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STATUTORY INSTRUMENTS

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**1996 No. 3266 (S.254)**

**CHILDREN AND YOUNG PERSONS**

**The Adoption Agencies (Scotland) Regulations 1996**

*Made* - - - - 24th December 1996  
*Laid before Parliament* 31st December 1996  
*Coming into force* - - 1st April 1997

The Secretary of State, in exercise of the powers conferred on him by sections 3(1A), 9 and 27(2) of the Adoption (Scotland) Act 1978(1) and of all other powers enabling him in that behalf, hereby makes the following Regulations:

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Adoption Agencies (Scotland) Regulations 1996 and shall come into force on 1st April 1997.

(2) These Regulations shall apply to Scotland only.

**Interpretation**

2.—(1) In these Regulations, unless the context otherwise requires—

“the Act” means the Adoption (Scotland) Act 1978;

“the 1995 Act” means the Children (Scotland) Act 1995(2);

“adoption agency” means a local authority or an approved adoption society within the meaning of the Act;

“adoption panel” means a panel appointed in accordance with regulation 7;

“court” means an authorised court as defined by section 56 of the Act;

“health board” means a health board constituted under section 2 of the National Health Service (Scotland) Act 1978(3);

“parent” has the meaning given to that term in section 65 of the Act(4).

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(1) 1978 c. 28; section 3(1A) of the 1978 Act substituted by section 94 (brought into force for regulation making purposes by the Children (Scotland) Act 1995 Commencement No. 3 Order 1996 S.I. 1996/ ) of the Children (Scotland) Act 1995 (c. 36) (“the 1995 Act”); in section 9 subsection (2) was amended by paragraph 5(a) and subsection (3A) was inserted by paragraph 5(b), of Schedule 2 to the 1995 Act; and section 27(2) was substituted by paragraph 19 of Schedule 2 to the 1995 Act.

(2) 1995 c. 36.

(3) 1978 c. 29.

(4) Section 65 was amended by the 1995 Act, Schedule 2, paragraph 29.

(2) In these Regulations any reference to an adoption order shall include reference to an order under section 49 of the Act and any reference to a person proposing to adopt a child shall include reference to a person proposing to apply for such an order.

(3) In these Regulations any reference to a numbered regulation or schedule shall be construed as a reference to the regulation or schedule bearing that number in these Regulations, and any reference to a numbered paragraph shall be a reference to the paragraph bearing that number in the regulation in which the reference to the numbered paragraph is made.

### **Approved adoption societies**

**3.—**(1) An application to the Secretary of State under section 3 of the Act for approval as an adoption society shall—

- (a) be made in writing;
- (b) provide information about the applicant as to the matters specified in sub-sections (3) to (5) of that section; and
- (c) where the application is for approval to act or continue to act as an adoption society functioning in relation to some service maintained, or to be maintained, as part of the Scottish Adoption Service, specify that service and provide further information about the applicant as to the matters specified in Schedule 1.

(2) An unincorporated body is prohibited from applying to the Secretary of State for his approval under section 3 of the Act to its acting as an adoption society.

(3) An approved adoption society shall notify the Secretary of State in writing of any change in its name or in the address of its registered or head office within one month after such change.

(4) An approved adoption society shall prepare an annual report on the exercise of its functions in relation to adoption and shall provide the Secretary of State with a copy of such a report as soon as possible after the expiry of the year to which the report relates.

(5) As soon as possible after the end of each financial year of an approved adoption society, the society shall provide the Secretary of State with an abstract of the society's accounts for that year, signed on behalf of the society and certified by its auditors.

### **Complaints procedure of approved adoption societies**

**4.—**(1) The procedures established by an approved adoption society for the purpose of dealing with complaints arising in relation to the exercise of its functions shall comply with paragraphs (2) to (8) hereinafter known as the “complaints procedure”.

(2) The complaints procedure shall apply to any representations (including complaints) received by the approved adoption society in writing from—

- (a) any person, or anyone acting on behalf of a person;
- (b) a child or, on behalf of a child, any person with parental responsibilities or parental rights in respect of the child; or
- (c) any person with an interest in the child and in the functions of the society in relation to the child,

where the representations relate to the society's exercise, or failure or refusal to exercise, in respect of that person or child any of the functions for which the society is approved under section 3 of the Act.

(3) The complaints procedure shall provide for the appointment of—

- (a) one of the employees of the approved adoption society for the purpose of receiving, and acknowledging as soon as reasonably practicable, any representations under the procedure,

- arranging for the consideration of them and for the giving of a response to them on behalf of the society; and
- (b) one or more persons for the purpose of investigating the representations, each being a person who is not a member or employee of the society, or related or married to, or living with such a member or employee.
- (4) The complaints procedure shall provide for—
- (a) a response in writing by the adoption society to the substance of the representations to be given to the person who made them, as soon as reasonably practicable following receipt of the representations by the society;
  - (b) arrangements to be made by the society to appoint a complaints review committee for the purpose of considering further representations, where within 28 days from giving a response under sub-paragraph (a), the society receives notice in writing from the person who made the representations that he is not satisfied with the response;
  - (c) any complaints review committee appointed by the society to be composed of 3 persons, at least one of whom shall be a person who is not a member or employee of the society and is not related or married to, or living with such a member or employee, and none of whom shall be a person appointed by the society for the purpose mentioned in sub-paragraph (3)(b);
  - (d) the complaints review committee to consider the representations as soon as reasonably practicable, and to report to the society in writing with a recommendation on the disposal of the matter along with reasons for that recommendation; and
  - (e) the society, as soon as reasonably practicable, to take a decision on the matter after it has received the report from the complaints review committee, taking account of the recommendation of that committee, and to give notice in writing of that decision, with the reasons for it, to the person who made the representations.
- (5) An approved adoption society shall keep a record of—
- (a) any representations received under the complaints procedure;
  - (b) the investigation into any such representations, including the report of any complaints review committee appointed under sub-paragraph (4)(b); and
  - (c) the disposal of the representations.
- (6) An approved adoption society shall make available information about its complaints procedure to—
- (a) any person having an interest and who requests it; and
  - (b) every person in respect of whom the society exercises, or decides not to exercise, any of the functions for which it is approved under section 3 of the Act.
- (7) An approved adoption society may make arrangements to deal with any informal representations received by it from any person in relation to the exercise, or failure or refusal to exercise, any of the functions for which it is approved under section 3 of the Act, provided that—
- (a) when replying to any informal representations the society advises the person who made them of the entitlement to make representations under the complaints procedure; and
  - (b) the society provides that person with such assistance as is appropriate and as he may require in making representations under the complaints procedure should he wish to do so.
- (8) An approved adoption society shall take such steps as are appropriate to ensure that the employees of the society are aware of its complaints procedure.

### **Cessation as approved adoption society**

5.—(1) An approved adoption society which intends to cease to act as an adoption society shall notify the Secretary of State in writing of such intention at least 3 months before the intended date of such cessation.

(2) An approved adoption society which has ceased to act as an adoption society shall notify the Secretary of State in writing that it has ceased so to act, as soon thereafter as is reasonably practicable.

### **Appointment of medical and legal advisers**

6.—(1) An adoption agency shall appoint such number of registered medical practitioners as it considers necessary for the purpose of providing it with medical advice in connection with the exercise of its functions.

(2) An adoption agency shall appoint such number of solicitors or advocates as it considers necessary for the purpose of providing it with legal advice in connection with the exercise of its functions and for the purpose of this paragraph “solicitor” means a person qualified to practise as a solicitor further to the provisions of section 4 of the Solicitors (Scotland) Act 1980(5); and “advocate” means a practising member of the Faculty of Advocates.

### **Appointment, composition, qualifications etc. of adoption panels**

7.—(1) A local authority shall appoint an adoption panel for the purpose of considering and advising on the matters specified in regulation 11 and may appoint such additional adoption panels as it considers necessary.

(2) An approved adoption society which is carrying out or proposing to carry out functions described in regulation 11 shall appoint an adoption panel for the purpose of considering and advising on the matters specified in that regulation, and may appoint such additional adoption panels as it considers necessary.

(3) An adoption agency shall satisfy itself that the numbers, qualifications and experience of individual members of an adoption panel will enable it effectively to discharge its functions under regulation 11.

(4) An adoption panel shall consist of not less than 6 persons each of whom shall be competent to assess whether any recommendation in relation to a child to be made by virtue of regulation 11(1) is likely to promote the welfare of the child, and shall include at least one man and at least one woman.

(5) The persons appointed to an adoption panel shall include—

- (a) a person appointed as a medical adviser to the adoption agency under regulation 6(1); and
- (b) a person appointed as a legal adviser to the adoption agency under regulation 6(2).

(6) An adoption panel shall make the recommendations specified—

- (a) in regulation 11 only when at least 3 of its members, excluding any medical and legal adviser appointed to the panel under paragraph (5), meet as a panel; and
- (b) in regulation 11(1)(a) only when a legal adviser appointed to the adoption panel under paragraph (5) is present, or legal advice has been provided to the panel by such an adviser.

### **Duties of adoption agencies in making arrangements for freeing for adoption**

8. An adoption agency which is a local authority shall not make application for an order under section 18 of the Act (freeing a child for adoption) unless—

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(5) 1980 c. 46.

- (a) the adoption agency has, so far as is reasonably practicable, ascertained the particulars set out in Part I of Schedule 2;
- (b) the adoption agency has obtained a report prepared within the previous 12 months by a fully registered medical practitioner as to the health of the child;
- (c) the adoption agency has prepared a written report containing its observations on the matters referred to in this regulation and has passed that report, together with all information obtained by it by virtue of this regulation, to the adoption panel or to another adoption agency; and
- (d) the adoption agency, after considering all the information obtained in pursuance of this regulation and having regard to the recommendation of the adoption panel under regulation 11 and all other circumstances, has concluded in accordance with sections 6 and 6A of the Act that adoption is likely to best meet the needs of the child, and that either—
  - (i) regulations 17(2), or regulation 18(3) or (5) apply to the case of the child; or
  - (ii) the welfare of the child would be best met by the making of an application for an order under section 18 of the Act at that time whether or not the child has been placed with a person with a view to his being adopted by that person.

#### **Duties of adoption agencies in making arrangements for adoption**

9.—(1) An adoption agency shall not place or secure the placing of a child in the care and possession of any person proposing to adopt the child until—

- (a) the adoption agency has so far as is reasonably practicable, ascertained the particulars set out in Schedule 2;
- (b) the adoption agency has obtained a report prepared within the previous 12 months by a fully registered medical practitioner as to the health of the child;
- (c) the adoption agency has obtained a report prepared within the previous 12 months by a fully registered medical practitioner as to the health of each person proposing to adopt the child;
- (d) that person has been interviewed by or on behalf of the adoption agency;
- (e) the adoption agency has satisfied itself by a visit on its behalf that any premises in Great Britain within which that person intends that the child shall have his home are satisfactory;
- (f) the adoption agency has made enquiries to satisfy itself that there is no reason to believe that it would be detrimental to the welfare of the child for him to be kept by that person and by that person in those premises and has inquired of every local authority in whose area those premises are situated whether that local authority has reason to believe that it would be detrimental to the welfare of the child—
  - (i) for him to be kept by that person in those premises; or
  - (ii) or the proposed adoption to proceed;
- (g) the adoption agency has prepared a written report containing its observations on the matters referred to in this regulation and has passed that report, together with all information obtained by it by virtue of this regulation, to the adoption panel or to another adoption agency;
- (h) the adoption agency has concluded in accordance with section 6 and 6A of the Act that the welfare of the child would be best met by his being so placed.

(2) The adoption agency shall arrange such medical investigations and tests as are considered necessary to be carried out on the child and shall arrange that a report based thereon is obtained from a fully registered medical practitioner unless such tests have already been carried out and the findings are known to the agency.

(3) Wherever practicable any report in connection with paragraph (2) shall be included in the report obtained by the adoption agency under paragraph 1(b) of this regulation.

### **Duties of adoption agencies in assessing prospective adopters**

**10.**—(1) An adoption agency shall prepare and make available to any person with an interest a statement of the general criteria which the agency applies for the purpose of considering whether any person may be accepted by the agency for assessment as an adoptive parent.

(2) An adoption agency shall from time to time review the general criteria prepared by it under paragraph (1).

(3) In considering any application by a person to be assessed by the adoption agency as an adoptive parent, the agency shall apply the general criteria prepared under paragraph (1), and undertake any further steps necessary to consider the application.

(4) Where following any action mentioned in paragraph (3) the adoption agency decides—

- (a) that the person should not be accepted for assessment as an adoptive parent, the agency shall give notice in writing to that person; or
- (b) that the person should be accepted for assessment as mentioned, the agency shall assess the case and refer it to the adoption panel for a recommendation to the agency on the matter.

(5) Where referring the case of a prospective adopter to the adoption panel under paragraph (4), the adoption agency shall at the same time give—

- (a) a copy of the report on the case to the adoption panel; and
- (b) notice to the prospective adopter that the case has been referred to the adoption panel and a copy of the report provided to the panel, (excluding any information from third parties given in confidence).

### **Functions of adoption panels**

**11.**—(1) Subject to paragraphs (4), (5) and (6), an adoption panel shall consider the case of every child and proposed placement referred to it by the adoption agency and the case of every prospective adopter referred to it by the agency under regulation 10(4), and shall make recommendations to the agency on such of the following matters as may be appropriate—

- (a) whether adoption is in the best interests of a child and if the panel recommends that it is whether an application under section 18 of the Act should be made to free the child for adoption;
- (b) whether a prospective adopter is suitable to be an adoptive parent; and
- (c) whether a prospective adopter would be a suitable adoptive parent for a particular child.

(2) Where making a recommendation to the adoption agency under paragraph (1)(a) whether adoption is in the best interests of the child—

- (a) an adoption panel shall provide a written report of the consideration given by it to the alternatives to adoption before coming to that recommendation; and
- (b) the adoption panel shall, when recommending in addition that following any adoption there be continued contact between the child and one or both of his then parents, provide a written report of the reasons why adoption is recommended rather than an alternative course of action.

(3) An adoption panel may make the recommendation specified in paragraph (1)(b) only where they had the opportunity to meet with the prospective adopter and had the opportunity to discuss the matter with him.

(4) An adoption panel may make the recommendations specified in paragraph (1) at the same time or at different times but it shall make the recommendation specified in paragraph (1)(c) in respect of a particular child and prospective adopter only if—

- (a) at the meeting of the panel at which that recommendation is to be made a recommendation is also made that adoption is in the best interests of the child; or
- (b) an adoption agency decision has been made in accordance with regulation 12(1) that adoption is in the best interests of the child; and
- (c) in either case—
  - (i) at the meeting of the panel at which the recommendation specified in paragraph (1)(c) is to be made a recommendation is also made that the prospective adopter is suitable to be an adoptive parent; or
  - (ii) an adoption agency decision has been made in accordance with regulation 12(1) that the prospective adopter is suitable to be an adoptive parent.

(5) In considering what recommendations to make the panel shall have regard to the duties imposed upon the adoption agency by sections 6, 6A and 7 of the Act (duty to promote welfare of child, consider alternatives to adoption and religious upbringing of adopted child) and shall as the case may be—

- (a) consider and take into account all the information and reports passed to it by virtue of regulation 8(c) or 9(1)(g) and in accordance with paragraph (6);
- (b) request the adoption agency to obtain any other relevant information which the panel considers necessary;
- (c) obtain legal advice in relation to each case.

(6) An adoption agency may request an adoption panel to consider and advise on any other matters relevant to the agency's performance of its functions under the Act, or under these regulations or under any other regulations made under the Act.

### **Adoption agency decisions and notifications**

**12.—**(1) An adoption agency shall make a decision within 14 days from the date of the recommendation of the adoption panel, on a matter referred to in regulations 11(1)(a), (b) or (c) and only after taking into account the relevant recommendation of that adoption panel.

(2) An adoption agency shall record in writing its reasons for any decision under paragraph (1) which is contrary to a recommendation of the adoption panel.

(3) Within 7 days from the date of a decision under paragraph (1) the adoption agency shall, as appropriate, notify in writing—

- (a) the parents of the child, including where the adoption agency considers this to be in the child's interests, the father or mother of a child who is a parent in terms of section 15(1) of the 1995 Act but does not have parental responsibilities, or the guardian of the child if their whereabouts are known to the adoption agency, of its decision as to whether it considers adoption to be in the best interests of the child;
- (b) the persons to be notified under sub-paragraph (a) of its decision as to whether an application under section 18 of the Act should be made to free the child for adoption;
- (c) the prospective adopter of its decision as to whether it considers him to be suitable to be an adoptive parent; and
- (d) the prospective adopter of its decision as to whether he would be suitable as such for a particular child.

(4) As soon as is reasonably practicable after making a decision under paragraph (1) that adoption is not likely to best meet the needs of the child as there is some better, practicable alternative, or that an application under section 18 of the Act would be in the child's best interests, or after deciding that the agreement mentioned in regulation 14(1)(d) is not forthcoming, an approved adoption society shall take such steps, if any, in relation to the case as they consider appropriate and in the interests of the child.

(5) A local authority referring the case of a child subject to a supervision requirement to the Principal Reporter under section 73(4)(c)(ii) or (iii) of the 1995 Act or section 22A of the Act shall not do so until it is in a position to proceed under regulation 15(1) or 15(2), and shall do so in the form set out in Schedule 3 or in form to like effect.

### **Freeing or placing for adoption a child subject to a supervision requirement**

**13.—**(1) An adoption agency which is a local authority shall, for the purpose of considering whether it is satisfied in accordance with section 73(4)(c)(ii) or (iii) of the 1995 Act that the best interests of a child subject to a supervision requirement would be served by their applying under section 18 of the Act for an order freeing the child for adoption or placing the child for adoption, take into account a recommendation of the adoption panel on the matter under regulation 11(1) before coming to a decision.

(2) An approved adoption society shall, for the purpose of considering whether it is satisfied in accordance with section 22A of the Act that the best interests of a child subject to a supervision requirement would be served by its placing the child for adoption, take into account a recommendation of the adoption panel on the matter under regulation 11(1) before coming to a decision.

### **Information and certificate for parents on notification of adoption agency's decision**

**14.—**(1) The adoption agency shall, when notifying the parents or guardian of a child of the agency's decision under regulation 12 on a matter referred to in regulation 11(1)(a)–

- (a) shall provide each parent or guardian with a memorandum either–
  - (i) in the form set out in Schedule 4 where it is proposed to make arrangements for adoption of the child;
  - or–
  - (ii) in the form set out in Schedule 5 where it is proposed to make an application for a freeing order under section 18 of the Act;
- (b) shall take such steps as are reasonably practicable to ensure that each parent or guardian signs and returns to the agency a certificate in the form set out in Schedule 4 or 5 as the case may be, or a form to the like effect, certifying that he has read and understood that memorandum;
- (c) shall at the request of the parents or guardian provide them with the names and addresses of adoption agencies, if they are available, which might meet their wishes regarding the child's upbringing in a particular religious persuasion;
- (d) at the same time provide each parent or guardian with a certificate in the form set out in Schedule 6 or 7 as the case may be, certifying the agreement or otherwise of the parent or guardian with the proposal under paragraph (1)(a)(i) or, as the case may be, (ii); and
- (e) ensure, so far as reasonably practicable, that each parent or guardian completes and signs the certificate and returns it to the agency within 28 days.



(2) Where the identity of a parent as defined by section 15(1) of the 1995 Act but not having parental responsibilities of a child is known to the adoption agency, it shall so far as it considers it reasonably practicable and in the interests of the child—

- (a) carry out in respect of such parent the requirements of paragraph (1)(a) and (b), as if they applied to him, unless the agency is satisfied that another adoption agency has so complied with those requirements;
- (b) obtain in respect of such parent the information required under Schedule 2 and ascertain so far as possible whether he intends to apply 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.

### **Return of consent certificate**

**15.**—(1) Where each parent or guardian within a period of 28 days from the date of receipt of the certificate mentioned in regulation 14(1)(d) returns to the adoption agency the certificate specified in regulation 14 stating his agreement to the agency’s decision, the agency shall determine that such agreement as is mentioned in section 16(1)(b)(i) or, as the case may be, section 18(1)(a) of the Act is likely to be forthcoming and for the purposes of section 27(1) of the Act the certificate shall be sufficient proof of consent.

(2) Unless the agency receives the certificate referred to in paragraph (1) within the 28 days specified (or where the parent or guardian cannot be contacted within 28 days from reasonable efforts being made to make contact), the agency shall proceed as though such agreement mentioned in paragraph (1) is unlikely to be forthcoming.

(3) Where a parent or guardian who has returned a certificate under regulation 15(1) subsequently notifies in writing to an agency that his agreement is no longer forthcoming, the agency shall from the date of receipt of the notification proceed, for the purposes of paragraph (1) but not where the child has already been placed for adoption for the purposes of section 27(1) of the Act, as though such agreement under the Act as is referred to in paragraph (1) is unlikely to be forthcoming and shall, if the adoption agency is a local authority, perform the duties referred to in regulation 17, or as the case may be regulation 18, as appropriate in light of the change of circumstances.

### **Appropriate steps as soon as practicable by adoption society**

**16.** As soon as is reasonably practicable after making a decision to proceed under regulation 15(2) as though the agreement is unlikely to be forthcoming, or from the date of receipt of a notification under regulation 15(3), an approved adoption society shall take such steps, if any, in relation to the case as they consider appropriate and in the interests of the child.

### **Legal process where the child is not subject to supervision requirement**

**17.**—(1) This regulation applies where a child is not subject to a supervision requirement and arrangements for adoption are proposed in respect of him by an adoption agency which is a local authority.

(2) Subject to paragraph (3), an adoption agency shall require to make an application for an order under section 18(1) of the Act in relation to the child by the end of the period of 28 days from the receipt of a certificate specified in regulation 14(1)(d) certifying that the parent or guardian does not agree with the agency’s decision, or from the date that the adoption agency proceeds under regulation 15(2) as though such agreement is unlikely to be forthcoming.

(3) Paragraph (2) does not apply where an application for an adoption order has been made in relation to the child.

### **Legal process where the child is subject to supervision requirement**

**18.—**(1) This regulation applies where a child is subject to a supervision requirement and arrangements for adoption are proposed in respect of him by an adoption agency which is a local authority.

(2) Where an adoption agency decides to proceed under regulation 15 as though such agreement as mentioned is unlikely to be forthcoming, the agency shall within 7 days from the date of the decision notify under section 73(4)(c)(ii) of the 1995 Act the Principal Reporter of this in terms of regulation 12(5).

(3) Subject to paragraph (4), where the adoption agency receives a report from a children's hearing under section 73(13) of the 1995 Act providing advice which supports the decision of the agency in relation to the child concerned the agency, where paragraph (2) applies, shall within a period of 28 days from the date of the children's hearing make an application for an order under section 18(1) of the Act.

(4) Subject to paragraph (5), where the adoption agency receives a report from a children's hearing further to section 73(13) of the 1995 Act which provides advice which does not support the decision of the agency in relation to the child, the agency shall within 28 days from the date of the children's hearing review its decision in the matter and come to a further decision taking into account the report from the children's hearing and any further recommendations from the adoption panel that it may wish to seek and shall notify the Principal Reporter of its decision.

(5) Subject to paragraph (6), where the adoption agency decides further to paragraph (4) that adoption remains in the best interests of the child, the agency shall make an application for an order under section 18(1) of the Act provided that such application must be within the same 28 days specified in paragraph (4).

(6) Paragraphs (3), (4) and (5) do not apply where an application for an adoption order has been made in relation to the child.

### **Placement for adoption**

**19.—**(1) Where an adoption agency has decided in accordance with regulation 12(1) that a prospective adopter would be a suitable adoptive parent for a particular child it shall provide the person proposing to adopt the child with—

- (a) written information about the child's background, parentage, health and mental and emotional development;
- (b) written advice about—
  - (i) the need to tell the child about his adoption and origins;
  - (ii) the provisions in the Act relating to the right of adopted persons to obtain information from the Register of Births and the availability of counselling services for adopted persons under section 45 of the Act; and
  - (iii) the availability of counselling services on any problems relating to the adoption; and
- (c) a copy of a report based on the medical findings on that child obtained under regulation 9.

(2) The adoption agency shall, in connection with the placement of a child for adoption with a prospective adopter—

- (a) notify the local authority in whose area the prospective adopter resides (if different from the agency making the placement) in writing of the placement with particulars of the placement;
- (b) notify the education authority in whose area the prospective adopter resides in writing of the placement with particulars of the placement if the child is of compulsory school

- age within the meaning of section 31 of the Education (Scotland) Act 1980<sup>(6)</sup>, and such notification shall take place before the placement if the adoption agency's medical adviser considers the child to have a problem of medical significance or special educational needs;
- (c) notify the health board in whose area the prospective adopter resides in writing of the placement with particulars of the placement, and such notification shall take place before the placement if the adoption agency's medical adviser considers the child to have a problem of medical significance to his future care;
  - (d) send a written report of the child's health history and current state of health to the prospective adopter's registered medical practitioner before the proposed placement, together with particulars of the proposed placement;
  - (e) notify in writing the parents of the child, including where the agency considers this to be in the child's best interests the father or mother of a child who is a parent in terms of section 15(1) of the 1995 Act but does not have parental responsibilities, or the guardian of the child if their whereabouts are known to the adoption agency, that the child has been placed for adoption, but no such notification shall be given to a person who has made a declaration under section 18(6) or 19(4) of the Act (declaration as to no further involvement with the child); and has not withdrawn that declaration under section 19 of the Act;
  - (f) ensure that the child is visited on its behalf within one week of his placement with a prospective adopter and thereafter on such other occasions as the adoption agency considers necessary in order to supervise the child's well-being as long as the child and the prospective adopter remain domiciled in Great Britain or until an adoption order under section 12 of the Act has been made by the court in favour of the prospective adopters;
  - (g) ensure that written reports are produced reporting on the said visits.

#### **Progress reports under section 19 of the Act**

**20.** Where parental responsibilities and rights relating to a child who is in Great Britain have been transferred from one adoption agency to another by virtue of an order under section 21 of the Act, the agency from which those parental responsibilities and rights are transferred shall provide such information to the agency receiving the parental responsibilities and rights as it may require to enable it to comply with its duty under section 19(2) and (3) of the Act (progress reports to relevant parent).

#### **Review of case where no placement made within 6 months of freeing for adoption**

**21.** Where a child has been freed for adoption by virtue of an order under section 18 of the Act and the child has not been placed for adoption in accordance with the Act and these regulations after 6 months from the making of that order, the adoption agency to which the parental responsibilities and parental rights are transferred by virtue of section 18 or 21 of the Act shall review that child's case forthwith to determine why no placement has been made and what action, if any, should be taken to safeguard and promote his welfare; and thereafter the agency shall review the case at intervals of not more than 6 months until the child has been placed for adoption.

#### **Provision of information to courts by adoption agencies**

**22.—**(1) Where application is made to a court—

- (a) by an adoption agency for an order under section 18 of the Act freeing a child for adoption;
- or

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(6) 1980 c. 44.

- (b) by a person proposing to adopt a child and with whom the child has been placed by an adoption agency under the Act and in accordance with these regulations,

the adoption agency shall provide, within such period as may be specified in a timetable drawn up by the court under section 25A of the Act and in accordance with any directions given by the court under that section, a report to the court to which application has been made giving such information on the background and circumstances of the child, his family and (where appropriate) the persons proposing to adopt him as it has been able to discover in accordance with these Regulations and any other matters relevant to the operation of section 6 of the Act (duty to promote welfare of child) as read with section 6A or as may be required by the court in accordance with section 23 of the Act (reports where child placed by agency).

(2) The adoption agency shall also provide to the court to which an application specified in paragraph (1) has been made any report by a children's hearing providing advice on the application obtained in terms of section 73(13) of the 1995 Act or that provision as applied by section 22A(3) of the Act.

### **Confidentiality and preservation of case records**

**23.**—(1) Subject to regulation 24, any information obtained or recommendations, reports or decisions made by virtue of these Regulations or given to the adoption agency, shall be treated by the agency as confidential.

(2) Where a case record has been set up by an adoption agency in respect of a child or a prospective adopter any report, recommendation or decision made by that agency by virtue of these Regulations in respect of that child or that prospective adopter shall be placed on the case record relating to that child or, as the case may be, that prospective adopter, and any case records set up by the agency together with the indexes to them shall be kept in a place of special security.

(3) Subject to regulation 26(2), an adoption agency shall preserve the indexes to all its case records and the case records in respect of those cases in which an adoption order is made in a place of special security for at least 75 years and shall preserve other case records in a place of special security for so long as it considers appropriate; and such case records and indexes may be preserved on computer records or such other system as reproduces the total contents of any such record or index.

### **Access to case records and disclosure of information**

**24.**—(1) Subject to paragraph (3), an adoption agency shall provide such access to its case records and the indexes to them and disclose such information in its possession, as may be required—

- (a) to those holding an inquiry under section 6A of the Social Work (Scotland) Act 1968<sup>(7)</sup> (inquiries), for the purposes of such an inquiry;
- (b) to the Secretary of State;
- (c) to the Commissioner for Local Administration in Scotland appointed under section 24 of the Local Government (Scotland) Act 1975<sup>(8)</sup> for the purpose of any investigation conducted under Part II of the Act;
- (d) to the persons and authorities referred to in regulations 12, 19 and 20 to the extent specified in those regulations;
- (e) to a court under regulation 22 to the extent specified in that regulation;

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(7) 1968 c. 49.

(8) 1975 c. 30.

- (f) to a curator ad litem or reporting officer appointed under rules made pursuant to section 58 of the Act (curator ad litem and reporting officer) for the purpose of the discharge of his duties in that behalf.
- (2) Subject to paragraph (3), an adoption agency may provide such access to its case records and the indexes to them and disclose such information in its possession, as it thinks fit—
  - (a) for the purposes of carrying out its functions as an adoption agency; and
  - (b) to a person who is authorised in writing by the Secretary of State to obtain information for the purposes of research.
- (3) A written record shall be kept by an adoption agency of any access provided or disclosure made by virtue of this regulation.

### **Disclosure of information to adopted person**

**25.** Where an adopted person who has attained the age of 16 years, if in Scotland, or 18 years, if in England or Wales, applies for counselling under section 45(6) of the Act or section 51 of the Adoption Act 1976<sup>(9)</sup>, an adoption agency may disclose information which it has relating to that person's adoption to—

- (a) that adopted person;
- (b) the local authority for the area in Scotland where the adopted person lives, if he has applied to them for counselling;
- (c) the Registrar General for England and Wales;
- (d) the local authority for the area in England and Wales where the adopted person is, if he has applied to them for counselling;
- (e) the local authority for the area in England or Wales where the court sat which made the order relating to the adopted person, if he has applied to that authority for counselling.

### **Transfer of case records**

**26.—**(1) Subject to paragraphs (2) and (3), an approved adoption society may transfer a copy of a case record (or part thereof) to another adoption agency when it considers this to be in the interests of a child or prospective adopter to whom the record relates, and a written record shall be kept of any such transfer.

(2) An approved adoption society which intends to cease to act or exist as such shall forthwith either transfer its case records to another adoption agency having first obtained the Secretary of State's approval for such transfer, or transfer its case records—

- (a) to the local authority in whose area the society's head office is situated; or
- (b) in the case of an approved adoption society which amalgamates with another approved adoption society to form a new approved adoption society, to the new society.

(3) An adoption agency to which case records are transferred by virtue of paragraph 2(a) or (b) shall notify the Secretary of State in writing of such transfer.

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(9) 1976 c. 36.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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St Andrew's House,  
Edinburgh  
24th December 1996

*James Douglas-Hamilton*  
Minister of State, Scottish Office

## SCHEDULE 1

Regulation 3(1)(c)

### INFORMATION IN APPLICATION FOR APPROVAL TO ACT AS OR CONTINUE TO ACT AS AN ADOPTION SOCIETY FOR A SPECIFIC SERVICE

1. The adoption society shall specify the following:—
  - (a) the nature of the service or services to be the subject of approval;
  - (b) the need for such a service or services; and
  - (c) how that service or those services contribute to the Scottish Adoption Service.
2. The applicant shall also provide information on the following:—
  - (a) the number and qualifications of its staff;
  - (b) its financial resources;
  - (c) the organisation and control of its operations;
  - (d) its procedures for dealing with complaints; and
  - (e) if the application is for continuing approval, a record of its activities in the previous 3 years.

## SCHEDULE 2

Regulations 8, 9

### PART 1

#### PARTICULARS RELATING TO THE CHILD

1. Name, sex, date and place of birth and address.
2. Whether the child's father was married to his mother at the time of birth or subsequently. If they have not married, whether he has any parental responsibilities and rights through an order or an agreement.
3. Nationality and race.
4. Physical description.
5. Details of any court orders relating to the child, including residence, maintenance, or parental contact or court orders awarding or depriving any person of the parental responsibilities or rights in respect of the child.
6. Details of any current or previous supervision requirements relating to the child imposed by children's hearings.
7. Details of any brothers and sisters, including dates of birth, addresses, arrangements in respect of residence and contact and whether any brother or sister is also being considered for adoption and, if so, whether it would be in the child's interests to place them together.
8. Extent of contact by all members of the child's birth family, including his father even if he is not married to the mother, and details of any court orders relating to contact.
9. Religious persuasion of the child including details of any baptism, confirmation or equivalent ceremonies and level of current religious observance.
10. Personality and social development.

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11. If the child has been looked after by a local authority details (including dates) of placements, including particulars of the persons with whom the child has had his home and observations on the care provided.

12. Names and addresses of schools attended and educational attainments.

13. Any special needs in relation to the physical or mental health of the child and his emotional and behavioural development, and whether he is the subject of a record of special educational needs under the Education (Scotland) Act 1980(10).

14. The child's views in relation to adoption and, if relevant, an application under section 18 of the Act taking into account his age and maturity, including any wishes in respect of his religious persuasion, racial origin and cultural and linguistic background.

15. Whether the child has any right to or interest in any property.

16. Whether an insurance policy for the payment on the death of the child of money for funeral expenses has been effected.

17. A comprehensive medical report signed by a fully registered medical practitioner, including such details as the medical adviser to the adoption agency considers necessary in the circumstances of the child.

18. Any other relevant information which the adoption agency considers may assist the panel.

## PART II

### PARTICULARS RELATING TO EACH PARENT, INCLUDING WHERE APPROPRIATE, A FATHER OR MOTHER WHO DOES NOT HAVE PARENTAL RESPONSIBILITIES OR RIGHTS IN RELATION TO THE CHILD

1. Name, date and place of birth and address.

2. Marital status and date and place of marriage (if any).

3. Nationality and race.

4. Past and present relationship (if any) with other birth parent including an assessment of its stability.

5. Names, addresses and brief details of the personal circumstances of parents of the birth parents and any of the birth parents' brothers and sisters, with their ages or ages at death.

6. Physical description.

7. Personality.

8. Religion, including any wishes in respect of the child's religious upbringing which each parent has in respect of the child's adoption.

9. Educational attainments.

10. Past and present occupation.

11. Whether the mother, if she has parental responsibilities, agrees to the child being adopted and, if not, her reasons for not agreeing.

12. Whether the father, if he has parental responsibilities, agrees to the child being adopted and, if not, his reasons for not agreeing.

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(10) 1980 c. 44.



13. If the father or mother does not have parental responsibilities in relation to the child whether he or she is intending to apply for, a parental responsibilities order or enter into a parental responsibilities agreement.

14. Whether there is any history of genetically transmissible or other significant disease in the family history of either the father's or mother's family.

15. A comprehensive medical report signed by a fully registered medical practitioner, including such details as the medical adviser to the adoption agency considers necessary in regard to each parent.

16. Any other relevant information which the adoption agency considers may assist the panel.

### PART III

#### PARTICULARS RELATING TO A GUARDIAN

1. Particulars referred to in paragraphs 1-3, 6-10, 15 and 16 of Part II.
2. Whether the guardian agrees to the child being adopted, and if the guardian does not agree, his reasons for not agreeing.

### PART IV

#### PARTICULARS RELATING TO EACH PROSPECTIVE ADOPTER

1. Name, date and place of birth.
2. Address.
3. Nationality and race.
4. Whether the proposed adopter has his home in Great Britain and, if not, the address at which he has his home, if different from 2 above.
5. Whether the proposed adopter is domiciled or habitually resident in the UK (ie England, Wales, Scotland, Northern Ireland) the Channel Islands or the Isle of Man, and, if not, the country in which he is domiciled or habitually resident. If habitually resident, for how long.
6. If the proposed adopter intends to apply for an order under section 49 of the Act, whether he intends to adopt the child in law or in fact in the country in which he is domiciled.
7. If there are two proposed adopters—
  - (a) the date and place of the proposed adopters' marriage;
  - (b) whether either proposed adopter has previously been married;
  - (c) if so, whether that marriage was dissolved or annulled;
  - (d) the grounds for the divorce or annulment;
  - (e) whether there are any financial commitments in respect of a former spouse and/or children of a previous marriage.
8. If there is only one proposed adopter, whether that person is married; if so why the spouse does not join in the application, and in particular whether the spouse:—
  - (a) cannot be found;
  - (b) is separated and living apart, and the separation is likely to be permanent; or

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(c) by reason of physical or mental ill-health is incapable of joining in the application.

**9.** Details of other members of the prospective adopter's household (including any children of the prospective adopter even if they are not resident in the household).

**10.** Details of the prospective adopter's parents and any of the prospective adopter's brothers or sisters, with their ages or ages at death.

**11.** Attitudes to adoption of such other members of the prospective adopter's household and of such of the other members of the prospective adopter's family as the adoption agency considers appropriate.

**12.** Personality.

**13.** Previous experience of caring for children and assessment of ability in this respect together, where appropriate, with assessment of ability in bringing up own children.

**14.** Whether the prospective adopter or any other adult member of the household has previously:—

- (a) notified a local authority of his intention to adopt a child;
- (b) applied to an adoption agency with a view to adopting a child;
- (c) had in his care and possession a foster child within the meaning of section 1 of the Foster Children (Scotland) Act 1984<sup>(11)</sup> who has been removed under section 12 of that Act;
- (d) been disqualified or prohibited from keeping a foster child under section 7 or as the case may be section 10 of the Foster Children (Scotland) Act 1984 or disqualified or prohibited under section 68 or as the case may be section 69 of the Children Act 1989<sup>(12)</sup> from fostering a child privately;
- (e) had in his care and possession a protected child who has been removed under section 34 of the Adoption Act 1976<sup>(13)</sup>;
- (f) been convicted of an offence mentioned in Schedule 1 to the Criminal Procedure (Scotland) Act 1995<sup>(14)</sup> or of an offence under Schedule 1 to the Children and Young Persons Act 1933<sup>(15)</sup>;
- (g) had parental responsibilities and rights in respect of one or more of his own children transferred to a local authority under section 86 of the 1995 Act or had one or more of such children made subject to care orders under section 31 of the Children Act 1989<sup>(16)</sup>;
- (h) been refused registration as a child minder or worker in a nursery under the Children Act 1989,

and details of any such occurrence.

**15.** Assessment of ability to bring up an adopted child throughout his childhood.

**16.** Religious persuasion including the degree of his religious observance.

**17.** His ability to have regard to a child's religious persuasion, racial origin and cultural and linguistic background.

**18.** Educational attainments.

**19.** Past and present occupations and interests.

**20.** Details of financial circumstances and comments on the living standards of the household.

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(11) 1984 c. 56.

(12) 1989 c. 41.

(13) 1976 c. 36.

(14) 1995 c. 21.

(15) 1933 c. 12.

(16) 1989 c. 41.

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- 21. Opinion of adoption agency as to whether any adoption allowance should be considered.
- 22. Reasons for wishing to adopt a child and extent of understanding of the nature and effect of adoption.
- 23. Names and address of two referees who are not close relatives who will give personal references on the prospective adopter.
- 24. Name and address of the prospective adopter’s registered medical practitioner.
- 25. A comprehensive medical report on the prospective adopter signed by a fully registered medical practitioner, including such details as the medical adviser to the adoption agency considers necessary in the circumstances of each prospective adopter.
- 26. Any other relevant information which the adoption agency considers may assist the panel.

SCHEDULE 3

Regulation 12(5)

FORM OF REFERENCE BY ADOPTION AGENCY TO PRINCIPAL REPORTER FOR ADVICE BY CHILDREN'S HEARING TO THE COURT

**To the Principal Reporter**

(Name of adoption agency) as an adoption agency has considered the case of (name and address of child) who is subject to a supervision requirement dated [ ] by a children’s hearing for (local authority area), and is satisfied for the reasons set out below that the best interests of (name of child) would be served by the agency [applying under section 18 of the Adoption (Scotland) Act 1978 for an order freeing (name of child) for adoption] [placing (name of child) for adoption]\*; and the agency intends to [apply for such an order] [so place (name of child)]\*.

The adoption agency has determined that the agreement of a parent to [adoption application under section 16] [freeing application under section 18]\* of the Adoption (Scotland) Act 1978 is [likely] [unlikely]\* to be forthcoming.

**REASONS REFERRED TO**

(insert reasons)

.....  
(officer of adoption agency)  
(place and date)

\*Delete as appropriate

SCHEDULE 4

Regulation 14(1)(a)(i)

MEMORANDUM

ADOPTION OF CHILDREN

This memorandum is addressed to the parent or guardian of a child for whom an adoption application is to be made. This includes the father and mother of a child even though they do not have parental responsibilities or rights in relation to the child. If any part of this memorandum is not clear to you, you should consult the adoption agency (which may be a local authority social work department or voluntary society). You may seek advice from the adoption agency on any matter connected with the adoption of your child, and may also wish to consult your solicitors. This memorandum is intended for guidance only and is not to be regarded as an authoritative interpretation of the law.

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1. If the court makes an adoption order, your responsibilities and rights (including financial obligations) as a parent or guardian will be transferred to the adopters and they will become in law your child's parents. You will then have no further right to see your child, unless a condition about continuing contact is part of the adoption order or voluntary contact is agreed by the adopters. You will cease to be the child's parent and will have no right to have your child returned to you.

2. If you wish your child to be brought up in a particular religious faith you should inform the adoption agency. The adoption agency is obliged, however, to make the welfare of the child its paramount consideration. At your request, the adoption agency will be able to tell you if there are any adoption societies which specialise in arranging adoptions with families of a particular faith and it will be able to provide you with the appropriate names and addresses if you wish such a society to arrange for your child's adoption.

3. The adoption agency needs to know whether each of the child's parents or guardian agrees with its decision that the child should be adopted. If you are a parent and have parental responsibilities and rights in relation to the child, or are a guardian, you are asked to complete a certificate (Annex A enclosed) indicating whether you agree or disagree with the adoption agency's decision. Agreement is sought in relation to the adoption agency's decision, and is quite separate from the agreement required by a court (see paragraph 6) in any subsequent application. You should read the certificate carefully, complete Part A or Part B and return it to the adoption agency within 28 days of receipt. This should provide you with sufficient time to take legal advice should you wish to do so. If you agree with the adoption agency's decision, then the adoption agency will make arrangements to have your child adopted. If you do not agree with the adoption agency's decision or do not reply within the 28 days then the agency, if it decides to proceed, will make an application to the court to have the matter resolved – the timescales depend on your child's circumstances, and the adoption agency or your solicitor will be able to advise you of how long this will take. In the event of an adoption application not being possible or appropriate within the timescale required for an application to be made, the adoption agency will apply to the court for an order to have the child declared free for adoption without any further parental involvement. The adoption agency can provide you with further information on this order.

4. If you sign the form of agreement to the agency's decision and your child is subsequently placed with a person wishing to adopt him, then you will not be entitled to have your child returned to you if you change your mind, unless you obtain the permission of the court or the adoption agency. If you do change your mind you should inform the adoption agency at once.

5. Once your child is placed with adopters, they then have to apply to a court for an adoption order. Before making an order, the court will require to know whether you (except where you are a father or mother of the child who does not have parental responsibilities and rights) and any other parent or guardian of the child freely and in full understanding of what is involved, agree unconditionally to your child being adopted. The court will also have enquiries made to check that it will be in the best interests of your child that he should be adopted by the proposed adopters.

6. After the adoption application is made to the court, you will be asked to sign a form of agreement which can be shown to the court as evidence of your agreement. The proposed adopters will either be referred to on this form by a number or they will be named. If they are referred to by a number it will not be possible to tell you who they are. The adoption agency arranging the adoption will explain the reasons for this and will be glad to give you information about the personal circumstances and interests of the proposed adopters and to answer your questions about them as far as possible. Do not sign the form of agreement unless you are willing that your child should be adopted.

7. The court cannot make an adoption order without your agreement unless it dispenses with your agreement on certain grounds. The grounds on which a court can dispense with a parent's agreement are that he or she:-

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- (a) is not known, cannot be found, or is incapable of giving agreement;
- (b) is withholding agreement unreasonably;
- (c) has persistently failed, without reasonable cause, to fulfil one or other of the following parental responsibilities in relation to the child–
  - (i) the responsibility to safeguard and promote the child’s health, development and welfare; or
  - (ii) if the child is not living with him, the responsibility to maintain personal relations and direct contact with the child on a regular basis;
- (d) has seriously ill-treated the child, whose re-integration into the same household as the parent or guardian is, because of the serious ill-treatment, or for other reasons, unlikely.

8. You are not allowed to receive any money for giving your agreement.

9. When an adoption order is made, the Registrar General for Scotland makes an entry in the Adopted Children Register showing the adopters as the parents of your child. A full extract and an abbreviated certificate of the entry in that Register (which takes the place of your child’s original birth certificate) can be obtained by the adopters from General Register Office, New Register House, Edinburgh on payment of a fee. When your child reaches the age of 16, he will be entitled to see his original entry in the birth register and to purchase a certificate of entry if he so wishes. This means that when he is 16 he will be able to find out his original names as well as your name and your address when you registered his birth. Should you wish, the adoption agency will discuss with you the implications this may have for you in the future.

CERTIFICATE

TO: (name of Adoption Agency)

I hereby certify that I have received from you a memorandum headed “Adoption of Children” from which I have detached this certificate of acknowledgement and that I have read the memorandum and understood it.

Signature .....

Name .....

Address .....

.....

Date .....

SCHEDULE 5

Regulation 14(1)(a)(ii)

MEMORANDUM

FREEING OF CHILDREN FOR ADOPTION

This memorandum is addressed to the parent or guardian of a child where an application is to be made to the court requesting that the child be “freed for adoption”. This includes the father and mother of a child even though they do not have parental responsibilities or rights in relation to the child. If any part of this memorandum is not clear to you, you should consult the adoption agency. You may seek advice from the adoption agency on any matter connected with the adoption of your child, and you may also wish to consult your solicitor. This memorandum is intended for guidance only and is not to be regarded as an authoritative interpretation of the law.

1. If the court makes an order (called a “freeing order”):

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- your responsibilities and rights as a parent or guardian will be transferred to the adoption agency;
- the adoption agency will then proceed to make arrangements for the child to be placed for adoption as quickly as possible;
- you will no longer be required to contribute financially to the upkeep of your child;
- the person wishing to adopt your child will apply to the court in due course and the court, if on investigation considers that this is in your child's best interests, will make an adoption order without being required to consult you first.

2. If you wish your child to be brought up in a particular religious faith you should inform the adoption agency and it will take your wishes into account in selecting new parents for him as far as possible. The adoption agency is obliged, however, to make the welfare of the child its paramount consideration. At your request, the adoption agency will be able to tell you if there are any adoption societies which specialise in arranging adoptions with families of a particular faith and if so it will try to meet your wishes if you wish such a society to arrange for your child's adoption.

3. The adoption agency needs to know whether each of the child's parents or guardian agrees with its decision that the child should be freed for adoption. If you are a parent and have parental responsibilities and rights in relation to the child or are a guardian, you are asked to complete a certificate (Annex B enclosed) indicating whether you agree or disagree with the freeing application being made. Agreement is sought solely in relation to the adoption agency's decision and is quite separate from the agreement required by the court (see paragraph 5) in the subsequent freeing application. You should read the certificate carefully, complete Part A or Part B and return it to the adoption agency within 28 days of receipt. If you do not indicate your agreement within 28 days, the adoption agency will be obliged to make the freeing application to the court within a set timescale determined by the circumstances of your child – the adoption agency or your solicitor will be able to advise you on how long this will take. If you do agree, and the adoption agency places your child with a person wishing to adopt him, then you will not be entitled to have your child returned to you without permission of the court or the adoption agency if you change your mind. If you change your mind, you should inform the agency at once.

4. The adoption agency has to apply to a court for a freeing order. Before making an order, the court will require to know whether you (except where you are a father or mother of the child who does not have parental responsibilities and rights) and any other parent or guardian of the child freely and with full understanding of what is involved, agree unconditionally to your child being adopted. The court will also have enquiries made to check that it is in the best interests of the child for him to be freed for adoption.

5. After the freeing application is made to the court, you will be asked to sign a form of agreement which can be shown to the court as evidence of your agreement. Do not sign the form of agreement unless you are willing that the child should be adopted and you are also willing to give up your right to be party to the court proceedings when application is made for your child to be formally adopted in due course.

6. The court cannot make a freeing order without your agreement unless it dispenses with your agreement on certain grounds. The grounds on which a court can dispense with a parent's agreement are that he or she:–

- (a) is not known, cannot be found, or is incapable of giving agreement;
- (b) is withholding agreement unreasonably;
- (c) has persistently failed, without reasonable cause, to fulfil one of the following parental responsibilities in relation to the child–
  - (i) the responsibility to safeguard and promote the child's health, development and welfare; or

- (ii) if the child is not living with him, the responsibility to maintain personal relations and direct contact with the child on a regular basis;
  - (d) has seriously ill-treated the child, whose re-integration into the same household as the parent or guardian is, because of the serious ill-treatment, or for other reasons, unlikely.
7. You are not allowed to receive any money for giving your agreement.

### **Declaration by a relevant parent**

8. You will also be asked to decide whether you wish to be involved in any future questions concerning your child's adoption. If you decide that you do not, the adoption agency will ask you to sign a form declaring this. The form, called a "Declaration by a Relevant Parent", will then be given to the court, so that your wishes will be recorded by the court when the freeing order is made. If you make a "Declaration" you will not be given any more information after the freeing order is granted, and you will not be advised of any outcome of any adoption application. Where you have made a Declaration and subsequently change your mind, you may receive information about your child if you advise the adoption agency in writing.

### **Your rights if you do not sign a "Declaration"**

9. If you do not sign a "Declaration", you have the right to be informed about future developments in relation to your child. It is likely that the adoption agency will tell you as soon as an adoption order is made. The adoption agency must write to you within one year and 2 weeks after the freeing order has been made, to tell you what has happened to your child – whether he has been adopted (if you have not already been told of this) or has been placed for adoption but not yet adopted or is still waiting to be placed with adopters. Thereafter the adoption agency has a duty to continue to notify you of any changes in your child's placement until he is adopted.

10. If the adoption agency has not been able to place your child with adopters within the 12 month period, you have the right to ask the court to revoke the freeing order. The adoption agency can also make such an application anytime after the freeing order is made. If the court agrees to do this as being in the best interests of your child, the responsibilities and rights of a parent are awarded to whoever the court considers most appropriate. Any duties relating to payments towards your child's maintenance which were extinguished by the freeing order will be automatically revived on the date when the court revokes that order. During the period when the court is considering your application the adoption agency will not be able to place your child for adoption without the court's permission.

11. If the court does not believe it to be in your child's interests for the freeing order to be revoked, you will not be able to make any further application for revocation unless the court permits this because of a change in circumstances or for any other reason. In such circumstances the adoption agency will continue with its arrangements to find an adoptive home for the child and will not be required to provide you with any further information about his progress or situation.

### **Birth records**

12. When an adoption order is made, the Registrar General for Scotland makes an entry in the Adopted Children Register showing the adopters as the parents of the child. A full extract and an abbreviated certificate of the entry in that Register (which takes the place of the child's original birth certificate) can be obtained by the adopters from General Register Office, New Register House, Edinburgh on payment of a fee. Where the child reaches the age of 16, he will be entitled to see his original entry in the birth register and to purchase a certificate of that entry if he so wishes. This means that when he is 16 he will be able to find out his original names as well as your name and your address when you registered his birth. Should you wish, the adoption agency will discuss with you the possible implications this may have for you in the future.

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

**CERTIFICATE**

**TO:** (name of Adoption Agency)

I hereby certify that I have received from you a memorandum headed "Freeing of Children for Adoption" from which I have detached this certificate of acknowledgement and that I have read the memorandum and understood it.

Signature .....

Name .....

Address .....

.....

Date .....

**SCHEDULE 6**

Regulation 14(1)(d)

**ANNEX APARENT'S AGREEMENT IN RESPECT OF PLACEMENT OF CHILD FOR ADOPTION**



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I

---

living at

---

am the mother/father of

---

who was born on

---

**\*A.** Agree to my child being placed for adoption and I understand that:

- (a) my child will go to live with adopters as that is in his interests;
- (b) as a consequence of giving any agreement, I will not be entitled to remove my child from the adopters without the permission of the adoption agency or the court; and
- (c) when the court considers an adoption application, it will seek my agreement to the making of an adoption order.

**\*B.** Do not agree to my child being placed for adoption and I understand that:

- (a) should the adoption agency wish to continue with their plan to have my child adopted, they must make a freeing application to the court within set timescales (unless an adoption application has already been made) to have the matter determined;
- (b) in the event of an application for an adoption or freeing order being made, the court will seek my agreement to the making of the order.

Signature:

---

Date:

---

**\*Delete as appropriate.**

**NOTE:**

You should delete either A or B and sign both copies of this form. You should keep one of them yourself in a safe place, and the other one will be kept by the agency. If you change your mind and decide against adoption, you should tell your social worker and your solicitor immediately. Once your child has gone to live with adopters the length of time she or he lives with them may influence the court's decision as to whether it is in your child's best interests to stay there. If you have not already consulted a solicitor you are advised to do so. You should show this document to your solicitor and anyone else advising you.

SCHEDULE 7

Regulation 14(1)(d)

ANNEX B PARENT'S AGREEMENT IN RESPECT OF AN APPLICATION TO FREE A CHILD FOR ADOPTION

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

I

\_\_\_\_\_

living at

\_\_\_\_\_

am the mother/father of

\_\_\_\_\_

who was born on

\_\_\_\_\_

\*A. Agree to my child being the subject of an application under section 18 of the Adoption (Scotland) Act 1978 to have him freed for adoption and for his placement with adopters. I understand that:

- (a) my child will go to live with adopters before the freeing application is made if that is in his interests;
- (b) as a consequence of giving any agreement, I will not be entitled to remove my child from the adopters without the permission of the adoption agency or the court; and
- (c) when the court considers the freeing application, it will seek my agreement to the making of the freeing order.

\*B. Do not agree to my child being the subject of an application under section 18 of the Adoption (Scotland) Act 1978 to have him freed for adoption. I understand that:

- (a) should the adoption agency wish to continue with their plan to have my child adopted, they must make a freeing application to the court within set timescales (unless an adoption application has already been made) to have the matter determined;
- (b) in the event of an application for an adoption or freeing order being made, the court will seek my agreement to the making of the order.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

\*Delete as appropriate.

**NOTE:**

You should delete either A or B and sign both copies of this form. You should keep one of them yourself in a safe place, and the other one will be kept by the agency. If you change your mind and decide against adoption, you should tell your social worker and your solicitor immediately. Once your child has gone to live with adopters the length of time she or he lives with them may influence the court's decision as to whether it is in your child's best interests to stay there. If you have not already consulted a solicitor you are advised to do so. You should show this document to your solicitor and anyone else advising you.

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations regulate adoption agencies and make provision inter alia for how adoption societies shall be approved by the Secretary of State (regulation 3), their appointment of adoption panels (regulation 7), the functions of the adoption panels (regulation 11) and the duties of adoption agencies in the adoption process.