



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 [^{F1} registered adoption services].
- (2) The facilities to be provided as part of the service maintained under subsection (1) include—
- ^{F2}(a)
 - (b) arrangements for assessing children and prospective adopters, and placing children for adoption;
 - [^{F3}(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 [^{F4} registered adoption services] 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Status: Point in time view as at 01/04/2004.

Changes to legislation: Adoption (Scotland) Act 1978, Part I is up to date with all changes known to be in force on or before 29 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

[^{F5}(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 [^{F6}registered adoption service] may be referred to as an adoption agency.

[^{F7}(5) In this Act, “registered adoption service” means an adoption service provided as mentioned in section 2(11)(b) of the Regulation of Care (Scotland) Act 2001 (asp 8) and registered under Part 1 of that Act.]

Textual Amendments

- F1** Words in s. 1(1) substituted (1.4.2004) by Regulation of Care (Scotland) Act 2001 (asp 8), s. 81(2), **sch. 3 para. 7(2)(a)**; S.S.I. 2004/100, art. 2(e) (with arts. 3, 4) (as amended (30.9.2004) by S.S.I. 2004/377, art. 2)
- F2** 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**)
- F3** 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**)
- F4** Words in s. 1(3) substituted (1.4.2004) by Regulation of Care (Scotland) Act 2001 (asp 8), s. 81(2), **sch. 3 para. 7(2)(a)**; S.S.I. 2004/100, art. 2(e) (with arts. 3, 4) (as amended (30.9.2004) by S.S.I. 2004/377, art. 2)
- F5** S. 1(3A) inserted (2.7.2001) by 1999 c. 18, s. 9; S.S.I. 2001/235, **art. 2**
- F6** Words in s. 1(4) substituted (1.4.2004) by Regulation of Care (Scotland) Act 2001 (asp 8), s. 81(2), **sch. 3 para. 7(2)(b)**; S.S.I. 2004/100, art. 2(e) (with arts. 3, 4) (as amended (30.9.2004) by S.S.I. 2004/377, art. 2)
- F7** S. 1(5) inserted (1.4.2004) by Regulation of Care (Scotland) Act 2001 (asp 8), s. 81(2), **sch. 3 para. 7(2)(c)**; S.S.I. 2004/100, art. 2(e) (with arts. 3, 4) (as amended (30.9.2004) by S.S.I. 2004/377, art. 2)

2 Local authorities’ social work.

The social services referred to in section 1(3) are the functions of a local authority [^{F8}under any of the enactments mentioned in subsection (1B) of section 5 of the ^{M1}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 [^{F9}the Foster Children (Scotland) Act 1984];
- ^{F10}(d)
- (e) the provision of residential accommodation for expectant mothers and young children and of day-care facilities;
- ^{F11}(f)
- (g) care and other treatment of children through court proceedings and children’s hearings.

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Textual Amendments

- F8** 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)**
- F9** Words substituted by **Foster Children (Scotland) Act 1984 (c. 56, SIF 20)**, ss. 22, 23, **Sch. 2 para. 6**
- F10** 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**)
- F11** S. 2(f) repealed (1.4.2004) by **Regulation of Care (Scotland) Act 2001 (asp 8)**, s. 81(2), **sch. 3 para. 7(3)**; S.S.I. 2004/100, **art. 2(e)** (with **arts. 3, 4**) (as amended (30.9.2004) by S.S.I. 2004/377, art. 2)

Marginal Citations

- M1** 1968 c. 49.

Adoption societies

F12³ Approval of adoption societies.

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Textual Amendments

- F12** S. 3 repealed (1.4.2004) by **Regulation of Care (Scotland) Act 2001 (asp 8)**, s. 81(2), **sch. 3 para. 7(3)**; S.S.I. 2004/100, **art. 2(e)** (with **arts. 3, 4**) (as amended (30.9.2004) by S.S.I. 2004/377, art. 2)

F13⁴ Withdrawal of approval.

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Textual Amendments

- F13** S. 4 repealed (1.4.2004) by **Regulation of Care (Scotland) Act 2001 (asp 8)**, s. 81(2), **sch. 3 para. 7(3)**; S.S.I. 2004/100, **art. 2(e)** (with **arts. 3, 4**) (as amended (30.9.2004) by S.S.I. 2004/377, art. 2)

F14⁵ Procedure on refusal to approve, or withdrawal of approval from, adoption societies.

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Textual Amendments

- F14** S. 5 repealed (1.4.2004) by **Regulation of Care (Scotland) Act 2001 (asp 8)**, s. 81(2), **sch. 3 para. 7(3)**; S.S.I. 2004/100, **art. 2(e)** (with **arts. 3, 4**) (as amended (30.9.2004) by S.S.I. 2004/377, art. 2)

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Welfare of children

[^{F15}6 **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.
- (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)

[^{F16}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.

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Modifications etc. (not altering text)

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

Supplemental

^{F17}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)

9 Regulation of adoption agencies.

^{F18}(1)

- (2) The Secretary of State may make regulations for any purpose relating to the exercise of its functions by [^{F19}a registered adoption service ^{F20}...
- (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.

[^{F21}(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 [^{F22}this section] 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.

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Textual Amendments

- F18** S. 9(1) repealed (1.4.2004) by [Regulation of Care \(Scotland\) Act 2001 \(asp 8\), s. 81\(2\), sch. 3 para. 7\(4\)\(a\)](#); S.S.I. 2004/100, art. 2(e) (with arts. 3, 4) (as amended (30.9.2004) by S.S.I. 2004/377, art. 2)
- F19** Words in s. 9(2) substituted (1.4.2004) by [Regulation of Care \(Scotland\) Act 2001 \(asp 8\), s. 81\(2\), sch. 3 para. 7\(4\)\(b\)\(i\)](#); S.S.I. 2004/100, art. 2(e) (with arts. 3, 4) (as amended (30.9.2004) by S.S.I. 2004/377, art. 2)
- F20** Words in s. 9(2) repealed (1.4.2004) by [Regulation of Care \(Scotland\) Act 2001 \(asp 8\), s. 81\(2\), sch. 3 para. 7\(4\)\(b\)\(ii\)](#); S.S.I. 2004/100, art. 2(e) (with arts. 3, 4) (as amended (30.9.2004) by S.S.I. 2004/377, art. 2)
- F21** 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](#))
- F22** Words in s. 9(4) substituted (1.4.2004) by [Regulation of Care \(Scotland\) Act 2001 \(asp 8\), s. 81\(2\), sch. 3 para. 7\(4\)\(c\)](#); S.S.I. 2004/100, art. 2(e) (with arts. 3, 4) (as amended (30.9.2004) by S.S.I. 2004/377, art. 2)

10 F23

Textual Amendments

- F23** 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. 1](#)

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.

[^{F24}(2) An adoption society which is—

(a) approved as respects England and Wales under section 3 of the Adoption Act ^{M2}1976: or

(b) registered as respects Northern Ireland under Article 4 of the Adoption (Northern Ireland) Order ^{M3}1987,

but which is not [^{F25}a registered adoption service], 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 [^{F26}a registered adoption service] or a local authority; or

(b) contravenes subsection (1); or

[^{F27}(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,]

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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

- F24** 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**)
- F25** Words in s. 11(2) substituted (1.4.2004) by Regulation of Care (Scotland) Act 2001 (asp 8), s. 81(2), **sch. 3 para. 7(5)(a)**; S.S.I. 2004/100, **art. 2(e)** (with **arts. 3, 4**) (as amended (30.9.2004) by S.S.I. 2004/377, **art. 2**)
- F26** Words in s. 11(3)(a) substituted (1.4.2004) by Regulation of Care (Scotland) Act 2001 (asp 8), s. 81(2), **sch. 3 para. 7(5)(b)**; S.S.I. 2004/100, **art. 2(e)** (with **arts. 3, 4**) (as amended (30.9.2004) by S.S.I. 2004/377, **art. 2**)
- F27** 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).

Status:

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