



# Children (Scotland) Act 1995

## 1995 CHAPTER 36

### PART III

#### ADOPTION

#### 94 Approval of adoption society for specific services.

(1) In section 3 of the 1978 Act (approval of adoption societies)—

(a) for subsections (1) and (2) substitute—

“(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.”;

**Status:** Point in time view as at 12/12/1996. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** Children (Scotland) Act 1995, Part III is up to date with all changes known to be in force on or before 24 May 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)

- (b) in subsection (3)(a), the words “, including in particular its ability to make provision for children who are free for adoption” shall cease to have effect;
  - (c) in subsection (5), for the words “areas within which” substitute “ geographical areas within which, the services as respects which ”;
  - (d) in subsection (6), after the word “Service” insert “ , or as the case may be to the applicant’s specified service ”; and
  - (e) in subsection (7)—
    - (i) for the words “a period of” substitute “ such period not exceeding ”; and
    - (ii) after the word “operative” insert “ as the Secretary of State may specify in the approval. ”.
- (2) In section 4 of that Act (withdrawal of approval), after the word “Service” insert “ , or as the case may be to the body’s specified service, ”.
- (3) In section 65(1) of that Act (interpretation), in the definition of “adoption society”, after the word “for” insert “ , or in connection with, ”.

#### Commencement Information

- II** [S. 94](#) wholly in force at 1.4.1997; [s. 94](#) not in force at Royal Assent see [s.105\(1\)](#); [s. 94](#) in force for certain purposes at 12.12.1996 by [S.I. 1996/3201](#), [art. 3\(1\)](#) (with [arts. 4-6](#) (as inserted (7.3.1997) by [S.I. 1997/744](#), [art. 3](#))); [s. 94](#) in force at 1.4.1997 insofar as not already in force by [S.I. 1996/3201](#), [art. 3\(7\)](#) (with [arts. 4-6](#)) (as amended (7.3.1997) by [S.I. 1997/744](#), [arts. 2, 3](#))

VALID FROM 01/04/1997

#### 95 Welfare of child paramount consideration.

For section 6 of the 1978 Act substitute—

##### “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.”.

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VALID FROM 01/04/1997

**96 Duty of adoption agency to consider alternatives to adoption.**

After section 6 of the 1978 Act there shall be inserted—

**“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.”.

VALID FROM 01/04/1997

**97 Adoption by person married to natural parent.**

(1) In section 12 of the 1978 Act (making of adoption orders)—

- (a) in subsection (3), at the beginning, insert “ Subject to subsection (3A) ”; and
- (b) after subsection (3) insert—

“(3A) Where the adoption order is made by virtue of section 15(1)(aa), its making shall not operate to extinguish the parental responsibilities and parental rights which immediately before the making of the order were vested in the natural parent to whom the adopter is married.”.

(2) In section 15(1) of that Act (adoption by one person)—

- (a) after paragraph (a) insert—
  - “(aa) not being a person who may make application by virtue of paragraph (b) below, is married to a person—
    - (i) who is the natural parent of the child concerned; and
    - (ii) in whom are vested parental responsibilities and parental rights in relation to the child;”;
- (b) in paragraph (b), at the beginning insert—

“not being a person who may make application by virtue of paragraph (aa) above.”.

(3) In section 39 of that Act (status conferred by adoption), for subsection (1) substitute—

- “(1) A child who is the subject of an adoption order shall be treated in law—
  - (a) where the adopters are a married couple, as if—
    - (i) he had been born as a legitimate child of the marriage (whether or not he was in fact born after the marriage was constituted); and
    - (ii) he were not the child of any person other than the adopters;

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- (b) where the adoption order is made by virtue of section 15(1)(aa) as if—
  - (i) he had been born as a legitimate child of the marriage between the adopter and the natural parent to whom the adopter is married (whether or not he was in fact born after the marriage was constituted); and
  - (ii) he were not the child of any person other than the adopter and that natural parent; and
- (c) in any other case, as if—
  - (i) he had been born as a legitimate child of the adopter; and
  - (ii) he were not the child of any person other than the adopter.”.

## 98 Further amendments of the 1978 Act; and interpretation of Part III.

(1) Schedule 2 to this Act, which contains further amendments of the 1978 Act, shall have effect.

(2) In this Part of this Act, “the 1978 Act” means the <sup>M1</sup>Adoption (Scotland) Act 1978.

### Commencement Information

**I2** S. 98 wholly in force at 1.4.1997; s. 98 not in force at Royal Assent see s. 105(1); s. 98(1) in force for certain purposes and s. 98(2) in force at 1.11.1996 by S.I. 1999/2203, art. 3(3), Sch. (with arts. 4-7) (as amended (19.1.1997) by S.I. 1997/137, art. 2); s. 98 in force for certain purposes at 12.12.1996 by S.I. 1996/3201, art. 3(2)-(5) (with arts. 4-6 (as inserted (7.3.1997) by S.I. 1997/744, art. 3)); s. 98 in force for certain purposes at 1.4.1997 by S.I. 1996/3201, art. 3(7) (with arts. 4-6) (as amended (7.3.1997) by S.I. 1997/744, arts. 2, 3); s. 98 wholly in force at 1.4.1998 by S.I. 1996/3201, art. 3(7)(a) (with arts. 4-6) (as amended (7.3.1997) by S.I. 1997/744, arts. 2, 3)

### Marginal Citations

**M1** 1978 c.28.

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