

**The Adoption Agencies (Scotland)  
Regulations 2009**

**SCOTTISH GOVERNMENT  
RESPONSE TO CONSULTATION**

**The Scottish Government**

**Edinburgh, 2009**

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## **Introduction**

The Adoption and Children (Scotland) Act 2007 (the 2007 Act) received Royal Assent on 15 January 2007. The 2007 Act introduced a range of legislative reforms relating to adoption of, and permanent care for, children who cannot remain with their birth families. Once the new legislation is commenced, the existing legislation - the Adoption (Scotland) Act 1978 (the 1978 Act) - will be repealed, except to the extent necessary to maintain the legality of those adoptions that have already been made under it. One consequence of this is that existing Regulations made under the 1978 Act will fall when that Act is repealed. For that reason new Regulations require to be put in place to restate, and amend, extend and improve, existing Regulations. In doing this account has been taken of the report from the Adoption Policy Review Group (APRG) *Adoption: Better Choices for Our Children*, which has already shaped the 2007 Act itself, and the consultation responses.

This report analyses the responses received by the Scottish Government to the Adoption Agencies (Scotland) Regulations consultation. This was the second of a suite of consultations on regulations associated with the 2007 Act. The consultation period ran from 7 July 2008 to 29 August 2008 and produced 28 responses; of which 16 were from local authorities and 12 were from organisations.

This report also analyses the responses received in respect of the consultation on the Adoption Information (Scotland) Regulations (the fourth in the suite of consultations). The consultation period ran from 13 August to 8 October 2008. Sixteen responses were received, of which 10 were from local authorities and 6 were from organisations. As these consist of only 2 Regulations and confer functions on adoption agencies, they have been incorporated into the Adoption Agencies (Scotland) Regulations as regulations 27 and 28.

## **Regulation 2 - Interpretation**

Although there wasn't a specific question on this regulation, one respondent suggested that there should be a definition of "guardian" and that this term should be added into a number of the regulations where there is a reference to "parent". The same respondent felt that there should also be a definition of "adoption agency" to differentiate, where appropriate, between the two types of adoption agency i.e. a local authority or registered adoption service.

### **Scottish Government response/action**

Both "guardian" and "adoption agency" are defined in the 2007 Act and it is not appropriate to repeat definitions in subordinate legislation which are provided in the parent Act. The term "guardian" has been added, where appropriate, to references to "parent".

## **Regulation 3 - Appointment and composition of adoption panels**

### **Question 1: Is a minimum of 6 members (which reflects the current minimum in the 1996 Regulations) reasonable?**

The majority of responses agreed with a minimum of 6 members. Two responses remarked on the removal of the gender requirement (Regulation 7(4) of the 1996 Regulations specify 6 as the minimum and should include at least one man and one woman). Two responses suggested that panels should be called 'Adoption and Permanence panels' and one respondent felt that this regulation should be amended to reflect the fact that not all adoption agencies are required to have a panel.

### **Scottish Government response/action**

The matter of gender balance is best dealt with in guidance rather than making it a requirement as this could present practical difficulties if there was a dearth of one gender or the other. The title of the panel reflects the functions it will exercise in accordance with these Regulations. However, we appreciate that some local authorities call their panels 'Adoption and Permanence Panels' as parents find this more acceptable on occasions when dealing with, for example, permanent fostering rather than adoption. There is no reason why this practice should not continue and this will be reflected in guidance. All local authorities are required to appoint an adoption panel but the regulation has been amended to make clear that only registered adoption services which are either carrying out or are proposing to carry out the functions conferred by these Regulations require to appoint a panel.

### **Question 2: Do you agree with the provisions in Regulation 3 regarding agencies having to be satisfied as to the qualifications for panel membership?**

The majority of the responses agreed with the provisions in this Regulation.

### **Scottish Government response/action**

No action required.

### **Question 3: Should Regulation 3 place a duty on agencies to review the membership of the panel on a regular basis?**

All but two of the fifteen responses agreed that membership should be reviewed but there was no consensus as to how often this should be done. Five respondents felt that there should be no timescale; four suggested three-yearly reviews; one suggested a two-yearly review; one suggested that panel members should serve for either three, five or ten year periods and two felt that the matter should be covered in guidance.

### **Scottish Government response/action**

Regulation 3 has been adjusted to include a requirement to review membership “from time to time” thereby leaving the frequency of reviews at the discretion of each adoption agency.

### **Regulation 4 – Meetings of the adoption panel and joint adoption panel**

#### **Question 4: The quorum is set at 3 in Regulation 3. Is this reasonable?**

All of the responses felt that the quorum should not include the medical and legal advisers. It was also felt that it was not always necessary for the legal adviser to attend when the panel was considering whether adoption was in the best interests of the child or whether an application for a permanence order with authority for the child to be adopted should be made.

### **Scottish Government response/action**

The Regulation has been adjusted to (a) exclude the medical and legal advisers from the quorum and (b) enable advice from the legal adviser to be a substitute for attendance at panel meetings.

### **Regulation 5 – Appointment of medical and legal advisers**

#### **Question 5: Do you agree with the approach in Regulation 5?**

The only point of concern here was in relation to the qualifications of the legal adviser as there is a broader group of solicitors who are “admitted” than those who are qualified to practice. It was felt that the requirements set out in the 1996 Regulations should be replicated.

### **Scottish Government response/action**

The Regulation has been amended to reflect the requirement in the 1996 Regulations.

### **Regulation 6 – Functions of the adoption panel**

#### **Question 6: Do you think anything else needs to be added to Regulation 6?**

Although the majority of responses focussed mainly on how the views of children and birth parents should be made known to the adoption panel, several respondents commented on the requirement for the panel to meet with the prospective adopters before making a recommendation as to their suitability to be adoptive parents. Two respondents suggested that the panel should also be able to make recommendations about reviewing adopters’ approval after a particular period of time if a child has not been placed with them.

#### **Question 7: Do you agree that the role of Adoption and Fostering Panels in relation to permanence plans for children should be covered in guidance instead of by regulation?**

The majority of respondents agreed that this issue should be covered in guidance.

#### **Question 8: Is the duty contained in section 14(4)(b) sufficient to give effect to the APRG recommendation or should a requirement be created whereby the adoption agency ascertains the wishes of the child and pass the information to the adoption panel?**

Six of the respondents (out of a total of 12) felt that the duty contained in section 14(4)(b) of the 2007 Act was sufficient to give effect to the APRG recommendation that children and young people should have the right to make representations to the panel and/or attend them. The other six respondents were of the view that the section 14 duties should be set out in detail.

**Question 9: If a requirement should be created should it be extended to cover birth parents?**

Eight respondents (out of a total of ten) agreed that if a requirement was created for the views of children and young people to be ascertained by the adoption agency the requirement should be extended to birth parents.

**Question 10: Should the definition of “parent” in Regulations 6(4) and (9) be opened up to include parents whose PRR have been removed by a permanence order with authority for the child to be adopted?**

The majority of responses were of the view that the definition should not be opened up to include parents whose PRR have been removed by a permanence order with authority for the child to be adopted.

**Scottish Government response/action**

Regulation 6 has been adjusted to require the panel to give the prospective adopter the opportunity to meet with the panel to discuss the matter of suitability (or continuing suitability) to be an adoptive parent. The role of the Adoption and Fostering Panels in relation to permanence plans for children will be covered in guidance. The requirements of section 14 of the Act apply to courts or adoption agencies when making decisions and not to the role of the adoption panel. A new Regulation 12 has been added which reinforces the requirements of section 14 and also requires an adoption agency to consult and take into account the views of the child’s parents or guardians if their whereabouts are known before referring the child’s case to the adoption panel.

New Regulations 9-11 have been added to provide a system for reviewing the approval of prospective adopters. Regulation 9 carries over the right (Regulation 11 in the consultation draft) of prospective adopters to request a review, whilst Regulation 10 introduces an automatic review after 2 years where no child has been placed with the prospective adopter or where there are concerns about the child’s welfare.

**Regulation 7 – Duties of adoption agencies: placing the child for adoption (now Regulation 18)**

**Question 11: Does Regulation 7 cover the agencies requirements when placing a child for adoption? If not, what is required?**

Several responses took the view that paragraph (1)(a) should refer to “adoption” instead of “placement”. Three responses indicated that the references to “examined” should be references to “assessed” and that the Regulation should contain provision to enable an adoption agency to proceed with a placement in the event that a birth parent refuses permission for medical examination/assessment.

**Question 12: Are the lists in Parts I, II and III of Schedule 1 complete? If not what needs to be added?**

The general view was that there were no glaring omissions from the Schedule. Suggested additions ranged from the inclusion of information about the child’s ethnicity and linguistic needs to information about referees and local authority checks.

A number of comments were made in relation to Schedule 1 as follows:-

Nationality should be covered;

The wording in the Schedule concerning race etc. should be the same as in the Act i.e. religious persuasion, racial origin and cultural and linguistic background;

Part I should include the child’s ethnicity and linguistic needs;

Part I, Paragraph 5 (now paragraph 5 of Part II) should also include the emotional development of the child;

Part I, Paragraph 12 (now paragraph 13 of Part II) should not include particulars of the people with whom the child had been placed by the local authority if this information had been previously withheld in the best interests or for the safety of the child or carers;

Part II (now Part III) should include the address of the child's parents or guardian;

Part II should include referees and local authority checks;

Part II should include a requirement to obtain information from any previous spouses or significant partners about applicant's suitability to adopt;

Part II, Paragraph 3 (now paragraph 2 of Part III) should be amended to include a reference to civil partnership status and date and place of registration of civil partnership.

Part III, Paragraph 11 (now paragraph 11 of Part I) should have "adopter's" inserted between "prospective" and "family";

Part III, Paragraph 14(j) (now paragraph 14(j) of Part I) is quite prescriptive and does not include, for example, people refused registration by the Scottish Social Services Council;

Part III, Paragraph 15 (now paragraph 15 of Part I) should have "and into adulthood" added after "childhood";

Part III, Paragraph 19 (now paragraph 19 of Part I) should possibly read "Past and present interests and chronological employment history";

Part III, Paragraph 21 (now paragraph 21 of Part I) should be removed and included in the Adoption Allowances Regulations;

Part III, Paragraph 23 ((now paragraph 23 of Part I) needs to be more specific that references must be sought and not just that 2 names and addresses are sought. Also needs some clarification that it is 2 references per applicant and not 2 references between them. Would be good practice to seek 2 personal references per applicant, one reference from a referee who knows the applicants as a couple and employer references for each applicant;

Part III, Paragraph 23 (now paragraph 23 of Part I) should say "at least two referees, two of whom are not relatives";

Part III, Paragraph 23 (now paragraph 23 of Part I) should require information from 3 referees rather than current practice of 2;

### **Scottish Government response/action**

Regulation 7 of the consultation draft and the reference to "placement" therein replicates the requirement in the 1996 Regulations (Regulation (9)(1)(h) of those Regulations) that an adoption agency could not place or secure the placing of a child in the care and possession of the person proposing to adopt the child unless the agency had concluded that the placement would best meet the welfare of the child. This provision (new Regulation 18) concerns what must be done before a child may be placed for adoption.

The Regulation has been adjusted to the effect that the requirement to have a medical report on the child is only where it is reasonably practicable to obtain such a report.

The comments on Schedule 1 have been dealt with as follows:-

Part II, Paragraph 2 now refers to "ethnicity" and paragraph 6 covers "linguistic and cultural needs";

Part II, Paragraph 13 replicates paragraph 11 of Part I of Schedule 2 to the 1996 Regulations. Guidance can cover the need, where appropriate, to withhold any information about previous carers;

Part III, Paragraph 1 now requests the address of the parents or guardian of the child;

Part I, Paragraph 11 now has "adopter's" inserted between "prospective" and "family";

Part II, Paragraph 5 has been adjusted to include "emotional development";

Part I, Paragraph 15 relates to a person's ability to raise a child throughout their childhood. Once the child reaches adulthood they are no longer being "raised";

Part I, Paragraph 23 has been adjusted to prescribe a minimum of 2 referees. Any other requirements can be covered in guidance;

Part I, Paragraph 14(j) has been adjusted to cover persons who have been refused registration as a child minder or a nursery worker under the Regulation of Care (Scotland) Act 2001;

Part III, Paragraph 21 has been retained. It replicates paragraph 21 of Part IV of Schedule 2 to the 1996 Regulations. It seems sensible for a view on an adoption allowance to be taken at the time when an agency

is considering whether assistance is likely to be required to either support a placement or to continue the adoption arrangements after an adoption order has been made.

Part III, Paragraph 2 has been amended to include a reference to civil partnership status and date and place of civil partnership registration.

### **Regulation 8 – Duties of adoption agencies; assessment of prospective adopters (now Regulation 7)**

#### **Question 13: Regulation 8 replicates regulation 10 of the 1996 Regulations. Do you have any comments?**

The majority of responses were content with this Regulation. Two respondents picked up an incorrect reference to “adoptive parent” in paragraph (4). One response wondered whether the regulation could be amended to deal with situations where, having started an assessment, applicants are effectively “counselled out” as they are unlikely to be approved as they are, for example, undergoing fertility treatment. One respondent asked if “publish” (in relation to an agency’s assessment criteria) could be defined.

#### **Scottish Government response/action**

The reference to “adoptive parent” has been amended. The matter of dealing with potential adopters who have been “counselled out” of the assessment process is too prescriptive for Regulations and will be covered in guidance. The manner in which an agency publishes its assessment criteria is best left to the discretion of the agency. Standard 18 of the *National Care Standards for Adoption Agencies* states that an agency will publish details of its adoption services “in a variety of ways, including libraries and online”.

### **Regulation 9 – Adoption agency decisions (now Regulation 13)**

Although there were no specific questions asked in relation to this Regulation three respondents provided comments on it. Two of the comments related to the 14 day timescale within which an agency must make a decision and one comment suggested that the words “with authority to adopt” should be inserted after “for a permanence order” in paragraph (5).

#### **Scottish Government response/action**

The 14 day timescale has been tied to the date of the adoption panel recommendation. The words “with authority to adopt” have not been included because paragraph (5) of Regulation 9 refers to 73(c) of the Children (Scotland) Act 1995 which only refers to “permanence order”.

### **Regulation 10 – Notification of adoption agency decisions (now Regulation 14)**

#### **Question 14: Does Regulation 10 cover the notification requirements in full? If not, what is required?**

#### **Question 15: Is an “unmarried father” a “parent” in terms of Regulation 10(1)(a) and (2)(a)? If not, is the duty at section 105 of the Act sufficient to protect the unmarried father’s interest?**

Several respondents commented on the need for an agency to notify any other relative who has expressed a view on the placement of the child for adoption. Four respondents thought that there should be a requirement to notify the child, subject to age and maturity.

Four respondents were of the view that an “unmarried father” was a “parent” and four were not but they felt that the duty in section 105 was sufficient to protect the unmarried father’s interest. Two respondents were of the view that notification should be at the agency’s discretion.

Two respondents found paragraph (4) confusing.

### **Scottish Government response/action**

The need to notify any other relative stems from section 14(5) of the Act which requires an agency, when placing a child for adoption, to have regard to the views of parents, guardians and other relatives of the child. Notifying the child of the agency's decision would be in keeping with the general approach of treating the child as an individual (where they have the capacity to understand). The regulation has therefore been adjusted accordingly.

The "unmarried father" will be included at paragraph (1)(b) and (2)(b) but only where he has parental rights and responsibilities as defined in the Children (Scotland) Act 1995 (PRR) (in line with paragraph (3)) so this will include a father who has entered into a section 4 (of the 1995 Act) agreement, obtained a section 11 order or is named on the birth certificate. A father with no PRR will only be notified if the agency considers it to be in the child's interests (paragraph (2)(c) of new regulation 14).

Paragraph (4) is a replication of Regulation 12(4) of the 1996 Regulations except that the reference to an application under section 18 of the 1978 Act has been replaced by a reference to an application for a permanence order under section 80 of the 2007 Act. However, Regulation 12(4) prescribed the steps an approved adoption society should take where a decision was made that adoption was not in the child's interests, an application for an order under section 18 of the 1978 Act should be made or they had decided that parental agreement to placing the child for adoption was not forthcoming. Although Regulation 12(4) only applied to approved adoption societies (and subsequently registered adoption services), we feel that it would be useful to have a provision applicable to a local authority specifying what must be done if there is a decision that adoption is not the way forward. Paragraph (4) of draft Regulation 10 is now Regulation 15.

### **Regulation 11 – Review of adoption agency decisions (now Regulation 9)**

**Question 16: Do you have any views on Regulation 11? Could it be strengthened in any way?**

**Question 17: Are the time limits of 28 and 14 days in Regulation 11 acceptable?**

The majority of respondents were content with this Regulation. Of the fifteen responses, nine felt that the time limits were acceptable.

### **Scottish Government response/action**

No action required.

**Regulation 12 – Provision of information to parents; decision by adoption agency to make arrangements for adoption (now Regulation 16)**

**Regulation 13 – Provision of information to parents; decision of adoption agency that an application under section 80 of the Act should be made (now Regulation 17)**

**Question 18: Could the provisions in Regulations 12 and 13 be strengthened in any way?**

**Question 19: Do Schedules 2-7 cover all the requirements? If not, what should be added?**

**Question 20: Is our understanding of "parent" correct in Regulations 12 and 13?**

Several respondents suggested that Regulations 12 and 13 should be combined because where a decision to pursue a permanence order with authority to adopt has been taken, there will always have been a recommendation that adoption is in the best interests of the child.

Two respondents expressed concern at the onus placed on adoption agencies to "ensure" the signature and return of the relevant certificates. It was felt that these Regulations require an agency to coerce or persuade parents to sign and return whereas the obligation should only be to ensure the issue of the certificates.

Two responses commented on the requirement to list the information set out in Part II of Schedule I (information about the child's family). While this reflects the 1996 Regulations, it was felt that the information should have been obtained at the stage of reporting to the panel.

In response to the question as to whether Schedules 2-7 covered all the requirements, the majority of respondents felt that they did. Three respondents thought that parents would have difficulty in understanding Schedules 2 and 5.

Respondents who disagreed with our understanding of "parent" provided the following comments:

"It is not appropriate that all parents be issued with the memorandum and certificates. The Court will not be looking to dispense with the agreement of parents who do not have parental rights and responsibilities. It is unfair to somehow give natural parents without parental rights and responsibilities some expectation that they will be asked to give formal consent to the application. Such individuals will be free to seek to enter the Court process but their agreement will not be dispensed with. Schedule 4 and Schedule 7 require the parent upon whom this form is served will be asked to sign a form that states "I understand that when the Court considers the Permanence Order/Adoption Order application it will seek my agreement". This of course is not the case, if the parent does not have parental rights and responsibilities. It is one thing to decide that in certain cases it is appropriate in the interests of the child that a parent without parental and responsibilities be issued with information regarding decisions but it is not appropriate to ask such a parent to give any consent. Would suggest, therefore, that the definition for the purposes of draft Regulations 12 and 13 should be only those with parental rights and responsibilities. There could then be a statement, much as is contained in draft Regulation 13(5) at the moment, that where the Adoption Agency considers it to be in the best interests of the child it should provide the parent without parental rights and responsibilities with the memorandum, though we not agree the certificate should be issued as, again, it is misleading".

"We have reservations about the interpretation taken within the consultation document that section 20 requires parents without parental responsibilities or rights to be given the opportunity to consent or not to the placement for adoption. Query the approach taken in Regulations 12 and 13 as section 20 simply provides that where a parent has consented to the placement the parent must not remove the child and commits an offence where they do so; it does not in itself require consent to the placement to be sought. Section 31 sets out the conditions one of which must be met before an adoption order may be made. In section 31, the giving of consent or dispensing with consent to the making of an adoption order relates only to parents with parental responsibilities or rights (or who had them pre-permanence order). It is inappropriate to build in the formal seeking of consent from persons whose consent (or not) is not part of the formal process. If the approach in regulation 12 has been taken in order to ensure wide application of the offence in section 20, it should be noted that a parent without parental responsibilities or rights will not have a right to move the child in any event. Further, if the child is required to reside there by virtue of a decision of a children's hearing, a parent who assists or induces the child to abscond may be committing an offence under the Children (Scotland) Act 1995 and the police may have powers to find and return the child. We would suggest that it is inappropriate to build in the formal seeking of consent in order to extend the offence provisions to parents who do not have parental responsibilities or rights. Although there is discretion in Regulation 13 whether to seek the consent of parents who do not have parental responsibilities or rights, it is inappropriate to seek formal consent where that consent (or not) is not part of the formal process.

Accordingly, the seeking of consent in both Regulation 12 and 13 should involve only parents with parental responsibilities or rights. The subsequent process in Regulation 15 should similarly relate only to the seeking of consent from parents with parental responsibilities or rights.

There would continue to be a need for recognition of the rights of, or opportunities for, parents without parental responsibilities or rights to be involved in the decision-making process (as Regulations 12(4) and (5) and Regulation 13(5)(c) do to some extent). It is suggested that the matters referred to in those Regulations might more appropriately be obtained at an earlier stage".

### **Scottish Government response/action**

When a child's case has been referred to the panel there are three possible outcomes. Either adoption is not appropriate for the child (in which case new Regulation 15 applies) or adoption is appropriate and either a permanence order with authority to adopt is applied for or the case could proceed to adoption without the permanence order i.e. a 'normal' adoption. Regulation 12 of the consultation draft covers what could be regarded as the 'normal' adoption route where an adoption agency proceeds with the placement, whereas Regulation 13 of that draft applies where an agency intends to pursue the permanence order route possibly because the parents are refusing to consent to the adoption. In effect, these Regulations refer back to the decisions made under Regulation 9(1) which, in turn, refers back to Regulation 6. It would be inappropriate for these provisions to be combined as there are two distinct processes involved and these processes require different information (certificates and memorandum) to be provided.

The duty to ensure the return of the consent certificates should remain. The requirement is to "take such steps as are reasonably practicable". This is important as a failure to return the certificate carries certain

consequences i.e. application for a permanence order. This requirement mirrors the duty in the 1996 Regulations

With regard to the comments in relation to our understanding of “parent”, the approach we have taken is also in line with what the 1996 Regulations require. While it is correct to say that non PRR parents do not require to consent to the making of an adoption order, we do not agree that providing the information in the Regulations (and relevant Schedules) is misleading this group of parents in any way. The memoranda and certificates draw out the different status of these parents and the parental agreement forms make it clear that only those with PRR or PRR removed by a permanence order with no authority to adopt will be asked to consent when a court considers an adoption application.

Section 20 of the Act does provide that where a parent has consented to placement that parent must not remove the child without the consent of the court or adoption agency otherwise an offence would be committed. However, this provision is not enabled until regulations prescribe the form of consent which must be given. In short, it has no effect until the Regulations prescribe the consent form for the purposes of section 20. This is entirely separate to the consent requirements under section 31 which concerns the making of the adoption order. Section 20 is concerned with placement for adoption with prospective adopters whereas children who are placed in accordance with a decision of a children’s hearing are done so in accordance with the terms of a supervision requirement. The consent issue in the Regulations is not a question of whether or not to involve non PRR parents in the decision making process but whether it should continue to be a requirement to notify them of the decision once it has been taken. The lack of consent will then trigger a duty on the local authority to apply for a permanence order with authority to adopt.

#### **Regulation 14 – Consent to placement of the child for adoption for the purpose of section 20 of the Act (now Regulation 19)**

Although there were no specific questions in relation to this Regulation, two responses suggested that this Regulation should be relocated as it deals with a completely separate concept i.e. that of moving a child who has been placed. The respondents also felt that it should be made clear that it only related to a person with PRR as a person with no PRR has no role in consenting to a placement or otherwise.

#### **Scottish Government response/action**

This Regulation is now housed in Part V as Regulation 19. The reference to “parent” cannot be restricted to just those with PRR as section 20 of the Act applies to all parents.

#### **Regulation 15 – Consent certificate; no consent or failure to return consent certificate (now Regulation 20)**

No specific question was asked in relation to this Regulation but comments were received to the effect that there is no timescale within which a local authority must make a determination to proceed as though parental agreement is not forthcoming.

#### **Scottish Government response/action**

A determination to proceed as though parental agreement is not forthcoming is linked to whichever of paragraphs (1)(a), (b) or (c) this Regulation applies. In the case of paragraph (1)(a), the decision should be taken as soon as practicable after the expiry of 28 days from the date the relevant certificate was received by the parent or guardian. In the case of paragraph (1)(b) the decision should be taken as soon as possible after the local authority have made all “reasonable efforts” to try and contact the parent or guardian. So far as paragraph (1)(c) is concerned, the decision should be as soon as practicable after the local authority has received written notification from the parent or guardian that they have withdrawn their agreement. This issue will be addressed in guidance to ensure that there is no unnecessary delay in a determination being made.

**Regulation 16 – Application for a permanence order; child not subject to supervision requirement (now Regulation 21)**

**Question 21: Is 28 days a realistic timescale in Regulation 16? If not, what do you regard as being a more effective timescale?**

A total of 14 responses were received to this question with 13 agreeing that it was.

**Scottish Government response/action**

No action required.

**Regulation 17 – Child subject to supervision requirement; referral to the Principal Reporter (now Regulation 22)**

**Regulation 18 – Application for a permanence order; child subject to supervision requirement (now Regulation 23)**

**Question 22: Do Regulations 17 and 18 cover the requirements in full? If not, what is required?**

This question attracted 7 responses. Three respondents felt that the requirements were covered in full and 3 did not. The other respondent commented that they were “uncertain about these regulations and the effect of the whole scheme of the regulations in these matters”.

**Scottish Government response/action**

Where it has been decided that adoption is in the best interests of the child there are 2 distinct routes – an application for a freeing order (now a permanence order with authority to adopt) may be made where the child’s parents do not consent to the child being placed for adoption or an application for an adoption order may be made by the prospective adopters. The 1996 Regulations provide that where there is no parental agreement to freeing or making arrangements for adoption, the local authority is bound, depending on whether or not there is a supervision requirement, by either Regulation 17(2) or 18(3) and (5), to proceed down the freeing order route. However, these Regulations do not apply where an application for an adoption order has been made (Regulation 17(3) or (18)(6)). This is because the case has found its way into the court system and, as a result, it will be for the court to determine what is in the child’s best interests and the court will address the consent issue in respect of the parents. This is the second route and would seem to be the “Direct Adoption Petition” referred to in one of the responses.

One response suggested that instead of only providing one route where there is no parental agreement to the decision to make arrangements for adoption, the Regulations should allow authorities to determine whether the case should proceed straight to adoption or whether an application for a permanence order should be made as the 1996 Regulations leave authorities with no choice in the matter: they must always make a freeing application (and now the permanence order application) if there is no consent to the placement. The approach taken in the new Regulations is no different from the approach in the 1996 Regulations. There are still 2 routes: the permanence order with authority to adopt (previously freeing) or the straight to adoption (referred to by some consultees as the “Direct Adoption Petition”) route. Like the 1996 Regulations, we do not make specific provision for the second route as the application for an adoption order is not within the control of the local authority: it is the prospective adopter.

Some consultation responses had concerns about the confines of the timescales and the requirement to make a freeing order application in every case where the parents do not agree or have not expressed agreement to the adoption arrangements. The expectation appears to be that there should be greater flexibility in allowing local authorities (acting in their capacity as adoption agencies) to avoid freeing (or now permanence order) applications in some cases.

Under the 1996 Regulations a local authority has 28 days to decide whether to lodge an application for a freeing order where parental consent to placing the child for adoption is not forthcoming. The alternative

is for the prospective adopters to lodge an application for an adoption order (the “Direct Adoption Petition” route referred to above). Anecdotal evidence is that most prospective adopters prefer to be in control of the adoption process. The difficulty is that prospective adopters would be unlikely to have sufficient time to raise the necessary petition within the 28 day timescale.

While extending the 28 day timescale could give prospective adopters more time to lodge a petition this has to be balanced against the fact that the child’s case needs to be progressed and a decision made as to what is in the child’s best interests. The Regulations have retained the requirement for the local authority to raise a court action to deal with the question of parental consent (where this is not forthcoming) so that a decision may be made as to the child’s future within a reasonable time. The question arises as to how long an extension to the timescale would be appropriate. As indicated above, the adoption application is not within the control of the local authority and we cannot use the Regulations to set time limits for prospective adopters to lodge an adoption application. We also need to ensure that the child’s case is progressed appropriately. The more practicable approach is for local authorities to bring prospective adopters ‘on board’ as early in the process as possible so that they are aware of the fact that parental consent to the placement has not been given and the duty on the local authority to make the application for a permanence order granting authority for the child to be adopted. We therefore intend to deal with this issue in guidance.

**Question 23: Does Schedule 8 cover all the requirements? If not, what should be added?**

The majority of respondents agreed that this Schedule covered all the requirements.

**Scottish Government response/action**

No action required.

**Question 24: Is 28 days a realistic timescale in Regulation 18? If not, what do you regard as being a more effective timescale?**

The majority of respondents agreed with the 28 day timescale.

**Scottish Government response/action**

No action required.

**Regulation 19 – Placement for adoption; notification and provision of information (now Regulation 24)**

**Regulation 20 – Duties of adoption agency following placement for adoption (now Regulation 25)**

**Question 25: Do Regulations 19 and 20 cover the requirements in full? If not, what else is required?**

A number of responses suggested that paragraph (2)(b)(iv) of Regulation 19 should refer to “adoption support services” instead of “counselling services”. With regard to Regulation 20, three respondents suggested that there should be some standardisation of the frequency of visits with one suggesting that since the child remains the responsibility of the local authority until the adoption order is made, there should be minimum requirements of visits within 1 week then at intervals of 1, 3 and 6 months after placement then every 6 months thereafter unless there are reasons to do otherwise. The other 2 respondents suggested a minimum of monthly visits as being reasonable.

**Scottish Government response/action**

The Regulation has been amended to include a reference to “adoption support services”. We consider that the frequency of visits is a matter of best practice and will be covered in guidance.

**Question 26: Should Regulation 19(5) be amended to ensure that non PRR parents receive automatic notification of the placement?**

The majority of respondents agreed that non PRR parents should not receive automatic notification of the placement.

**Scottish Government response/action**

No change to Regulation required.

**Question 27: Could Schedules 2, 4, 5, 7 and 8 be simplified? If so, your suggestions would be greatly appreciated.**

The majority of respondents felt that these Schedules could be simplified or written in plain English but did not offer any suggestions. One respondent referred to the statement “You will then have no further right to see your child, unless voluntary contact is agreed by the adopters” in paragraph 1 of Schedule 2 as not properly reflecting the fact that an adoption order may contain such terms and conditions as the court thinks fit.

**Scottish Government response/action**

No action required. As one of the respondents pointed out, it is difficult to make such documents legally competent whilst also keeping to plain English. Each Schedule, where appropriate, makes it clear that legal advice should be sought as the Schedule is intended for guidance only and should not to be regarded as an authoritative interpretation of the law.

With regard to the comment about paragraph 1 of Schedule 2, it is true that an adoption order may contain such terms and conditions as the court thinks fit. However, the courts have made it clear that conditions, including those relating to contact, should only be made in exceptional circumstances (e.g. BvC 1996, S.L.T. 1370, 1996 S.C.L.R. 874).

**Specific questions**

The consultation also asked the following specific questions:-

**(i) Given that all children who will be subject to a permanence order are Looked After Children, should those regulations which relate to permanence orders with authority to adopt (principally Regulations 13, 16 and 18 but there are references in several other regulations) be incorporated into the Looked After Children (Scotland) Regulations?**

**(ii) Where should the provisions relating to permanence orders sit?**

**(iii) Do you agree with our understanding of what ‘parent’ means in each of the relevant regulations?**

There were 7 responses to question (i). 3 responses felt that the regulations should be incorporated into the Looked After Children (Scotland) Regulations (the LAC Regulations) with one suggesting that there should be clear cross-referencing in those regulations and guidance to guidance on the Adoption Agencies Regulations and 3 felt they should not. One response asked if it would be possible to cover the issue in guidance. There were also 7 responses to question (ii) but there was no consensus on where the provisions should sit. One of the responses also asked about regulations in respect of permanence orders without authority to adopt.

Of the 9 responses to question (iii) the majority found the definitions confusing and wondered whether there could simply be one definition.

## Scottish Government response/action

We take the view that the provisions for permanence orders with authority to adopt should be housed in the Adoption Agencies Regulations because those regulations apply where adoption is being considered for a child. An application for a permanence order with authority to adopt should only be made where adoption is considered to be in the child's best interests. There are also a number of provisions in the 1996 Regulations which have been carried over into the Adoption Agencies Regulations and, because of their reference to freeing orders, have been adjusted to reflect the introduction of permanence orders with authority to adopt.

With regard to the response about regulations in respect of permanence orders without authority to adopt, there are no regulation making powers contained in the 2007 Act in relation to permanence orders and the original intention was that permanence orders without authority to adopt would not be regulated as they are court orders. However, an amendment was made to the Social Work (Scotland) Act 1968 to include a reference to the 2007 Act which widened the 1968 Act power to allow the Scottish Ministers to make provision in respect of the performance of local authority functions assigned to them by that Act (this amendment was inserted into the Adoption Bill at Stage 2). This would include scope to regulate the activities of local authorities in their preparation for making a permanence order application. Court rules will prescribe the timescales for making applications to the court for such orders as well as the documentation and evidence which must be submitted. Our view is that there is no current need to regulate any steps in the run up to the application being made by the local authority

As regards question (iii), the Regulations follow the approach taken in the 2007 Act. The 2007 Act does not provide a general definition of "parent" and there are 3 different groups of "parent" (outlined below) which are treated as distinct groups in the draft regulations (these distinctions are derived from the 2007 Act. This means that it would not be appropriate to provide a general definition covering all types of parent.

The approach taken in the draft Regulations also follows, as far as possible, the approach taken in the 1996 Regulations. The 1996 Regulations recognise 2 categories of parent. "Parent" is defined in the Adoption (Scotland) Act 1978 (the enabling legislation for the 1996 Regulations) as the mother or father of the child or both where they have parental rights and responsibilities (PRR) (which are defined in sections 1 and 2 of the Children (Scotland) Act 1995). The 1996 Regulations also make provision for parents who have no PRR (an example of a parent with no PRR could be a father who is not married to the mother of the child and who is not named on the child's birth certificate. A parent could also have had their PRR removed by a court order.).

The confusion about the definition of "parent" in the Regulations may, in part, be due to the fact that there is a new, third, category of parent which has come about as a result of the 2007 Act. The 3 categories are:-

- (i) "parent" undefined. This will include all parents with parental rights and responsibilities as well as all natural parents whether or not they have such rights and responsibilities.
- (ii) Parents with PRR
- (iii) Parents who have had PRR removed by the making of a permanence order with no authority to adopt (examples of this group are to be found in section 31 (Parental etc. consent) and section 83 (permanence order granting authority for adoption: conditions)) of the 2007 Act.

The 2007 Act also makes some separate provision for natural parents which may be regarded as a fourth category of parent. This group may or may not have parental rights and responsibilities but will exclude persons who have such parental rights and responsibilities if they are not the child's genetic parents. Examples of references to natural parent are found in sections 1 (duty of local authority to provide adoption service) and 30 (adoption by one person) of the 2007 Act. The Regulations do not make any provision specific to this group of parents.

There are 2 main areas where the new Regulations and the 1996 Regulations vary in their approach regarding categories of parent. The first concerns notification of provision of information to parents. The

new Regulations include the third category of parents described above when notifying a decision that adoption is in the best interests of the child (Regulation 11 of the 1996 Regulations requires an adoption agency to notify each parent or guardian of the child once a decision has been made regarding adoption or freeing for the child and to provide that parent or guardian with certain information). Where a parent with no PRR is known to the agency they must carry out those same steps but only where reasonably practicable and in the child's interests. In the new Regulations the agency is required to notify PRR parents (1<sup>st</sup> category) and those parents whose PRR have been removed by a permanence order with no authority to adopt (3<sup>rd</sup> category) when a decision is made as to adoption or permanence orders) as those parents will be required to consent before the court makes an adoption order (section 31 of the Act) or a permanence order granting authority to adopt (section 83). It is therefore important that this group of parents are given notice that such an application could be made.

The second area where a new approach has been taken concerns provision asking parents to consent to the child being placed for adoption or for an application for a permanence order with authority to adopt being made. Such consent is entirely separate to the parental consent requirements when the court comes to make the order. The new Regulations require adoption agencies to seek parental agreement to the child being placed. If such consent is not forthcoming then they must make an application for a permanence order granting authority to adopt (mirroring the approach in the 1996 Regulations). Section 20 of the 2007 Act makes it an offence for a parent to remove a child who has been placed for adoption where that parent has consented to the placement. The new Regulations prescribe the form of consent for the purposes of that provision.

Section 20 applies to all parents (the 1<sup>st</sup> category in paragraph 15) whereas the parallel provision in the 1978 Act applies to PRR parents (the 2<sup>nd</sup> category). The approach in the new Regulations has therefore been to require agencies to provide the consent certificates to all parents. They must also ensure that the certificates are signed and returned but only where reasonably practicable. The 1996 Regulations differ slightly in that the non PRR parents will only receive the consent certificates if it is reasonably practicable and in the child's interests.

In the circumstances, we propose to clarify the different categories of "parent" in guidance. The guidance will explain that where "parent" is not defined, then this will be a reference to the first group of parents (i.e. natural parents and those with parental rights and responsibilities) and where a different group of "parents" needs to be distinguished then a separate definition is given for the purpose of that provision within the Regulations.

## **Scottish Government analysis of responses to the consultation on the Adoption Information (Scotland) Regulations**

### **Regulation 2 – Information to be kept about adoptions**

**Question 1: Is the approach in this Regulation sufficiently inclusive and comprehensive for the purposes of the collection and creation of a case record?**

**Question 2: Are there any processes in practice that are not covered by this Regulation and should be included?**

**Question 3: Is the term 'adopted child' confusing? If so, what term should be used?**

**Question 4: Is Regulation 2(4) necessary?**

### **Regulation 3 – Form and manner in which information is kept**

**Question 5: Is the timescale for preservation of records sufficient? What would be a more appropriate timescale?**

### **Scottish Government response/action**

Clarification was sought by the respondents about when a case record started. Many felt that there needed to be clarity about this as practice varied. The term "adopted child" implied that a record should be created at the point of the order being made. However a number of respondents indicated that an adoption record

should start when the decision has been made that adoption is in the best interests of the child. The creation of an adoption record has, therefore, been linked to the decision of an adoption panel and the information collected and supplied to that panel will constitute the record. Practice around the information collected in a child's plan, which is not relevant to adoption and would not necessarily be placed on a case record for adoption, will be revisited in guidance.

Most respondents indicated that the timescales in Regulation 3 should be increased in light of life expectancy and future proofing legislation with 100 years being suggested as more appropriate. Changes to this Regulation have been made accordingly.

Respondents also indicated that records for those who had been unsuccessful in their application should also be kept. Provision has therefore been made for adoption records for unsuccessful prospective adopters to be kept for 10 years in order that they can be referred to in future applications to that agency or other agencies.

Respondents also identified the need to review the indexes and records to ensure that they are still accessible, especially where they are held electronically. The Regulation has therefore been amended to refer to accessibility as well as ensure they are not damaged.

**2009 No. 154**

**CHILDREN AND YOUNG PERSONS**

**The Adoption Agencies (Scotland) Regulations 2009**

*Made* - - - - 22nd April 2009

*Laid before the Scottish Parliament* 23rd April 2009

*Coming into force* - - 28th September 2009

**ARRANGEMENT OF REGULATIONS**

**PART I**

*GENERAL*

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2. Interpretation

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4. Meetings of the adoption panel and joint adoption panel
5. Appointment of medical and legal advisers
6. Functions of the adoption panel

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*ASSESSMENT OF PROSPECTIVE ADOPTERS*

7. Duties of adoption agencies: assessment of prospective adopters
8. Approval of prospective adopters
9. Review of adoption agency decisions
10. Review without request
11. Adoption agency decision on review

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*DUTIES OF ADOPTION AGENCIES WHEN CONSIDERING ADOPTION FOR A CHILD*

12. Duties of adoption agencies when considering adoption for a child
13. Adoption agency decisions

14. Notification of adoption agency decisions
15. Decision that adoption should not proceed or to make an application under section 80 of the Act
16. Provision of information to parents: decision by adoption agency to make arrangements for adoption
17. Provision of information to parents: decision of adoption agency that an application under section 80 of the Act should be made
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**PART V**

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19. Consent to placement of the child for adoption for the purposes of section 20 of the Act
20. Consent certificate: no consent or failure to return consent certificate

**PART VI**

*APPLICATION FOR PERMANENCE ORDER*

21. Application for a permanence order: child not subject to supervision requirement
22. Child subject to supervision requirement: referral to the Principal Reporter
23. Application for a permanence order: child subject to supervision requirement

**PART VII**

*PLACEMENT FOR ADOPTION*

24. Placement for adoption: notification and provision of information
25. Duties of adoption agency following placement for adoption
26. Review of child's case where no placement made within 6 months of permanence order granting authority to adopt being made

**PART VIII**

*CASE RECORDS*

27. Information to be kept about adoptions
28. Form and manner in which information is kept

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SCHEDULE 1

- PART I — INFORMATION ABOUT PROSPECTIVE ADOPTERS
- PART II — INFORMATION ABOUT THE CHILD
- PART III — INFORMATION ABOUT THE CHILD'S FAMILY
- SCHEDULE 2 — MEMORANDUM
- SCHEDULE 3 — CERTIFICATE
- SCHEDULE 4 — PARENT'S AGREEMENT
- SCHEDULE 5 — MEMORANDUM
- SCHEDULE 6 — CERTIFICATE
- SCHEDULE 7 — PARENT'S AGREEMENT
- SCHEDULE 8 — FORM OF REFERENCE BY ADOPTION AGENCY TO PRINCIPAL REPORTER FOR ADVICE BY CHILDREN'S HEARING TO THE COURT

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 8, 20(1), 37, 106 and 117(2) of the Adoption and Children (Scotland) Act 2007<sup>(1)</sup> and all other powers enabling them to do so.

## PART I GENERAL

### **Citation and commencement**

1. These Regulations may be cited as the Adoption Agencies (Scotland) Regulations 2009 and come into force on 28th September 2009.

### **Interpretation**

2. In these Regulations—

“the Act” means the Adoption and Children (Scotland) Act 2007;

“the 1995 Act” means the Children (Scotland) Act 1995<sup>(2)</sup>;

“adoption panel” means an adoption panel established under regulation 3;

“legal adviser” means a member of the adoption panel appointed under regulation 5(2);

“medical adviser” means a member of the adoption panel appointed under regulation 5(1);

“relative” means a grandparent, brother, sister, uncle or aunt of the child (in the cases of a brother, sister, uncle or aunt, whether of the full-blood or half-blood); and includes a spouse or civil partner of any such grandparent, brother, sister, uncle or aunt.

## PART II ADOPTION PANELS

### **Appointment and composition of adoption panels**

3.—(1) Each—

(a) local authority; and

(b) registered adoption service which is carrying out or proposes to carry out functions specified in these Regulations,

must appoint a panel to be known as the “adoption panel” for the purpose of carrying out the functions conferred on it by regulation 6.

(2) The adoption panel must consist of at least 6 members.

(3) An adoption panel may be established jointly by any 2 or more adoption agencies which panel shall be known as a “joint adoption panel” and any reference to an adoption panel in these Regulations shall include a reference to a joint adoption panel.

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

(a) a medical adviser; and

(b) a legal adviser.

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(1) 2007 asp 4.

(2) 1995 c.36.

(5) The adoption agency must—

- (a) be satisfied that the number of members and qualifications and experience of individual members of an adoption panel will enable it effectively to discharge its functions; and
- (b) review the membership of the panel from time to time.

(6) Where the adoption agency is of the opinion that any member of the adoption panel is unsuitable or unable to remain as a member it may terminate membership at any time by giving notice in writing with reasons.

### **Meetings of the adoption panel and joint adoption panel**

**4.**—(1) No business shall be conducted by an adoption panel unless at least 3 of its members meet as the panel.

(2) The adoption panel may only make a recommendation referred to in regulation 6(2)(a) or (b) where—

- (a) a legal adviser is present at the meeting of the panel at which the recommendation is made; or
- (b) legal advice has been provided to the panel by such an adviser.

(3) The adoption panel must make a written record of its proceedings and the reasons for its recommendations.

(4) In paragraph (1) “members” does not include any legal adviser or medical adviser.

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

**5.**—(1) An adoption agency must appoint such number of persons with the qualifications specified in paragraph (3) 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 must appoint such number of persons with the qualifications specified in paragraph (4) as it considers necessary for the purpose of providing it with legal advice in connection with the exercise of its functions.

(3) The qualifications referred to in paragraph (1) are that the person is a registered medical practitioner.

(4) The qualifications referred to in paragraph (2) are that the person is—

- (a) a solicitor; or
- (b) an advocate.

(5) In paragraph (4)—

“solicitor” means a person qualified to practice as a solicitor under section 4 of the Solicitors (Scotland) Act 1980<sup>(3)</sup>; and

“advocate” means a practising member of the Faculty of Advocates.

### **Functions of the adoption panel**

**6.**—(1) The adoption panel must consider—

- (a) the case of every child;
- (b) every proposed placement; and
- (c) the case of every prospective adopter,

referred to it by the adoption agency.

(2) The adoption panel must make recommendations on the following matters:—

- (a) whether adoption is in the best interests of the child;
- (b) whether an application for a permanence order granting authority for the child to be adopted should be made under section 80 of the Act;

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(3) 1980 c.46.

- (c) whether a prospective adopter is suitable or continues to be suitable to be an adoptive parent;
- (d) whether a prospective adopter would be a suitable adoptive parent for a particular child; and
- (e) any other matter referred to the adoption panel which is relevant to the adoption agency's functions under the Act.

(3) Where an adoption panel makes a recommendation under paragraph (2)(a) that adoption is in the best interests of the child it must provide a written report of the consideration given by it to the alternatives to adoption.

(4) Where an adoption panel makes a recommendation that there should be continued contact between the child and the child's parent or parents, it must provide a written report of the reasons why continued contact is in the best interests of the child.

(5) Before making a recommendation under paragraph (2)(c) the adoption panel must give the prospective adopter the opportunity to meet with the adoption panel to discuss the matter with them.

(6) Subject to paragraph (7) the adoption panel may make any of the recommendations in paragraph (2) at the same time or at different times.

(7) Before making a recommendation specified in paragraph (2)(d) the adoption panel must—

- (a) at the meeting of the panel at which the recommendation is to be made, be satisfied that adoption is in the best interests of the child; or
- (b) be satisfied that an adoption agency decision has been made under regulation 13 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 (2)(d) is to be made, make a recommendation that the prospective adopter is suitable to be an adoptive parent; or
  - (ii) be satisfied that an adoption agency decision has been made under regulation 8(1) or 9(5) that the prospective adopter is suitable to be an adoptive parent.

(8) In carrying out its functions the adoption panel must have regard to—

- (a) the duties imposed on the adoption agency by section 14 of the Act;
- (b) all the information and reports passed to it;
- (c) any other information which may be provided to it on request; and
- (d) where appropriate, any legal advice in relation to each case.

(9) In paragraph (4) “parent” means a parent who has any parental responsibilities or parental rights in relation to the child.

## PART III

### ASSESSMENT OF PROSPECTIVE ADOPTERS

#### **Duties of adoption agencies: assessment of prospective adopters**

7.—(1) Each adoption agency must prepare and publish a statement of the general criteria applied by it for the purpose of determining whether any person may be accepted for assessment as an adoptive parent.

(2) Each adoption agency must 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 adoption agency must—

- (a) apply the general criteria under paragraph (1); and
- (b) undertake any further steps which it considers necessary to consider and make a determination on the application.

(4) Where the adoption agency determines that a person should not be accepted for assessment as an adoptive parent it must give notice in writing of its determination to that person.

(5) Where the adoption agency determines that a person should be accepted for assessment as an adoptive parent it must—

- (a) so far as is reasonably practicable obtain the information in Part I of Schedule 1;
- (b) assess the case and prepare a report on the assessment;
- (c) refer the case to the adoption panel for a recommendation on whether the prospective adopter is suitable to be an adoptive parent;
- (d) provide all relevant information obtained under sub-paragraph (a) and a copy of the report on the assessment to the adoption panel at the same time as making the referral;
- (e) notify the prospective adopter that the case has been referred to the adoption panel; and
- (f) provide the prospective adopter with a copy of the report provided to the adoption panel which report shall exclude any information provided by any person in confidence.

### **Approval of prospective adopters**

**8.—**(1) Where an adoption agency receives a recommendation from the adoption panel under regulation 6(2)(c) or (d) it must make a decision on whether the prospective adopter is suitable to be an adoptive parent within 14 days of the date the recommendation was made.

(2) No member of the adoption panel which made the recommendation is to take part in the decision.

(3) Where an adoption agency makes a decision that a person is suitable to be an adoptive parent it must be satisfied that—

- (a) it has taken into account the recommendations made by the adoption panel; and
- (b) the prospective adopter is a suitable person with whom to place a child or children.

(4) Where the adoption agency makes a decision that is contrary to the recommendation of the adoption panel the agency must record in writing the reasons for that decision.

(5) Where the decision is that the prospective adopter is suitable to be an adoptive parent the adoption agency must notify in writing the prospective adopter of the decision within 14 days of making that decision.

(6) Where the decision is that the prospective adopter is not suitable to be an adoptive parent the adoption agency must—

- (a) notify the prospective adopter in writing of the decision within 7 days of making the decision;
- (b) send with the notification—
  - (i) its reasons for the decision; and
  - (ii) where the adoption panel's recommendation was that the prospective adopter was suitable to be an adoptive parent, a copy of that recommendation;
- (c) inform the prospective adopter in writing that they may require the decision to be reviewed within 28 days of the date of notification (the "28 day period"); and
- (d) invite the prospective adopter to submit to the adoption agency any representations regarding the decision within the 28 day period.

### **Review of adoption agency decisions**

**9.—**(1) Where a prospective adopter has, within the 28 day period referred to in regulation 8(6)(c), required a review of the decision made under regulation 8(1) the adoption agency must refer the case to the adoption panel for a recommendation.

(2) A referral under paragraph (1) must be made to a differently constituted adoption panel.

(3) Where a referral is made under paragraph (1) the adoption agency must provide the adoption panel with—

- (a) a copy of its decision and reasons made under regulation 8(4);

- (b) the report provided to the adoption panel under regulation 7(5)(d);
- (c) any representations received by the adoption agency from the prospective adopter; and
- (d) any other relevant information.

(4) The adoption panel must consider the case referred to it under paragraph (1) and make a fresh recommendation to the adoption agency as to whether the prospective adopter is suitable to be an adoptive parent.

(5) The adoption agency must—

- (a) make a decision (the “reviewed decision”) within 14 days of the date the fresh recommendation was made under paragraph (4); and
- (b) notify the prospective adopter of its reviewed decision within 7 days of making the reviewed decision.

(6) Where the reviewed decision is that the prospective adopter is not suitable to be an adoptive parent the notification under paragraph (5)(b) must—

- (a) state the reasons for the reviewed decision; and
- (b) where the adoption panel’s fresh recommendation was that the prospective adopter was suitable to be an adoptive parent, include a copy of the adoption panel’s fresh recommendation.

### **Review without request**

**10.**—(1) Where an adoption agency has made a decision to approve a person as an adoptive parent that agency must, where paragraph (2) or (3) applies, carry out a review of the approval of the prospective adopter by complying with the requirements in paragraph (4).

(2) This paragraph applies where no child has been placed for adoption within 2 years from the date the adoption agency made the decision to approve that person as an adoptive parent under regulation 8(1) or 9(5)(a).

(3) This paragraph applies where—

- (a) the adoption agency has placed a child or children with the prospective adopter in accordance with regulation 18;
- (b) no application for an adoption order has been made in respect of the child; and
- (c) the adoption agency considers that a review of the prospective adopter’s approval is necessary or appropriate to safeguard or promote the welfare of the child.

(4) The requirements are—

- (a) to re-assess the prospective adopter’s suitability to become an adoptive parent by making such enquiries and obtaining such information as the adoption agency considers necessary in order to review whether the prospective adopter continues to be suitable to be an adoptive parent; and
- (b) to seek and take into account the views of the prospective adopter.

(5) If, following the review, the adoption agency considers that the prospective adopter may no longer be suitable to be an adoptive parent it must—

- (a) prepare a report on the re-assessment (“the review report”);
- (b) notify the prospective adopter that the case is to be referred to the adoption panel;
- (c) send the prospective adopter a copy of the review report; and
- (d) invite the prospective adopter to submit any representations to the adoption agency within 14 days of the report being sent.

(6) At the end of the period of 14 days referred to in paragraph (5)(d) (or earlier if any representations of the prospective adopters are received before that period has expired) the adoption agency must send the review report, together with any such representations, to the adoption panel.

(7) When a referral to the adoption panel is made under paragraph (6) the adoption agency must—

- (a) notify the prospective adopter that the case has been referred to the adoption panel; and

- (b) provide the prospective adopter with a copy of the report provided to the adoption panel which report shall exclude any information provided by any person in confidence.

(8) The adoption panel must consider the review report, the representations made by the prospective adopter (if any), and any other information passed to it by the adoption agency and make a recommendation as to whether the prospective adopter continues to be suitable to be an adoptive parent.

#### **Adoption agency decision on review**

**11.**—(1) Where an adoption agency receives a recommendation from the adoption panel under regulation 10(8), the adoption agency must make a decision on whether the prospective adopter continues to be suitable to be an adoptive parent within 14 days from the date of the recommendation.

(2) Regulations 8(2) to (6) and 9 shall apply to that recommendation or, as the case may be, decision as if—

- (a) references to the recommendation of an adoption panel were references to a recommendation under regulation 10(8);
- (b) in regulation 9(1) and (3) references to a decision were to a decision under paragraph (1); and
- (c) the reference to the report provided to the adoption panel under regulation 7(5)(d) were a reference to the report provided to the panel under regulation 10(5)(a).

## **PART IV**

### **DUTIES OF ADOPTION AGENCIES WHEN CONSIDERING ADOPTION FOR A CHILD**

#### **Duties of adoption agencies when considering adoption for a child**

**12.**—(1) This regulation applies where an adoption agency is considering adoption for a child.

(2) The adoption agency must, so far as is reasonably practicable and in the child's best interests—

- (a) consult and take into account the views of—
  - (i) the child, taking account of their age and maturity; and
  - (ii) the child's parents and guardians if their whereabouts are known;
- (b) take account of the child's religious persuasion, racial origin and cultural and linguistic background where known;
- (c) obtain and record in writing the information in Parts II and III of Schedule 1;
- (d) ensure that arrangements are made for the child to be examined by a registered medical practitioner; and
- (e) obtain from the practitioner who has carried out the examination referred to in sub-paragraph (d) a written assessment of the child's health.

(3) Where the adoption agency considers that adoption may be in the best interests of the child it must refer the case to the adoption panel for a recommendation.

(4) Where a referral is made under paragraph (3) the adoption agency must provide the adoption panel with—

- (a) the medical report obtained in accordance with paragraph (2)(e);
- (b) the information obtained in accordance with paragraph (2)(c);
- (c) any representations received from the child or their parents or guardians; and
- (d) any other information which the adoption agency considers relevant.

### **Adoption agency decisions**

**13.**—(1) Where an adoption agency receives a recommendation from an adoption panel, following a referral, on a matter under regulation 6(2)(a), (b) or (e), the agency must make a decision on that matter within 14 days from the date of the recommendation.

(2) No member of the adoption panel which made the recommendation is to take part in the decision.

(3) On making its decision under paragraph (1) the adoption agency must take into account the recommendation of the adoption panel.

(4) Where an adoption agency makes a decision that is contrary to the recommendation of the adoption panel the adoption agency must record in writing the reasons for its decision.

(5) Paragraphs (6) and (7) apply where the child to whom the decision under paragraph (1) relates is subject to a supervision requirement.

(6) For the purpose of determining whether it is satisfied in accordance with section 73(4)(c)(i) or (v)(4) of the 1995 Act (duration and review of supervision requirement) that the best interests of the child would be served by an application for a permanence order or their placing the child for adoption an adoption agency which is a local authority must take into account any recommendation of the adoption panel under regulation 6(2) before making the decision.

(7) For the purpose of determining under section 106 of the Act (child subject to supervision requirement: duty to refer to Principal Reporter) whether the best interests of the child would be served by placing the child for adoption a registered adoption service must take into account any recommendation of the adoption panel under regulation 6(2) before making the decision.

### **Notification of adoption agency decisions**

**14.**—(1) Where an adoption agency makes a decision under regulation 13(1) as to whether adoption is in the best interests of the child it must within 7 days of making the decision notify—

- (a) the child where, taking account of the child's age and maturity, the adoption agency considers that the child is capable of understanding the effect of the decision;
- (b) the parent or parents of the child;
- (c) where the adoption agency considers it to be in the child's interests any parent or parents of the child who do not have parental rights or parental responsibilities, if their whereabouts are known to the adoption agency;
- (d) the guardian of the child if their whereabouts are known to the adoption agency; and
- (e) any other relative of the child who has expressed a view on the placement of the child for adoption to the adoption agency.

(2) Where the adoption agency makes a decision under regulation 13(1) as to whether an application for a permanence order granting authority for the child to be adopted under section 80 of the Act should be made the adoption agency must notify—

- (a) the child, taking account of their age and maturity;
- (b) the parent or parents of the child;
- (c) where the adoption agency considers it to be in the child's interests any parent or parents of the child who do not have parental rights or parental responsibilities if their whereabouts are known to the adoption agency; and
- (d) the guardian of the child if their whereabouts are known to the adoption agency.

(3) In paragraphs (1)(b) and (2)(b) "parent" means—

- (a) a parent who has any parental responsibilities or parental rights in relation to the child; or
- (b) a parent who, by virtue of a permanence order granted under section 80 of the Act which does not include provision granting authority for the child to be adopted, has no such responsibilities or rights.

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(4) section 73(4) of the 1995 Act is amended by the 2007 Act, section 120(1), Schedule 2, paragraph 9.

### **Decision that adoption should not proceed or to make an application under section 80 of the Act**

**15.**—(1) Where the adoption agency makes a decision under regulation 13(1) that adoption is not in the best interests of the child and there is a better and practicable alternative to adoption the adoption agency shall take such steps, if any, in relation to the case as it considers appropriate and in the best interests of the child.

(2) Where a registered adoption service makes a decision under regulation 13(1) that an application for a permanence order granting authority for the child to be adopted should be made under section 80 of the Act, the registered adoption service must refer the case to the local authority for the area in which the child resides.

### **Provision of information to parents: decision by adoption agency to make arrangements for adoption**

**16.**—(1) This regulation applies where the adoption agency—

- (a) makes a decision under regulation 13(1) that adoption is in the best interests of the child; and
- (b) proposes to make arrangements for the adoption of the child.

(2) The adoption agency must, within 7 days of making the decision, provide each parent or guardian of the child with—

- (a) a memorandum in the form set out in Schedule 2;
- (b) a certificate in the form set out in Schedule 3; and
- (c) a certificate in the form set out in Schedule 4.

(3) The adoption agency must take such steps as are reasonably practicable to ensure that—

- (a) each parent or guardian signs and returns to the adoption agency a certificate in the form set out in Schedule 3 or a form to like effect which certifies that they have read and understood the memorandum; and
- (b) each parent or guardian completes and signs the certificate in the form set out in Schedule 4 and returns it to the adoption agency within 28 days.

(4) Paragraph (5) applies where the adoption agency is aware of the identity of a parent who does not have parental responsibilities or parental rights in respect of the child.

(5) The adoption agency must, so far as it considers reasonably practicable to do so, make enquiries and—

- (a) obtain in respect of the parent the information in Part III of Schedule 1; and
- (b) ascertain, where possible, whether the parent intends to make an application 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.

### **Provision of information to parents: decision of adoption agency that an application under section 80 of the Act should be made**

**17.**—(1) This regulation applies where an adoption agency makes a decision under regulation 13(1) that—

- (a) adoption is in the best interests of the child; and
- (b) an application for a permanence order with authority for the child to be adopted should be made under section 80 of the Act.

(2) The adoption agency must, within 7 days of making the decision, provide each parent or guardian of the child with—

- (a) a memorandum in the form set out in Schedule 5;
- (b) a certificate in the form set out in Schedule 6; and
- (c) a certificate in the form set out in Schedule 7.

(3) The adoption agency must take such steps as are reasonably practicable to ensure that—

- (a) each parent or guardian signs and returns to the adoption agency a certificate in the form set out in Schedule 6 or a form to like effect which certifies that they have read and understood the memorandum; and
  - (b) each parent or guardian completes and signs the certificate in the form set out in Schedule 7 and returns it to the adoption agency within 28 days.
- (4) Paragraph (5) applies where the adoption agency is aware of the identity of a parent who does not have parental responsibilities or parental rights in respect of the child.
- (5) The adoption agency must, so far as it considers it reasonably practicable to do so make enquiries and—
- (a) obtain in respect of the parent the information in Part III of Schedule 1; and
  - (b) ascertain, where possible, whether the parent intends to make an application 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.

### **Duties of adoption agencies: placing the child for adoption**

**18.**—(1) An adoption agency must not place or secure the placing of a child with any prospective adopter unless the adoption agency—

- (a) is satisfied that the placement is in the best interests of the child;
- (b) is satisfied that placement of the child with the prospective adopter is in the best interests of the child;
- (c) has, so far as is reasonably practicable, obtained the information in Schedule 1;
- (d) has, so far as is reasonably practicable, obtained a report prepared within the previous 12 months by a registered medical practitioner as to the health of the child;
- (e) has obtained a report prepared within the previous 12 months by a registered medical practitioner as to the health of each prospective adopter;
- (f) has (or has had) the prospective adopter interviewed;
- (g) is satisfied that the premises within which the prospective adopter intends that the child shall reside are suitable for the needs of the child;
- (h) has made inquiries and has in particular inquired of every relevant local authority to satisfy itself that it would not be detrimental to the welfare of the child—
  - (i) for the child to reside with the prospective adopter in the premises proposed for the child’s home; and
  - (ii) for the proposed adoption to proceed;
- (i) has prepared a report with its observations on the matters referred to in sub-paragraphs (a) to (h) and has passed that report and all information obtained by it by virtue of this regulation to the adoption panel or to another adoption agency;

(2) Subject to paragraph (3) in addition to securing the report referred to in paragraph (1)(d), that adoption agency must ensure that arrangements are made for such medical investigations and tests as are considered necessary to be carried out in respect of the child and obtain from a registered medical practitioner a report based on those investigations and tests.

(3) Paragraph (2) does not apply where such investigations and tests have already been carried out in respect of the child and a report on their findings has been made available to the agency.

(4) Wherever practicable any report prepared in accordance with paragraph (2) shall be included in the report obtained by the adoption agency under paragraph (1)(d).

(5) In order to satisfy itself as to the matter referred to in paragraph (1)(g) the adoption agency must arrange for the premises to be visited on its behalf.

- (6) In paragraph (1)(h) a “relevant local authority” is the local authority for the area in which—
- (i) the child is resident;
  - (ii) the prospective adopter is resident;

- (iii) the premises referred to in that paragraph are situated.

## PART V

### CONSENT CERTIFICATES

#### **Consent to placement of the child for adoption for the purposes of section 20 of the Act**

**19.** For the purpose of section 20(1)(b) of the Act consent to the placement of a child for adoption by each parent or guardian must be—

- (a) made in the certificate in the form set out in Schedule 4 or Schedule 7;
- (b) signed by the parent or guardian of the child; and
- (c) returned to the adoption agency within 28 days from the date the parent or guardian received the certificate.

#### **Consent certificate: no consent or failure to return consent certificate**

**20.—**(1) This regulation applies where—

- (a) an adoption agency does not receive the signed certificate referred to in regulation 16(3)(b) or 17(3)(b) within 28 days from the date the certificate was received by the parent or guardian;
- (b) the adoption agency has not been able to carry out the duties referred to in paragraphs (2), (3) and (5) of regulation 16 or 17 because the parent or guardian of the child cannot be contacted from reasonable efforts being made to make contact by or on behalf of the adoption agency; or
- (c) a parent or guardian has signed and returned a certificate under regulation 16(3)(b) or 17(3)(b) and subsequently notifies in writing to the adoption agency that their agreement is being withdrawn.

(2) Where the adoption agency is a registered adoption service it must—

- (a) take such steps, in relation to the case as it considers appropriate and in the best interests of the child; and
- (b) refer the case to the local authority for the area in which the child resides.

(3) Where the adoption agency is a local authority it must make a determination to proceed as though parental agreement is not forthcoming.

(4) Where the case is referred to a local authority under paragraph (2) that local authority must make a determination to proceed as though parental agreement is not forthcoming.

## PART VI

### APPLICATION FOR PERMANENCE ORDER

#### **Application for a permanence order: child not subject to supervision requirement**

**21.—**(1) This regulation applies where an adoption agency which is a local authority is considering making arrangements for adoption in respect of a child who is not subject to a supervision requirement.

(2) The adoption agency must make an application for a permanence order in accordance with paragraph (3) by the end of the period of 28 days from—

- (a) the receipt of the certificate specified in regulation 16(3)(b) or 17(3)(b) certifying that the parent or guardian does not agree with the decision; or
- (b) the date the adoption agency makes a determination to proceed under regulation 20 as though the parental agreement is not forthcoming.

(3) In making the application for a permanence order the local authority must, in that application, request that the order include—

- (a) ancillary provisions vesting in the local authority the parental responsibilities and parental rights referred to in section 82(1)(a) of the Act; and
- (b) provision granting authority for the child to be adopted.

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

**Child subject to supervision requirement: referral to the Principal Reporter**

22.—(1) This regulation applies where—

- (a) an adoption agency which is a local authority is under a duty to refer the case of the child to the Principal Reporter under section 73(4)(c)(i) or (v) of the 1995 Act; or
- (b) an adoption agency which is a registered adoption service is under a duty to refer the case of a child to the Principal Reporter under section 106 of the Act.

(2) The referral to the Principal Reporter shall not be made unless the adoption agency—

- (a) has received the certificate referred to in regulation 16(3)(b) or 17(3)(b) confirming the agreement of each parent or guardian of the child to the decision of the adoption agency; or
- (b) regulation 20 applies.

(3) The referral to the Principal Reporter must be made in the form set out in Schedule 8 or in a form to like effect.

**Application for a permanence order: child subject to supervision requirement**

23.—(1) This regulation applies where an adoption agency which is a local authority, following a decision under regulation 13(1), is considering making arrangements for adoption in respect of a child who is subject to a supervision requirement.

(2) Where the adoption agency has made a determination to proceed as though parental consent is not forthcoming in accordance with regulation 20 the adoption agency must notify the Principal Reporter of its determination within 7 days from the date it made that determination.

(3) Where—

- (a) paragraph (2) applies; and
- (b) the adoption agency receives a report from a children’s hearing under section 73(13) of the 1995 Act which provides advice in support of the decision of the adoption agency made under regulation 13(1) in relation to the child,

the adoption agency must, within a period of 28 days from the date it receives the report from the children’s hearing, make an application for a permanence order in accordance with paragraph (7).

(4) Where the adoption agency receives a report from a children’s hearing under section 73(13)(5) of the 1995 Act which provides advice which does not support the decision of the adoption agency made under regulation 13(1) in relation to the child the adoption agency must, within 28 days from the date it receives the report from the children’s hearing, review its decision.

(5) In reviewing its decision under paragraph (4) the adoption agency must—

- (a) take into account the report from the children’s hearing;
- (b) take into account any further recommendations it may wish to seek; and
- (c) notify the Principal Reporter of its decision.

(6) Where the adoption agency makes a decision that adoption remains in the best interests of the child following a review under paragraphs (4) and (5) it must make an application for a permanence order in accordance with paragraph (7) within 28 days from the date of the children’s hearing.

(7) In making an application for a permanence order the local authority must, in that application, request that the order include—

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(5) Section 73(13) is amended by section 120(1), Schedule 1, paragraph 9(7)(e) of the 2007 Act.

- (a) ancillary provisions vesting in the local authority the parental responsibilities and the parental rights referred to in section 82(1)(a) of the Act; and
  - (b) provision granting authority for the child to be adopted.
- (8) Paragraphs (3), (4), (5) and (6) do not apply where an application for an adoption order has been made in relation to the child.

## PART VII

### PLACEMENT FOR ADOPTION

#### **Placement for adoption: notification and provision of information**

- 24.**—(1) This regulation applies where an adoption agency makes a decision under regulation 8(1) that—
- (a) a prospective adopter is suitable to be an adoptive parent; and
  - (b) the prospective adopter would be a suitable adoptive parent for a particular child.
- (2) The adoption agency must provide the prospective adopter with—
- (a) written information about the child’s background, parentage, health and mental and emotional development;
  - (b) written advice about—
    - (i) the need to inform the child of their adoption and origins;
    - (ii) the rights of adopted persons over 16 to obtain information from the Registrar General under section 55(4) of the Act;
    - (iii) the rights of adopted persons to whom information is disclosed under section 55(4) of the Act to request and receive counselling;
    - (iv) the availability of adoption support services on any problems relating to the adoption; and
  - (c) a copy of the report as to the health of the child obtained under regulation 18(1)(d) and any report obtained under regulation 18(2).
- (3) The adoption agency must provide notification of the placement to—
- (a) the local authority for the area in which the prospective adopter resides if different from the agency making the placement; and
  - (b) the Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978<sup>(6)</sup> which provides services under that Act in the area in which the prospective adopter resides.
- (4) In paragraph (3)—
- (a) “notification” means notification in writing and shall include particulars of the placement;
  - (b) where the adoption agency’s medical adviser considers the child to have a problem of medical significance or additional support needs within the meaning of the Education (Additional Support for Learning) (Scotland) Act 2004<sup>(7)</sup> notification as required in paragraph (3) must be made before the placement.
- (5) When the child has been placed for adoption the adoption agency must notify—
- (a) the parent or parents of the child;
  - (b) where the agency considers this to be in the child’s best interests, any parent or parents of the child who do not have parental responsibilities or parental rights if their whereabouts are known to the adoption agency; and
  - (c) the guardian of the child if their whereabouts are known to the adoption agency.

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<sup>(6)</sup> 1978 c.29. Section 2 was amended by the National Health Service and Community Care Act 1990 c.19, sections 28 and 66(1) and Schedule 9, the National Health Service Reform (Scotland) Act 2004 asp 7, section 11, schedule 1 and the Smoking, Health and Social Care (Scotland) Act 2005 asp 13, section 42(1), schedule 2.

<sup>(7)</sup> 2004 asp 4.

(6) The adoption agency must send a written report as to the health of the child and the history of the child's health to the prospective adopter's registered medical practitioner before the proposed placement together with particulars of the proposed placement.

(7) In paragraph (5)(a) "parent" means—

- (a) a parent who has any parental responsibilities or parental rights in relation to the child; or
- (b) a parent who, by virtue of a permanence order granted under section 80 of the Act which does not include provision granting authority for the child to be adopted, has no such responsibilities or rights.

### **Duties of adoption agency following placement for adoption**

**25.**—(1) Where a child has been placed for adoption by an adoption agency with a prospective adopter the adoption agency must—

- (a) ensure that the child is visited on its behalf within one week of the placement and thereafter on such other occasions as the adoption agency considers necessary in order to supervise the child's well-being; and
- (b) ensure that written reports on such visits are produced and retained on the child's case record kept in accordance with regulation 27.

(2) The requirement at paragraph (1)(a) will cease to apply where an adoption order is made vesting parental responsibilities and parental rights in relation to the child in the prospective adopter.

### **Review of child's case where no placement made within 6 months of permanence order granting authority to adopt being made**

**26.**—(1) This regulation applies where a permanence order granting authority for a child to be adopted has been granted and the child has not been placed for adoption in accordance with the Act and these Regulations after 6 months from the date that permanence order was granted.

(2) The adoption agency on whose application the permanence order was made must carry out a review of the child's case by complying with the requirements in paragraph (3) as soon as reasonably practicable and thereafter at intervals of not more than 6 months until the child has been placed for adoption.

(3) The requirements are—

- (a) to consult and take into account the views of—
  - (i) the child, taking account of their age and maturity; and
  - (ii) any person with parental responsibilities or parental rights in respect of the child;
- (b) to assess—
  - (i) the child's immediate and long-term needs;
  - (ii) the reason why no placement has been made; and
  - (iii) what action, if any, should be taken to safeguard and promote the child's welfare.

(4) Following a review under paragraph (2) the adoption agency must make a written report containing the findings made under paragraph (3) and ensure that the report is produced and retained on the child's case record kept in accordance with regulation 27.

## **PART VIII CASE RECORDS**

### **Information to be kept about adoptions**

**27.**—(1) An adoption agency must create a case record in respect of—

- (a) a child in relation to whom an adoption panel has made a recommendation under regulation 6(2)(a) that adoption is in the best interests of the child ("an adopted child"); and

(b) a prospective adopter.

(2) The following must be placed on the case record relating to an adopted child or a prospective adopter—

(a) any information obtained by that adoption agency; and

(b) any report, recommendation or decision made by that adoption agency, or by an adoption panel appointed by that agency,

under these Regulations, in respect of that adopted child or, as the case may be, that prospective adopter.

(3) An adoption agency must continue to keep the case record set up in respect of an adopted child or prospective adopter under the Adoption Agencies (Scotland) Regulations 1996<sup>(8)</sup>.

(4) However an adoption agency is not required to keep any information falling within paragraph (2)(a) if the agency considers—

(a) that it would be prejudicial to the adopted person's welfare to keep it; or

(b) that it would not be reasonably practicable to keep it.

### **Form and manner in which information is kept**

**28.**—(1) Subject to the Adoption (Disclosure of Information and Medical Information about Natural Parents) (Scotland) Regulations 2009<sup>(9)</sup> any information, reports, recommendations or decisions referred to in regulation 27(2) must be treated by the adoption agency as confidential.

(2) The adoption agency must ensure that all case records, together with the indexes to them, are at all times kept in an accessible form in secure conditions and in particular that all appropriate measures are taken to prevent theft, unauthorised disclosure, damage, loss or destruction.

(3) Subject to the Adoption (Disclosure of Information and Medical Information about Natural Parents) (Scotland) Regulations 2009, an adoption agency must—

(a) 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 secure conditions for at least 100 years;

(b) preserve the case records in respect of a prospective adopter, in relation to whom an adoption order is not made, for at least 10 years; and

(c) preserve other case records in secure conditions for so long as it considers appropriate.

(4) Case records and indexes to them may be preserved on computer records or such other system as reproduces the total contents of the case record or index.

*ADAM INGRAM*

Authorised to sign by the Scottish Ministers

St Andrew's House,  
Edinburgh  
22nd April 2009

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<sup>(8)</sup> S.I. 1996/3266, amended by S.I. 2002/3135, S.S.I. 2003/242 and 2005/517.

<sup>(9)</sup> S.S.I. 2009/.....

## SCHEDULE 1

Regulations 7(5), 12(2)(c),  
16(5)(a), 17(5)(a), 18(1)(c)

### PART I

#### INFORMATION ABOUT PROSPECTIVE ADOPTERS

1. Name, date and place of birth.

2. Address.

3. Nationality and ethnicity.

4. Whether the prospective adopter has their home in Great Britain and, if not, the address at which the prospective adopter has their home if different from paragraph 2.

5. Whether the prospective adopter is domiciled or habitually resident in the United Kingdom, the Channel Islands or the Isle of Man and, if not, the country in which they are domiciled or habitually resident. If habitually resident, for how long.

6. Whether the prospective adopter intends to apply for an order under section 59 of the Act.

7. Where there are 2 prospective adopters–

- (a) the date and place of the prospective adopters' marriage;
- (b) the date and place of the prospective adopters' civil partnership registration;
- (c) whether either prospective adopter has previously been married or in a civil partnership;
- (d) whether that marriage or civil partnership was dissolved or annulled and, if so, the grounds of divorce, annulment or dissolution;
- (e) whether there are any financial commitments in respect of a former spouse or civil partner or children from a previous relationship;
- (f) whether the prospective adopters are living together as husband and wife or as civil partners in an enduring family relationship.

8. Where there is only 1 prospective adopter–

- (a) whether that person is–
  - (i) married;
  - (ii) in a civil partnership;
  - (iii) living with another person as if husband and wife in an enduring family relationship; or
  - (iv) living with another person as if civil partners in an enduring family relationship;
- (b) if the prospective adopter is married or in a civil partnership–
  - (i) the reasons for their spouse or civil partner choosing not to join in the application;
  - (ii) whether the spouse or civil partner cannot be found;
  - (iii) whether the prospective adopter and their spouse or their civil partner are separated and living apart and whether the separation is likely to be permanent; or
  - (iv) whether the spouse or civil partner is incapable of joining in the application by virtue of their physical or mental health.
- (c) if the prospective adopter is living with another person as if husband and wife in an enduring family relationship or as if civil partners in an enduring family relationship the reasons for their partner choosing not to join in the application.

**9.** Details of other members of the prospective adopter's household including any children of the prospective adopter whether or not they are resident in the household.

**10.** Details of the prospective adopter's parents and any of the prospective adopter's siblings and their ages or ages at death.

**11.** The 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.** The prospective adopter's personality.

**13.** Details of the prospective adopter's previous experience of caring for children and an assessment of ability in this respect together, where appropriate, with an assessment of their ability in caring for their own children.

**14.** Whether the prospective adopter or any other member of their household has previously–

- (a) notified a local authority of their intention to adopt a child;
- (b) applied to an adoption agency with a view to adopting a child;
- (c) had in their care a foster child within the meaning of section 1 of the Foster Children (Scotland) Act 1984<sup>(10)</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 section 10 of that Act<sup>(11)</sup> or disqualified or prohibited under section 68 or 69 of the Children Act 1989<sup>(12)</sup> from fostering a child privately;
- (e) had in their care–
  - (i) a child who had been a protected child who had been removed under section 34 of the Adoption Act 1976<sup>(13)</sup>; or
  - (ii) a privately fostered child within the meaning of section 66 of the Children Act 1989 in respect of whom an emergency protection order under section 44 of that Act has been made or the local authority has taken steps in accordance with section 67(5) of that Act;
- (f) been convicted of an offence mentioned in Schedule 1 to the Criminal Procedure (Scotland) Act 1995<sup>(14)</sup> or an offence under Schedule 1 to the Children and Young Persons Act 1933<sup>(15)</sup>;
- (g) been convicted of an offence under section 11 of the Protection of Children (Scotland) Act 2003<sup>(16)</sup> or has been disqualified from working with children within the meaning of that Act;
- (h) had parental responsibilities and rights in respect of one or more of their own children transferred to a local authority under section 86 of the 1995 Act<sup>(17)</sup> or had one or more of such children made subject to care orders under section 31 of the Children Act 1989<sup>(18)</sup>;
- (i) had parental responsibilities and rights in respect of one or more of their own children transferred to a local authority or any other person under section 81 or 82 of the Act;
- (j) been refused registration as a child minder or worker in a nursery under–
  - (i) the Children Act 1989; or
  - (ii) Part 1 of the Regulation of Care (Scotland) Act 2001<sup>(19)</sup>,

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<sup>(10)</sup> 1984 c.56. Section 1 was amended (and repealed in part) by the Children Act 1989 c.41, section 108 and Schedule 2. Section 12 was amended by the 1995 Act, Schedule 4.

<sup>(11)</sup> Section 7 was amended by the Children Act 1989, Schedule 4, the 1995 Act, Schedule 4 and the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 c.40, Schedule 4, and is amended by the 2007 Act, schedule 4.

<sup>(12)</sup> 1989 c.41. Section 68 was amended by the Criminal Justice Act 2003 c.44, Schedules 32 and 37 and repealed, in part, by the Safeguarding Vulnerable Groups Act 2006 c.47, Schedule 9.

<sup>(13)</sup> 1976 c.36. Section 34 was repealed by the Children Act 1989 section 108 and Schedule 15.

<sup>(14)</sup> 1995 c.46. Schedule 1 was amended by the Prohibition of Female Mutilation (Scotland) Act 2005 asp 8, section 7 and the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 asp 9, schedule 1.

<sup>(15)</sup> 1933 c.12. Schedule 1 was amended by the Sexual Offences Act 2003 c.33, Schedule 6 and by the Domestic Violence, Crime and Victims Act 2004 c.28, Schedule 10.

<sup>(16)</sup> 2003 asp 5.

<sup>(17)</sup> Section 86 of the 1995 Act was amended by the Adoption and Children Act 2002 c.38, Schedule 3.

<sup>(18)</sup> Section 31 was amended by the 1995 Act, Schedule 4, the Powers of Criminal Courts (Sentencing) Act 2000 c.6, Schedule 9, the Criminal Justice and Court Services Act 2000 c.43, Schedule 8 and the Adoption and Children Act 2002 sections 120 and 121(1).

<sup>(19)</sup> 2001 asp 8. Part 1 has been amended as follows: section 2 was amended by the Mental Health (Care and Treatment) (Scotland) Act 2003 asp 13, schedule 5; sections 2, 16 and 25 were amended by the Smoking, Health and Social Care (Scotland) Act 2005 asp 13,

and details of any such occurrence.

**15.** An assessment of the prospective adopter's ability to raise an adopted child throughout their childhood.

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

**17.** The ability of the prospective adopter to have regard to a child's religious persuasion, racial origin and cultural and linguistic background.

**18.** Educational background.

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

**20.** Details of the prospective adopter's financial circumstances and comments on the living standards of the household.

**21.** Opinion of the adoption agency as to whether any adoption allowance may be paid.

**22.** The reasons given by the prospective adopter for wishing to adopt a child and the extent of their understanding of the nature and effect of adoption.

**23.** Names and addresses of at least 2 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 prepared and signed by a 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.

## PART II

### INFORMATION ABOUT THE CHILD

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

**2.** Nationality and ethnicity.

**3.** Physical description.

**4.** Religious persuasion of the child including details of any baptism, confirmation or equivalent ceremonies and level of current religious observance.

**5.** Personality, social, emotional and behavioural development.

**6.** Any linguistic and cultural needs.

**7.** Names and addresses of schools attended and educational attainments.

**8.** Whether the child's father was married to the child's mother at the time of birth or subsequently. If they have not married, whether the child's father has any parental responsibilities or parental rights.

**9.** Details of any court orders relating to the child, including residence, maintenance, or parental contact or court orders awarding or depriving any person of parental responsibilities or parental rights in respect of the child.

**10.** Details of any current or previous supervision requirements relating to the child imposed by a children's hearing.

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sections 29, 30 and 31 respectively; and sections 2, 21 and 25 are amended by the Adoption and Children (Scotland) Act 2007 asp 4, section 82, schedules 2 and 3.

**11.** Details of any siblings including their dates of birth, addresses, arrangements in respect of residence and contact and whether any sibling is also being considered for adoption and, if so, whether it would be in the child's interests to place them together.

**12.** The extent of any contact with any member of the child's family including the child's father even where the father has no parental responsibilities and parental rights and details of any court orders relating to contact.

**13.** Where 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 their home and observations on the care provided.

**14.** Any particular requirements in relation to the physical or mental health of the child and whether the child has additional support needs or a co-ordinated support plan within the meaning of the Education (Additional Support for Learning) (Scotland) Act 2004(20).

**15.** The child's views in relation to adoption and whether an application should be made for a permanence order with authority for the child to be adopted under section 80 of the Act taking into account the age and maturity of the child and any wishes in respect of their religious persuasion, racial origin and cultural and linguistic background.

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

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

**18.** A comprehensive medical report prepared and signed by a registered medical practitioner including such details as the medical adviser to the adoption agency considers necessary as to the circumstances of the child.

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

### **PART III**

#### **INFORMATION ABOUT THE CHILD'S FAMILY**

**1.** Name, date, place of birth and address of each parent and guardian of the child.

**2.** The marital status and date and place of marriage or date of registration of civil partnership of the child's parents and guardian if applicable.

**3.** The nationality and ethnicity of the child's parents and guardian.

**4.** The current and past relationship between the child's parents including an assessment of its stability.

**5.** The names, addresses, ages and brief details of the personal circumstances of the parents of the child's parents and any siblings of the child's parents.

**6.** Physical description of the child's parents and guardian.

**7.** Details of the personality of the child's parents and guardian.

**8.** Religious persuasion of the child's parents, guardian and other relatives including any wishes they have expressed as to the child's religious upbringing.

**9.** The educational background of the child's parents and guardian.

**10.** The past and present occupations of the child's parents and guardian.

**11.** Whether the child's mother, if she has parental responsibilities and parental rights other than those mentioned in sections 1(1)(c) and 2(1)(c) of the 1995 Act agrees to the child being adopted and, if not, her reasons for not agreeing.

**12.** Whether the child's father, if he has parental responsibilities and parental rights other than those mentioned in sections 1(1)(c) and 2(1)(c) of the 1995 Act agrees to the child being adopted and, if not, his reasons for not agreeing.

**13.** 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.

**14.** A comprehensive medical report prepared and signed by a registered medical practitioner including such details as the medical adviser to the adoption agency considers necessary in regard to each parent and guardian.

**15.** Any other relevant information about the child's parents and guardian which the adoption agency considers may assist the adoption panel in discharging its functions.

## SCHEDULE 2

Regulation 16(2)(a)

### 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 a registered adoption service). 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.

**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 voluntary contact is agreed by the adopters. You may however apply to the court for a contact order although leave of the court to make the application must be granted. 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 or have any other views on the upbringing of your child which you wish to be taken into account you should inform the adoption agency. The adoption agency is obliged, however, to make the welfare of the child its paramount consideration.

**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. You are asked to complete a certificate (which is 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 a permanence order with authority for your child to be adopted 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 them, 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 unless these have been removed by a permanence order which does not grant authority for your child to be adopted) 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 they 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 or if you are a parent who does not have parental rights and responsibilities unless these were removed by virtue of a permanence order which does not grant authority for the child to be adopted. The grounds on which a court can dispense with a parent's agreement are that:–

- (a) the parent or guardian is dead;
- (b) the parent or guardian cannot be found, or is incapable of giving agreement;
- (c) the court is of the opinion that the parent or guardian is unable satisfactorily to discharge parental rights and responsibilities in relation to the child (except the responsibility and the right to maintain personal relations and direct contact with the child on a regular basis) and is likely to continue to be able to do so;
- (d) where a permanence order (which does not include authority for adoption) has been made which removes the parental rights and responsibilities from the parents or guardian and it is unlikely that such responsibilities will be imposed on, or rights given to the parent or guardian;
- (e) if sub-paragraphs (c) and (d) do not apply the welfare of the child requires the consent to be dispensed with.

**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, they will be entitled to see the original entry in the birth register and to purchase a certificate of entry if they so wish. This means that when your child is 16 they will be able to find out their original name as well as your name and your address when you registered the birth. Should you wish, the adoption agency will discuss with you the implications this may have for you in the future.

SCHEDULE 3

Regulation 16(2)(b)

CERTIFICATE

ADOPTION OF CHILDREN

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 4

Regulation 16(2)(c), 19(a)

PARENT’S AGREEMENT

IN RESPECT OF

PLACEMENT OF CHILD FOR ADOPTION

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 my child’s best 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 but only where I am a parent who has parental responsibilities and parental rights or where such responsibilities and rights have been removed from me by virtue of the making of a permanence order which does not grant authority for my child to be adopted\*\*;

\*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 an application to the court for a permanence order with authority for my child to be adopted 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 a permanence order with authority for my child to be adopted being made, the court will seek my agreement to the making of the order but only where I am a parent who has parental responsibilities and parental rights or where such responsibilities and rights have been removed by virtue of the making of a permanence order which does not grant authority for my child to be adopted\*\*.

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.

\*\* You may wish to seek independent advice from a solicitor if you are unsure as to your status as a parent with parental rights and responsibilities.

## SCHEDULE 5

Regulation 17(2)(a)

### MEMORANDUM

#### APPLICATION FOR PERMANENCE ORDER WITH AUTHORITY FOR A CHILD TO BE ADOPTED

This memorandum is addressed to the parent or guardian of a child where an application is to be made to the court for a permanence order seeking authority for the child to be adopted. 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 “permanence order” granting authority for the child to be adopted:

- your responsibilities and rights as a parent or guardian to regulate the child’s residence and to provide guidance appropriate to the child’s stage of development will be transferred to the local authority;
- other rights and responsibilities may be transferred to the local authority or to specified persons;
- the adoption agency will then proceed to make arrangements for the child to be placed for adoption as quickly as possible;
- the court will grant authority for your child to be adopted which means that your consent to the adoption is not required before the making of an adoption order;
- 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 or have any other views on the upbringing of your child which you wish to be taken into account you should inform the adoption agency and it will take your wishes into account in selecting new parents for them as far as possible. The adoption agency is obliged, however, to make the welfare of the child its paramount consideration.

**3.** The adoption agency needs to know whether each of the child’s parents or guardian agrees with its decision that an application for a permanence order with authority for the child to be adopted should be made. You are asked to complete a certificate (enclosed) indicating whether you agree or disagree with the 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 paragraphs 4 and 5) in the 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. If you do not indicate your agreement within 28 days, the adoption agency will be obliged to make the application for the permanence order seeking authority for the child to be adopted 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 them, 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 local authority has to apply to a court for a permanence order with authority for the child to be adopted. 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 unless these have been removed by the making of a previous permanence order which does not grant authority for your child to be adopted) and any other parent with parental rights and responsibilities 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 the permanence order with authority for adoption to be made.

5. After the 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 the permanence order granting authority for adoption without your agreement unless it dispenses with your agreement on certain grounds of if you are a parent who does not have parental rights and responsibilities unless these were removed by virtue of a previous permanence order which does not grant authority for the child to be adopted. The grounds on which a court can dispense with a parent's agreement are that:-

- (a) the parent or guardian is dead;
- (b) the parent or guardian cannot be found, or is incapable of giving agreement;
- (c) the court is of the opinion that the parent or guardian is unable satisfactorily to discharge parental rights and responsibilities in relation to the child (except the responsibility and the right to maintain personal relations and direct contact with the child on a regular basis) and is likely to continue to be able to do so;
- (d) where a permanence order (which does not include authority for adoption) has been made which removes the parental rights and responsibilities from the parents or guardian and it is unlikely that such responsibilities will be imposed on, or given to the parent or guardian;
- (e) if sub-paragraphs (c) and (d) do not apply the welfare of the child requires the consent to be dispensed with.

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

#### **Right to apply for a variation of the permanence order**

8. Any person who had parental rights and responsibilities in respect of the child immediately before the permanence order was made which were removed by the making of that permanence order may apply to the court for leave to make an application for a variation of certain provisions in the permanence order. The right also applies to any person who claims an interest, the local authority which made the application, the child (if they are over 12 or are capable of understanding the effect of the order) and any person who has had parental rights and responsibilities conferred on them by virtue of the permanence order.

9. An application to have the permanence order revoked may also be made by any person who is affected by the order but only where the leave of the court has been granted.

#### **Birth records**

10. 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, they will be entitled to see the original entry in the birth register and to purchase a certificate of that entry if they so wish. This means that when the child is 16 they will be able to find out their original names as well as your name and your address when you registered their birth. Should you wish, the adoption agency will discuss with you the possible implications this may have for you in the future.

SCHEDULE 6

Regulation 17(2)(b)

CERTIFICATE

APPLICATION FOR PERMANENCE ORDER WITH AUTHORITY FOR A  
CHILD TO BE ADOPTED

To: (name of Adoption Agency)

I hereby certify that I have received from you a memorandum headed "Application for permanence order with authority for a child to be adopted" from which I have detached this certificate of acknowledgement and that I have read the memorandum and understood it.

Signature .....

Name .....

Address .....

.....  
Date .....

SCHEDULE 7

Regulation 17(2)(c), 19(a)

PARENT'S AGREEMENT

IN RESPECT OF AN

APPLICATION FOR A PERMANENCE ORDER WITH AUTHORITY FOR  
A CHILD TO BE ADOPTED

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 80 of the Adoption and Children (Scotland) Act 2007 for a permanence order with authority for my child to be adopted and for their placement with adopters. I understand that:

- (a) my child will go to live with adopters before the permanence order application is made if that is in my child's best 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 permanence order application, it will seek my agreement to the making of the permanence order but only where I am a parent who has parental responsibilities and parental rights or where such responsibilities and rights have been removed from me by virtue of the making of a permanence order which does not grant authority for my child to be adopted\*\*.

\*B. Do not agree to my child being the subject of an application under section 80 of the Adoption and Children (Scotland) Act 2007 for a permanence order granting authority for my child to be adopted. I understand that:

- (a) should the adoption agency wish to continue with their plan to have my child adopted, they must make an application for a permanence order 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 permanence order with authority for my child to be adopted being made, the court will seek my agreement to the making of the order but only where I am a parent who has parental responsibilities and parental rights or where such responsibilities and rights have been removed from me by virtue of the making of a permanence order which does not grant authority for my child to be adopted\*\*.

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.

\*\* You may wish to seek independent advice from a solicitor if you are unsure as to your status as a parent with parental rights and responsibilities.

SCHEDULE 8

Regulation 22(3)

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 an application for a permanence order with authority for the child to be adopted under section 80 of the Adoption and Children (Scotland) Act 2007 [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 for a permanence order granting authority for the child to be adopted under section 80]\* of the Adoption and Children (Scotland) Act 2007 is [likely] [unlikely]\* to be forthcoming.

REASONS REFERRED TO

(insert reasons)

.....  
.....  
.....

(officer of adoption agency) .....

(place and date) .....

\*Delete as appropriate

## EXPLANATORY NOTE

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

These Regulations make provision for the various functions of adoption agencies under the Adoption and Children (Scotland) Act 2007 (“the Act”). Adoption agencies are registered adoption services and local authorities.

Part 2 makes provision for the establishment of adoption panels whose functions are specified in regulation 6. Regulations 3 and 4 make provision for the constitution, composition and meetings of the adoption panel whilst regulation 5 prescribes the appointment of medical and legal advisers.

Part 3 provides for the duties of adoption agencies in the assessment of prospective adopters (regulation 7) and their approval (regulation 8). Regulations 9, 10 and 11 provide a system for review of such approval.

Part 4 concerns the functions of adoption agencies when adoption is being considered for a child. Regulation 13 prescribes the time within which a decision must be made following a recommendation made by the adoption panel and the requirement to take account of the panel’s recommendation and to give reasons where the decision is contrary to that recommendation. Paragraphs (4) to (6) apply where the child is subject to a supervision requirement under the Children (Scotland) Act 1995.

Regulations 16 and 18 prescribe the information which must be provided and the steps which must be taken when a decision is made that adoption is in the child’s best interests and arrangements should be made for adoption (regulation 16) or an application for a permanence order with authority for the child to be adopted should be made (regulation 18). Where adoption is not the way forward for the child the adoption agency must take such steps as it considers to be appropriate and in the child’s best interests (regulation 15(1)). Where the adoption agency decides that a permanence order with authority for adoption should be sought it must, if it is a registered adoption service, refer the case to the local authority (regulation 15(2)).

Part 5 makes provision for consent certificates and, in particular, the consent requirements for the purposes of section 20(1)(b) of the Act (regulation 19) and the circumstances under which an adoption agency which is a local authority shall determine to proceed as though parental consent is not forthcoming (regulation 20).

Part 6 prescribes the circumstances where an application for a permanence order with authority for the child to be adopted must be made. Where that child is subject to a supervision requirement regulations 22 and 23 prescribe the circumstances under which a referral must be made to the Principal Reporter of the children’s hearing or notification of the adoption agency decision to make an application for a permanence order with authority for the child to be adopted.

Part 7 makes provision for the placing of a child for adoption when a decision has been made that a prospective adopter is suitable to be an adoptive parent and that person would be a suitable adoptive parent for a particular child. Regulation 26 creates a requirement for review of the child’s case where a permanence order with authority to adopt has been granted but the child has not been placed for adoption.

Part 8 makes provision concerning the information which an adoption agency must keep in relation to adoptions and the form and manner in which such information must be kept.

