions of a local authority which stand referred to the authority's social work committee, including, in particular but without prejudice to the generality of the foregoing, a local authority's functions relating to—

- (a) the promotion of the welfare of children by diminishing the need to receive children into care or keep them in care, including (in exceptional circumstances) the giving of assistance in cash ;
- (b) the welfare of children in the care of a local authority ;
- (c) the welfare of children who are foster children within the meaning of the Children Act 1958 ;
- (d) children who are subject to supervision orders made in matrimonial or custody proceedings ;
- (e) the provision of residential accommodation for expectant mothers and young children and of day-care facilities;
- (f) the regulation and inspection of nurseries and child minders;
- (g) care and other treatment of children through court proceedings and children's hearings.

### *Adoption societies*

## 3 Approval of adoption societies

- (1) Subject to regulations under section 9(1), a body desiring to act as an adoption society or, if it is already an adoption society, desiring to continue to act as such may, in the manner specified by regulations made by the Secretary of State, apply to the Secretary of State for his approval to its doing so.
- (2) On an application under subsection (1), the Secretary of State shall take into account the matters relating to the applicant specified in subsections (3) to (5) and any other relevant considerations, and if, but only if, he is satisfied that the applicant is likely to make, or, if the applicant is an approved adoption society, is making, an effective contribution to the Scottish Adoption Service, he shall by notice to the applicant give his approval, which shall be operative from a date specified in the notice or, in the case of a renewal of approval, from the date of the notice.
- (3) In considering the application, the Secretary of State shall have regard, in relation to the period for which approval is sought, to the following—
  - (a) the applicant's adoption programme, including, in particular, its ability to make provision for children who are free for adoption,
  - (b) the number and qualifications of its staff,
  - (c) its financial resources, and
  - (d) the organisation and control of its operations.
- (4) Where it appears to the Secretary of State that the applicant is likely to operate extensively within the area of a particular local authority he shall ask the authority whether they support the application, and shall take account of any views about it put to him by the authority.
- (5) Where the applicant is already an approved adoption society or, whether before or after the passing of this Act, previously acted as an adoption society, the Secretary of State,

in considering the application, shall also have regard to the record and reputation of the applicant in the adoption field, and the areas within which and the scale on which it is currently operating or has operated in the past.

- (6) If after considering the application the Secretary of State is not satisfied that the applicant is likely to make or, as the case may be, is making an effective contribution to the Scottish Adoption Service, the Secretary of State shall, subject to section 5(1) and (2), by notice inform the applicant that its application is refused.
- (7) If not withdrawn earlier under section 4, approval given under this section shall last for a period of three years from the date on which it becomes operative, and shall then expire or, in the case of an approved adoption society whose further application for approval is pending at that time, shall expire on the date that application is granted or, as the case may be, refused.

#### **4 Withdrawal of approval**

- (1) if, while approval of a body under section 3 is operative, it appears to the Secretary of State that the body is not making an effective contribution to the Scottish Adoption Service he shall, subject to section 5(3) and (4), by notice to the body withdraw the approval from a date specified in the notice.
- (2) If an approved adoption society fails to provide the Secretary of State with information required by him for the purpose of carrying out his functions under subsection (1), or fails to verify such information in the manner required by him, he may by notice to the society withdraw the approval from a date specified in the notice.
- (3) Where approval is withdrawn under subsection (1) or (2) or expires the Secretary of State may direct the body concerned to make such arrangements as to children who are in its care and other transitional matters as seem to him expedient.

#### **5 Procedure on refusal to approve, or withdrawal of approval from, adoption societies**

- (1) Before notifying a body which has applied for approval that the application is refused in accordance with section 3(6) the Secretary of State shall serve on the applicant a notice—
  - (a) setting out the reasons why he proposes to refuse the application;
  - (b) informing the applicant that it may make representations in writing to the Secretary of State within 28 days of the date of service of the notice.
- (2) If any representations are made by the applicant in accordance with subsection (1), the Secretary of State shall give further consideration to the application taking into account those representations.
- (3) The Secretary of State shall, before withdrawing approval of an adoption society in accordance with section 4(1), serve on the society a notice—
  - (a) setting out the reasons why he proposes to withdraw the approval; and
  - (b) informing the society that it may make representations in writing to the Secretary of State within 28 days of the date of service of the notice.
- (4) If any representations are made by the society in accordance with subsection (3), the Secretary of State shall give further consideration to the withdrawal of approval under section 4(1) taking into account those representations.

- (5) This section does not apply where the Secretary of State, after having considered any representations made by the applicant in accordance with this section, proposes to refuse approval or, as the case may be, to withdraw approval for reasons which have already been communicated to the applicant in a notice under this section.

### *Welfare of children*

## **6 Duty to promote welfare of child**

In reaching any decision relating to the adoption of a child, a court or adoption agency shall have regard to all the circumstances, first consideration being given to the need to safeguard and promote the welfare of the child throughout his childhood; and shall so far as practicable ascertain the wishes and feelings of the child regarding the decision and give due consideration to them, having regard to his age and understanding.

## **7 Religious upbringing of adopted child**

An adoption agency shall in placing a child for adoption have regard (so far as is practicable) to any wishes of the child's parents and guardians as to the religious upbringing of the child.

### *Supplemental*

## **8 Inactive or defunct adoption societies**

- (1) If it appears to the Secretary of State that an approved adoption society, or one in relation to which approval has been withdrawn under section 4 or has expired, is inactive or defunct he may, in relation to any child who is or was in the care of the society, direct what appears to him to be the appropriate local authority to take any such action as might have been taken by the society or by the society jointly with the authority; and if apart from this section the authority would not be entitled to take that action, or would not be entitled to take it without joining the society in the action, it shall be entitled to do so.
- (2) Before giving a direction under subsection (1) the Secretary of State shall, if practicable, consult both the society and the authority.

## **9 Regulation of adoption agencies**

- (1) The Secretary of State may by regulations prohibit unincorporated bodies from applying for approval under section 3 ; and he shall not approve any unincorporated body whose application is contrary to regulations made under this subsection.
- (2) The Secretary of State may make regulations for any purpose relating to the exercise of its functions by an approved adoption society.
- (3) The Secretary of State may make regulations with respect to the exercise by local authorities of their functions of making or participating in arrangements for the adoption of children.

- (4) Any person who contravenes or fails to comply with regulations made under subsection (2) shall be guilty of an offence and liable on summary conviction to a fine not exceeding £400.
- (5) Regulations under this section may make different provisions in relation to different cases or classes of cases and may exclude certain cases or classes of cases.

## **10 Inspection of books, etc., of approved adoption societies**

- (1) A local authority may at any time give notice in writing to an approved adoption society, or to any officer of such a society, requiring that society or officer to produce to the authority such books, accounts and other documents relating to the performance by the society of the function of making arrangements for the adoption of children as the authority may consider necessary for its own information or that of the Secretary of State.
- (2) Any such notice may contain a requirement that any information to be furnished in accordance with the notice shall be verified in a manner specified in the notice.
- (3) Any person who fails to comply with the requirements of a notice under this section shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding £50 or to both.

## **11 Restriction on arranging adoptions and placing of children**

- (1) A person other than an adoption agency shall not make arrangements for the adoption of a child, or place a child for adoption, unless the proposed adopter is a relative of the child.
- (2) An adoption society approved as respects England and Wales under section 3 of the Adoption Act 1976, but which is not approved under section 3 of this Act, shall not act as an adoption society in Scotland except to the extent that the society considers it necessary to do so in the interests of a person mentioned in section 1 of that Act.
- (3) A person who—
  - (a) takes part in the management or control of a body of persons which exists wholly or partly for the purpose of making arrangements for the adoption of children and which is not an approved adoption society or a local authority; or
  - (b) contravenes subsection (1); or
  - (c) receives a child placed with him in contravention of subsection (1),shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding £400 or to both.
- (4) In any proceedings for an offence under paragraph (a) of subsection (3), proof of things done or of words written, spoken or published (whether or not in the presence of any party to the proceedings) by any person taking part in the management or control of a body of persons, or in making arrangements for the adoption of children on behalf of the body, shall be sufficient evidence of the purpose for which that body exists.
- (5) Section 26 shall apply where a person is convicted of a contravention of subsection (1) as it applies where an application for an adoption order is refused.