



# 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—
- <sup>F1</sup>(a) .....
  - (b) arrangements for assessing children and prospective adopters, and placing children for adoption;
  - <sup>F2</sup>(bb) counselling and assistance (but, without prejudice to sections 51 to 51B, not assistance in cash) to children who have been adopted and to persons who have adopted a child; and
  - (c) counselling for other persons if they have 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.

*Status: Point in time view as at 01/12/2003.*

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[<sup>F3</sup>(3A) In this Part, references to adoption are to the adoption of children, wherever they may be habitually resident, effected under the law of any country or territory, whether within or outside the British Islands.]

(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.

#### Textual Amendments

- F1** S. 1(2)(a) repealed (1.4.1997) by 1995 c. 36, ss. 98(1), 105(5), Sch. 2 para. 2(a), **Sch. 5** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F2** S. 1(2)(bb)(c) substituted for s. 1(2)(c) (1.4.1997) by 1995 c. 36, s. 98(1), **Sch. 2 para. 2(b)** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)
- F3** S. 1(3A) inserted (2.7.2001) by 1999 c. 18, s. 9; S.S.I. 2001/235, **art. 2**

## 2 Local authorities’ social work.

The social services referred to in section 1(3) are the functions of a local authority [<sup>F4</sup>under any of the enactments mentioned in subsection (1B) of section 5 of the <sup>M1</sup>Social Work (Scotland) Act 1968 (power of Secretary of State to issue directions to local authorities in respect of their functions under certain enactments)], 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 [<sup>F5</sup>the Foster Children (Scotland) Act 1984];
- <sup>F6</sup>(d) .....
- (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.

#### Textual Amendments

- F4** Words in s. 2 substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 111(2)**; S.I. 1996/323, **art. 4(1)(c)**
- F5** Words substituted by Foster Children (Scotland) Act 1984 (c. 56, SIF 20), ss. 22, 23, **Sch. 2 para. 6**
- F6** S. 2(d) repealed (1.4.1997) by 1995 c. 36, s. 105(5), **Sch. 5** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)

#### Marginal Citations

- M1** 1968 c. 49.

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### *Adoption societies*

## **3 Approval of adoption societies.**

- [<sup>F7</sup>(1) Subject to any regulations made under section 9(1), a body which is a voluntary organisation may apply to the Secretary of State for his approval to its acting, or as the case may be continuing to act, as an adoption society, whether functioning generally or in relation to some service maintained, or to be maintained, as part of the Scottish Adoption Service and specified in the application (the service so specified being in this section and in section 4 referred to as the body's "specified service").
- (1A) Application under subsection (1) shall be in such manner as may be specified in regulations made by the Secretary of State under this section.
- (2) In considering 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 matters which appear to him to be relevant; and if, but only if, he is satisfied that, as the case may be, the applicant is likely to make, or is making, an effective contribution to the Scottish Adoption Service or to the applicant's specified service, he shall by notice to the applicant give the approval sought.
- (2A) Approval under subsection (2) shall operate from such date as may be 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 <sup>F8</sup> . . . ,
  - [<sup>F9</sup>(aa) the procedures in accordance with which the applicant deals with, or as the case may be proposes to deal with, complaints arising in relation to its exercise of its functions and, where the applicant is already an approved adoption society, the manner in which it deals with particular complaints.]
  - (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 [<sup>F10</sup>geographical areas within which, the services as respects 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 [<sup>F11</sup>, or as the case may be to the applicant's specified service], the Secretary of State shall, subject to section 5(1) and (2), by notice inform the applicant that its application is refused.

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- (7) If not withdrawn earlier under section 4, approval given under this section shall last for [<sup>F12</sup>such period not exceeding] three years from the date on which it becomes operative [<sup>F13</sup>as the Secretary of State may specify in the approval], 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.

#### Textual Amendments

- F7** S. 3(1)-(2A) substituted for s. 3(1)(2) (12.12.1996 for specified purposes and 1.4.1997 for all other purposes) by 1995 c. 36, s. 94(1)(a) (with s. 103(1)); S.I. 1996/3201, art. 3(1)(7) (as amended by S.I. 1997/744, arts. 2, 3)
- F8** Words in s. 3(3)(a) ceased to have effect (12.12.1996 for specified purposes and 1.4.1997 for all other purposes) by 1995 c. 36, s. 94(1)(b) and repealed (1.4.1997) by 1995 c. 36, s. 105(5), Sch. 5 (with s. 103(1)); S.I. 1996/3201, art. 3(1)(7) (as amended by S.I. 1997/744, arts. 2, 3)
- F9** S. 3(3)(aa) inserted (12.12.1996 for specified purposes and 1.4.1997 for all other purposes) by 1995 c. 36, s. 98(1), Sch. 2 para. 3 (with s. 103(1)); S.I. 1996/3201, art. 3(2)(7) (as amended by S.I. 1997/744, arts. 2, 3)
- F10** Words in s. 3(5) substituted (12.12.1996 for specified purposes and 1.4.1997 for all other purposes) by 1995 c. 36, s. 94(1)(c) (with s. 103(1)); S.I. 1996/3201, art. 3(1)(7) (as amended by S.I. 1997/744, arts. 2, 3)
- F11** Words in s. 3(6) inserted (12.12.1996 for specified purposes and 1.4.1997 for all other purposes) by 1995 c. 36, s. 94(1)(d) (with s. 103(1)); S.I. 1996/3201, art. 3(1)(7) (as amended by S.I. 1997/744, arts. 2, 3)
- F12** Words in s. 3(7) substituted (12.12.1996 for specified purposes and 1.4.1997 for all other purposes) by 1995 c. 36, s. 94(1)(e)(i) (with s. 103(1)); S.I. 1996/3201, art. 3(1)(7) (as amended by S.I. 1997/744, arts. 2, 3)
- F13** Words in s. 3(7) inserted (12.12.1996 for specified purposes and 1.4.1997 for all other purposes) by 1995 c. 36, s. 94(1)(e)(ii) (with s. 103(1)); S.I. 1996/3201, art. 3(1)(7) (as amended by S.I. 1997/744, arts. 2, 3)

#### 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 [<sup>F14</sup>, or as the case may be to the body's specified 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.

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### Textual Amendments

**F14** Words in s. 4 inserted (12.12.1996 for specified purposes and 1.4.1997 for all other purposes) by 1995 c. 36, s. 94(2) (with s. 103(1)); S.I. 1996/3201, art. 3(1)(7) (as amended by S.I. 1997/744, arts. 2, 3)

## 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*

#### [<sup>F156</sup> Duty to promote welfare of child.

- (1) Without prejudice to sections 12(8) and 18(8), in reaching any decision relating to the adoption of a child, a court or adoption agency shall have regard to all the circumstances but—
  - (a) shall regard the need to safeguard and promote the welfare of the child concerned throughout his life as the paramount consideration; and
  - (b) shall have regard so far as practicable—
    - (i) to his views (if he wishes to express them) taking account of his age and maturity; and
    - (ii) to his religious persuasion, racial origin and cultural and linguistic background.

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(2) Without prejudice to the generality of paragraph (b) of subsection (1), a child twelve years of age or more shall be presumed to be of sufficient age and maturity to form a view for the purposes of that paragraph.]

**Textual Amendments**

**F15** S. 6 substituted (1.4.1997) by 1995 c. 36, s. 95 (with s. 103(1)); S.I. 1996/3201, art. 3(7) (as amended by S.I. 1997/744, arts. 2, 3)

**Modifications etc. (not altering text)**

**C1** S. 6 applied (1.4.1997) by S.I. 1996/3266, reg. 11(5)

**[<sup>F16</sup>6A Duty to consider alternatives to adoption.**

In complying with its duties under section 6 of this Act, an adoption agency shall, before making any arrangements for the adoption of a child, consider whether adoption is likely best to meet the needs of that child or whether for him there is some better, practicable, alternative; and if it concludes that there is such an alternative it shall not proceed to make those arrangements.]

**Textual Amendments**

**F16** S. 6A inserted (1.4.1997) by 1995 c. 36, s. 96 (with s. 103(1)); S.I. 1996/3201, art. 3(7) (as amended by S.I. 1997/744, arts. 2, 3)

**Modifications etc. (not altering text)**

**C2** S. 6A applied (1.4.1997) by S.I. 1996/3266, reg. 11(5)

**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.

**Modifications etc. (not altering text)**

**C3** S. 7 applied (1.4.1997) by S.I. 1996/3266, reg. 11(5)

*Supplemental*

**<sup>F17</sup>8** .....

**Textual Amendments**

**F17** S. 8 repealed (1.4.1997) by 1995 c. 36, ss. 98(1), 105(5), Sch. 2 para. 4, Sch. 5 (with s. 103(1)); S.I. 1996/3201, art. 3(7) (as amended by S.I. 1997/744, arts. 2, 3)

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## 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 [<sup>F18</sup>including, without prejudice to the generality of this subsection, regulations as to procedures for dealing with complaints arising in relation to such exercise.]
- (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.

[<sup>F19</sup>(3A) Regulations under this section may make provision—

- (a) as to the determination by an adoption agency of whether, as regards a child for whose adoption it proposes to make arrangements, any such agreement as is mentioned in sections 16(1)(b)(i) and 18(1)(a) is likely to be forthcoming and as to a period by the end of which, if they have determined that the agreement is unlikely to be forthcoming and if no application has been made for an adoption order in relation to the child, application for an order under section 18(1) shall require to be made in relation to him; and
  - (b) where the case of a child for whose adoption an adoption agency proposes to make arrangements is referred under section 73(4)(c)(ii) or (iii) of the Children (Scotland) Act 1995 to the Principal Reporter (within the meaning of Part II of that Act), as to circumstances in which and, on the occurrence of such circumstances, a period by the end of which, if no application has been made for an adoption order in relation to the child, application for an order under section 18(1) shall require to be made in relation to him.]
- (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.

### Textual Amendments

**F18** Words in s. 9(2) added (12.12.1996 for specified purposes and 1.4.1997 for all other purposes) by 1995 c. 36, s. 98(1), **Sch. 2 para. 5(a)** (with s. 103(1)); S.I. 1996/3201, **art. 3(4)(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)

**F19** S. 9(3A) inserted (12.12.1996 for specified purposes and 1.4.1997 for all other purposes) by 1995 c. 36, s. 98(1), **Sch. 2 para. 5(b)** (with s. 103(1)); S.I. 1996/3201, **art. 3(4)(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)

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### Textual Amendments

**F20** S. 10 repealed by [Health and Social Services and Social Security Adjudications Act 1983 \(c. 41, SIF 113:3\)](#), ss. 9, 30, Sch. 2 para. 39, **Sch. 10 Pt. I**

## 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.

[<sup>F21</sup>(2) An adoption society which is—

(a) approved as respects England and Wales under section 3 of the Adoption Act <sup>M2</sup>1976: or

(b) registered as respects Northern Ireland under Article 4 of the Adoption (Northern Ireland) Order <sup>M3</sup>1987,

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 or, as the case may be, Article 3 of that Order.]

(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

[<sup>F22</sup>(c) both receives a child placed with him in contravention of subsection (1) and knows that the placement is with a view to his adopting the child,]

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.

### Textual Amendments

**F21** S. 11(2) substituted (14.10.1991) by [Children Act 1989 \(c. 41, SIF 20\)](#), ss. 88, 108, **Sch. 10 para. 32** (with [Sch. 14 para. 1\(1\)](#)); S.I. 1991/828, **art. 3(2)** (as amended by S.I. 1997/744, **arts. 2, 3**)

**F22** S. 11(3)(c) substituted (1.4.1997) by [1995 c. 36, s. 98\(1\)](#), **Sch. 2 para. 6** (with s. 103(1)); S.I. 1996/3201, **art. 3(7)** (as amended by S.I. 1997/744, **arts. 2, 3**)

### Marginal Citations

**M2** 1976 c.36 (49:11).

**M3** S.I. 1987/2203 (N.I. 22).



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