

**The Adoption Agencies (Scotland)
Regulations 2008**

**CONSULTATION ON DRAFT
REGULATIONS**

The Scottish Government

Edinburgh, 2008

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CONSULTATION ON DRAFT REGULATIONS-INTRODUCTION

The Adoption and Children (Scotland) Act 2007 ('the 2007 Act') introduced a range of reforms into the law relating to the adoption of, and permanent care for, children who cannot remain with their birth families.

As the Act repeals previous legislation (the Adoption (Scotland) Act 1978) the volume of new regulations will be quite large, though most will comprise restated and updated, rather than wholly new, material. There will be four main "packages" of regulations:

- adoption agencies (procedures, appeals etc);
- adoption support (preparation of adoption support plans, responsibility for providing support etc);
- adoption information (keeping of records, disclosure of information to adopted persons; and
- intercountry adoption.

The full text of the 2007 Act may be found at:

http://www.opsi.gov.uk/legislation/scotland/acts2007/asp_20070004_en_1

The APRG Report *Adoption: Better Choices for Our Children* may be found at:

<http://www.scotland.gov.uk/Publications/2005/06/27140607/06107>

This document accompanies the draft Adoption Agencies (Scotland) Regulations 2008. It sets out the policy behind the draft Regulations and seeks your comments on a number of issues within the Regulations. The Regulations will replace the Adoption Agencies (Scotland) Regulations 1996. The consultation period runs until 29 August 2008.

The regulations are broadly similar to the 1996 Regulations with new provisions dealing with the permanence order with authority to adopt which replaces the freeing order. However, it should be noted that the regulations do not contain detailed procedural provisions for permanence orders because the Act does not allow us to go that far. Permanence orders may only be applied for by local authorities and section 8 of the Act allows regulations to be made with respect to the carrying out by local authorities of their functions in relation to *adoption*. Section 8(3) clarifies that this may include specifying the circumstances in which a local authority proposing to make arrangements for the adoption of a child must apply for a permanence order with authority to adopt. This is why the regulations only deal with authority to adopt. The court rules will deal with procedural aspects such as notification or who may be called to appear during the hearing. They will not, however, be used to prescribe anything in the lead up to the making of the application by the local authority. They are concerned with procedural requirements. The rules could prescribe the form of the permanence order application for example.

While we welcome comments on all of the draft regulations, there are specific questions on which we seek your views and these are highlighted in the document. We would also be grateful for responses to the following questions/issues:

- (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) As indicated above, the regulations will not apply to a permanence order which does not include provision granting authority to adopt. The regulations make provision for placing the child for adoption and it is possible that a child may be looked after and accommodated before an application for a permanence order with authority to adopt is made (although in some cases the child will not be looked after and accommodated). The permanence order provisions also flow naturally from the other provisions within the regulations. Regulation 16, for example, applies when the consent certificate has not been returned under regulation 12 or 13 and the adoption agency makes its determination under regulation 15 to proceed as though parental agreement is not forthcoming. The permanence order provisions are therefore housed in these regulations because they fit within the wider adoption planning process being regulated here. They also use the same enabling power at section 8 of the Act.

It must also be remembered that permanence orders are designed to be flexible and tailored to meet the individual needs of the child. The right to regulate the child's residence and the responsibility to provide guidance will always be vested in the local authority as the mandatory provisions. However it is open to the court to confer other parental rights and responsibilities on other named individuals or to allow some of those rights and responsibilities to remain with the child's parents depending on the circumstances of the individual case. Therefore a child who is subject to a permanence order will not always be a fostered child within the definition in the Looked After Children (Scotland) Regulations.

Bearing this in mind your views on where the provisions relating to permanence orders should sit would be appreciated.

- (iii) Do you agree with our understanding of what “parent” means in each of the relevant regulations? See Annex A on page 39 for the reasoning behind this question. There is also an explanation in each regulation as to which group of ‘parents’ is being covered in that provision.

This document is primarily being distributed electronically and is available on the Scottish Government web-site at www.scotland.gov.uk/adoptionagenciesregs. If, however, you would wish to be sent the document in photocopy please contact **Suzanne Allan on 0131 244 0407**

or e-mail adoptionregulations@scotland.gsi.gov.uk to arrange for a copy or copies to be sent to you.

Please send your response electronically to the above address or in hard copy to

Adoption Agencies Regulations Consultation, 2-A(N) Victoria Quay, EDINBURGH, EH6 6QQ

Please complete the details on the respondent information form at the end of this document and return it with your response. This will help ensure we handle your response appropriately. Thank you for your help.

COMMENTARY AND CONSULTATION QUESTIONS

Regulation 1 – Citation and Commencement

It is planned that these regulations will come into force in early 2009.

Regulation 2 - Interpretation

Regulation 2 provides for definitions to be used throughout the Regulations. Where an expression is used in these Regulations it will have the same definition as in the Act unless a separate definition is provided.

Regulation 3 – Appointment and composition of adoption panels

This regulation specifies that all adoption agencies should appoint a panel to carry out the functions conferred on them by regulation 6. “Adoption agencies” are local authorities and adoption services which are registered with the Care Commission. Regulation 3 and regulation 4 make a distinction between the adoption panel, which is the wider pool of members who can serve on the adoption panel and a meeting of the adoption panel, which is the group of individuals acting together to make recommendations on any one occasion.

Regulation 3 prescribes the number of members that an adoption panel (i.e. the wider pool) should have and allows for the appointment of joint adoption panels.

- **Is a minimum of 6 members (which reflects the current minimum in the 1996 Regulations) reasonable?**

The regulation also specifies that adoption agencies must be satisfied as to the qualifications for membership of an adoption/joint adoption panel

- **Do you agree with these provisions?**
- **Should there be a duty on agencies to review the membership of the panel on a regular basis?**

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

Regulation 4 makes provision for a quorum for a meeting of an adoption panel with at least one member being a legal adviser when considering whether adoption is in the best interest of the child or whether an application for a permanence order with authority for the child to be adopted should be made under section 80 of the Act.

- **The quorum is set at 3 (which replicates the 1996 Regulations). Is this reasonable?**

Regulation 5 – Appointment of medical and legal advisers

Regulation 5 specifies that an adoption agency shall appoint such number of persons as it considers necessary for the purposes of providing medical and legal advice in connection with the exercise of its functions.

- **Do you agree with this approach (which again replicates the 1996 Regulations)?**

Regulation 6 – Functions of the adoption panel

This regulation sets out the functions of an adoption panel. These are to consider whether adoption is in the best interests of a particular child; whether an application for a permanence order with authority to adopt should be made under section 80 of the Act; whether a prospective adopter is suitable to be an adoptive parent; whether a prospective adopter would be a suitable adoptive parent for a particular child; to provide a written report of the consideration given by them to alternatives to adoption and in circumstances where adoption with parental contact is recommended, why adoption is recommended rather than an alternative course of action. The panel can also consider any other matter referred to it which is relevant to the adoption agency's functions under the Act.

- **Do you think anything else needs to be added?**

We are aware that the Adoption Policy Review Group recommended that all “plans for permanence for children, including adoption, should be looked at by one advisory panel within each local authority”. However, it is proposed that while Adoption and Fostering panels should be separate entities, there should be no impediment to the same body of people being able to constitute the membership of both the Fostering Panel and the Adoption Panel. In order to avoid excessive regulation on local authorities and adoption agencies, we propose to cover this possibility in guidance.

- **Do you agree with this approach?**

The provisions in Regulation 6 do not cover the procedural conduct of the adoption panel hearings. This allows instead for a flexible and individual approach in each case which is being considered by the panel. The panel will consider a range of matters referred to it by the adoption agency. Its role is to make recommendations whilst the final decision making power rests with the adoption agency. Some overriding conditions will apply however. Regulation 6(5) requires the panel to meet with the prospective adopter and to discuss the case with him or her before making a recommendation on the specific issue of whether that prospective adopter is suitable to be an adoptive parent. The views of the child must also be taken into account when a decision relating to their adoption is being made.

Although the Adoption Policy Review Group recommended that children and young people should have a right to make representations to adoption panels and/or attend them, taking into account their age and maturity, section 14(4)(b) of the Act ensures that the adoption agency must have regard in particular to the child's ascertainable views regarding the decision it takes taking into account the child's age and maturity. This duty will therefore apply when an adoption agency makes a decision under regulation 9 following receipt of a recommendation by the adoption panel.

- **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 ascertain the wishes of the child and pass the information to the adoption panel?**
- **If a requirement should be created should it be extended to cover birth parents?**

In regulations 6(4) and (9) “parent” means only those parents with PRR in order to maintain consistency with the 1996 Regulations.

- **Should the definition be opened up to include parents whose PRR have been removed by a permanence order with authority for the child to be adopted?**

Regulation 7 – Duties of adoption agencies: placing the child for adoption

This regulation sets out what an adoption agency must do and the information it must obtain before placing a child with any prospective adopter. The information which should be obtained is set out in Schedule 1 which is split into 3 parts. Part I covers information about the child. Information about the child’s family is covered in Part II. Part III covers information about the prospective adopters.

- **Does this cover the requirements? If not, what is required?**
- **Are the lists in Parts I, II and III of Schedule 1 complete? If not what needs to be added?**

Regulation 8 - Duties of adoption agencies: assessment of prospective adopters

This regulation requires an adoption agency to prepare and publish a statement of the general criteria which it will apply for the purpose of considering whether any person may be accepted by the agency for assessment as an adoptive parent.

- **This regulation replicates regulation 10 of the 1996 Regulations. Do you have any comments?**

Regulation 9 – Adoption agency decisions

Although the adoption panel makes a recommendation, the final decision to approve someone as an adopter and to determine whether adoption is 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, is taken by the adoption agency. Regulation 9 prescribes the timescales within which a decision must be made and details what the agency has to take into account when making its decision.

Regulation 10 – Notification of adoption agency decisions

This Regulation specifies the notification requirements when an adoption agency makes a decision as to whether (a) adoption is in the best interests of the child, (b) an application for a permanence order with authority for the child to be adopted under section 80 of the Act should be made, or (c) it considers a prospective adopter to be suitable to be an adoptive parent or whether they would be suitable as such for a particular child. Regulation 10 also explains what needs to be done where the agency makes a decision that (a) adoption is not in the best interests of the child and there is a better and practicable alternative to adoption or (b) an application for a permanence order with authority for the child to be adopted should be made under section 80 of the Act.

- **Does this cover the requirements in full? If not, what is required?**

Regulations 10(1) and (2) distinguish parents (undefined therefore the larger group including natural parents) and non PRR parents.

- **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?**

Regulation 11 – Review of adoption agency decisions

If an agency decides that it does not consider a prospective adopter to be suitable to be an adoptive parent, the prospective adopter can request a review of the decision. The request must be made within 28 days of the day on which notice of the agency’s decision was made. This regulation explains what an agency is required to do when a request for a review has been received. The agency must refer the case to a freshly constituted adoption panel, which in turn, will consider the case and make a recommendation. The adoption agency must then make a decision within 14 days of receiving the recommendation. There is no right to request any further review once the agency makes its decision following the panel’s recommendation.

- **Do you have any views on this provision? Could it be strengthened in any way?**
- **Are the time limits of 28 and 14 days acceptable?**

Regulation 12 – Provision of information to parents; decision by adoption agency to make arrangements for adoption

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

These Regulations prescribe the information which must be provided to each parent or guardian and the steps to be taken by an adoption agency where the agency makes a decision (a) that adoption is in the best interests of the child and proposes to make arrangements for the adoption of the child, or (b) that adoption is in the best interests of the child and an application for a permanence order with authority for the child to be adopted should be made under section 80 of the Act.

Schedules 2 and 5 set out the form of memorandum containing information about the legal process depending on whether the decision is to pursue adoption or where an application is to be made to the court for a permanence order seeking authority for the child to be adopted which should be sent to the parent or guardian of the child. Schedules 3 and 6 are the certificates which confirm receipt of the memorandum. Schedule 4 sets out the certificate of agreement, or otherwise, to the child being placed for adoption and Schedule 7 sets out the certificate of agreement, or otherwise, to the child being the subject of an application for a permanence order with authority to adopt and for the child to be placed with adopters.

- **Could these provisions be strengthened in any way?**
- **Do the Schedules cover all the requirements? If not what should be added?**

Regulation 12 applies where a decision is made that adoption is in the child’s best interests and the adoption agency has taken a further step and decided that arrangements for adoption

should be made. Here Regulations 12(1)-(3) apply to all parents whilst Regulation 12(5) refers only to non PRR parents. The effect is that all parents must receive the memorandum and certificates in Schedules 2-4 whilst the adoption agency must take additional steps to obtain the Schedule 1 information and establish whether a parental agreement order under section 4 of the Children (Scotland) Act 1995 is likely to be applied for in the case of non PRR parents.

Regulation 13 applies where a decision is made that adoption is in the child's best interests and that an application for a permanence order with authority for the child to be adopted should be made. This provision effectively mirrors regulation 12.

- **Is our understanding of “parent” correct in these Regulations?**

Regulation 14 – Consent to placement of the child for adoption for the purposes of section 20 of the Act

Where a child has been placed for adoption with prospective adopters and the child's parents have consented to this,

Section 20(2) of the Act provides that the parents cannot remove the child from the home of the prospective adopters without the leave of the adoption agency or the appropriate court. This regulation sets out the form in which the consent has to be given for those purposes.

“Parent” in section 20 is left undefined therefore the offence applies to all parents to include those with parental rights and responsibilities and natural parents whether or not they have such rights and responsibilities. As the consent certificates in Schedules 4 and 7 are the prescribed forms for the purposes of section 20 it is important that all parents are given the information and these certificates as required by Regulations 12 and 13 so all parents will be asked to consent for the purposes of section 20.

Regulation 15 – Consent certificate; no consent or failure to return consent certificate

This regulation applies where (a) an adoption agency does not receive the certificate confirming the parent's or guardian's agreement, or otherwise, to either the child being placed for adoption or being the subject of an application under section 80 of the Act for a permanence order with authority for the child to be adopted and for the child's placement with adopters, (b) the adoption agency has not been able to carry out the duties referred to in paragraphs (2), (3) and (5) of regulation 12 or 13 because the parent or guardian of the child cannot reasonably be contacted, or (c) the parent or guardian has given written notice that agreement is being withdrawn. Where the adoption agency is a registered adoption service, it must take such steps, if any, it considers appropriate and in the best interests of the child if the agency is a local authority it must make a determination to proceed as though parental consent is not forthcoming.

Regulation 16 – Application for a permanence order; child not subject to supervision requirement

Where a local authority adoption agency is considering making arrangements for the adoption of a child who is not subject to a supervision requirement, this regulation requires the agency to make an application for a permanence order with authority for the child to be adopted under section 80 of the Act before the expiry of 28 days from either the receipt of the

certificate confirming that the parent or guardian does not agree with the decision or the date the agency makes a determination to proceed as though agreement is not forthcoming under regulation 15. This regulation does not apply where an application for an adoption order has been made in relation to the child.

- **Is 28 days a realistic timescale? If not what do you regard as being a more effective timescale?**

“Parent” is left undefined in Regulations 15 and 16 and therefore includes non PRR parents (i.e. “parent” carries the same meaning as in Regulations 12 and 13).

Regulation 17 – Child subject to supervision requirement; referral to the Principal Reporter

Regulation 18 – Application for a permanence order; child subject to supervision requirement

These regulations deal with applications for permanence orders with authority for the child to be adopted where that child is subject to a supervision requirement and the circumstances under which referral must be made to the Principal Reporter or notification of its decision to make an application for a permanence order with authority for the child to be adopted. Schedule 8 sets out the form of referral to the Principal Reporter.

- **Do these Regulations cover the requirements in full? If not, what is required?**
- **Does the Schedule cover all the requirements? If not what should be added?**
- **Is 28 days a realistic timescale in Regulation 18? If not what do you regard as being a more effective timescale?**

Regulation 19 – Placement for adoption; notification and provision of information

Regulation 20 – Duties of adoption agency following placement for adoption

These Regulations make 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 19 sets out the information which must be provided to the prospective adopter and who should be notified of the placement. Regulation 20 requires that, where an agency has placed a child with a prospective adopter, the agency must ensure that (a) the child is visited on the agency’s behalf within one week of placement and on such occasions thereafter as the agency considers necessary in order to supervise the child’s well-being and (b) written reports on such visits are produced and retained on the case record.

- **Do these Regulations cover the requirements in full? If not, what else is required?**

Regulation 19(5) distinguishes between parents with PRR or PRR removed by a permanence order and non PRR parents. It applies where a child has been placed for adoption. The PRR/PRR removed by a permanence order with authority to adopt parents are automatically notified of the placement. Non PRR parents, however, are only notified where the adoption agency considers this to be in the child’s best interests. Although this reflects the equivalent

provision in the 1996 Regulations, the stage reached when Regulation 19 bites should come after the process in Regulations 12 or 13 have been applied and it may appear odd that non PRR parents are asked to consent to placement and sign the appropriate certificate but are not then automatically notified once the placement is made.

- **Should non PRR parents receive automatic notification of the placement?**

Schedules 2, 4, 5, 7 and 8

- **Could these Schedules be simplified? If so, your suggestions would be greatly appreciated.**

SUMMARY OF CONSULTATION QUESTIONS (excluding specific questions (i)-(iii) on pages 3-4)

Is a minimum of 6 members reasonable in Regulation 3?

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

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

The quorum is set at 3 in Regulation 3. Is this reasonable?

Do you agree with the approach in Regulation 5?

Do you think anything else needs to be added to Regulation 6?

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?

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 ascertain the wishes of the child and pass the information to the adoption panel?

If a requirement should be created should it be extended to cover birth parents?

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?

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

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

Regulation 8 replicates regulation 10 of the 1996 Regulations. Do you have any comments?

Does Regulation 10 cover the notification requirements in full? If not, what is required?

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?

Do you have any views on Regulation 11? Could it be strengthened in any way?

Are the time limits of 28 and 14 days in Regulation 11 acceptable?

Could the provisions in Regulations 12 and 13 be strengthened in any way?

Do Schedules 2-7 cover all the requirements? If not what should be added?

Is our understanding of “parent” correct in Regulations 12 and 13?

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

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

Does Schedule 8 cover all the requirements? If not what should be added?

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

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

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

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

2008 No.

CHILDREN AND YOUNG PERSONS

The Adoption Agencies (Scotland) Regulations 2008

Made - - - -

Laid before the Scottish Parliament

Coming into force - -

ARRANGEMENT OF REGULATIONS

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- PART I — INFORMATION ABOUT THE CHILD
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The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 8, 20 and 106 of the Adoption and Children (Scotland) Act 2007⁽¹⁾ 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 2008 and shall come into force on .

⁽¹⁾ 2007 asp 4.

Interpretation

2. In these Regulations–

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

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

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

[“independent nurse prescriber” has the same meaning as in regulation 2 of the National Health Service (Charges for Drugs and Appliances) (Scotland) Regulations 2007(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 each case, whether or not by affinity, and in the cases of a brother, sister, uncle or aunt, whether of the full-blood or half-blood); and includes a civil partner of any such grandparent, brother, sister, uncle or aunt.

PART II

ADOPTION PANELS

Appointment and composition of adoption panels

3.—• Each adoption agency shall appoint a panel to be known as the “adoption panel” for the purpose of carrying out the functions conferred on it by regulation 6.

(1) The adoption panel shall consist of at least 6 members.

(2) An adoption panel may be established jointly by any two 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.

(3) The persons appointed to an adoption panel shall include–

(a) a medical adviser appointed by the adoption agency under regulation 5(1); and

(b) a legal adviser appointed by the adoption agency under regulation 5(2).

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

(5) 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.—• Subject to paragraph (2) no business shall be conducted by an adoption panel unless at least 3 of its members, meet as the panel.

(1) When considering a matter referred to in regulation 6(2)(a) or (b) at least one of the adoption panel members must be a legal adviser appointed under regulation 5(2).

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

Appointment of medical and legal advisers

5.—• An adoption agency shall 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) 1995 c.36.

(3) S.S.I. 2007/27.

(1) An adoption agency shall 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.

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

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

- (a) a solicitor admitted in Scotland; or
- (b) an advocate.

Functions of the adoption panel

6.—• The adoption panel shall 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 shall 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 with authority for the child to be adopted should be made under section 80 of the Act;
- (c) whether a prospective adopter is 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 shall 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 shall provide a written report of the reasons why adoption is recommended rather than an alternative course of action.

(5) Before making a recommendation under paragraph (2)(c) the adoption panel must meet with the prospective adopter [and 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 9 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 9(1) that the prospective adopter is suitable to be an adoptive parent.

(8) In carrying out its functions the adoption panel shall 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

DUTIES OF ADOPTION AGENCIES

Duties of adoption agencies: placing the child for adoption

7.—• An adoption agency shall not place or secure the placing of a child with any prospective adopter unless—

- (a) the adoption agency is satisfied that the placement is in the best interests of the child;
- (b) the adoption agency is satisfied that placement of the child with the prospective adopter is in the best interests of the child;
- (c) the adoption agency has, so far as is reasonably practicable, obtained the information in Schedule 1;
- (d) the adoption agency has obtained a report prepared within the previous 12 months by a registered medical practitioner or [an independent nurse prescriber] as to—
 - (i) the health of the child; and
 - (ii) the health of each prospective adopter;
- (e) the prospective adopter has been interviewed by or on behalf of the adoption agency;
- (f) subject to paragraph (5) the adoption agency is satisfied that the premises within which the prospective adopter intends that the child shall reside are suitable for the needs of the child;
- (g) the adoption agency 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;
- (h) the adoption agency has prepared a report with its observations on the matters referred to in sub-paragraphs (a) to (g) 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) the adoption agency shall—

- (a) ensure that arrangements are made for the child to be examined by a registered medical practitioner [or independent nurse prescriber]; and
- (b) obtain from the practitioner [or nurse] who has carried out a written assessment of the state of health of the child and their need for health care.

(3) Paragraph (2) does not apply where the child has been examined by a registered medical practitioner and an assessment has been made of the state of the health of the child and the child’s need for health care within the previous 12 months.

(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)(i).

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

(6) In paragraph (1)(g) 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.

Duties of adoption agencies: assessment of prospective adopters

8.—• An adoption agency shall 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.

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

(2) 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.

(3) 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 the adoptive parent.

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

- (a) assess the case and prepare a report on the assessment;
- (b) refer the case to the adoption panel for a recommendation [on whether the prospective adopter is suitable to be an adoptive parent];
- (c) provide a copy of the report on the assessment to the adoption panel [at the same time as making the referral];
- (d) notify the prospective adopter that the case has been referred to the adoption panel; and
- (e) provide the prospective adopter with a copy of the report provided to the adoption panel which report shall exclude any information provided by [third parties] [any person] in confidence.

PART IV

ADOPTION AGENCY DECISIONS

Adoption agency decisions

9.—• The adoption agency must make a decision within 14 days from the date it receives a recommendation from the adoption panel on a matter referred to the panel under regulation 6(2)(a), (b), (c) or (d).

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

(2) 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.

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

(4) For the purposes of determining whether it is satisfied in accordance with section 73(4)(c)(i) or (iv) of the 1995 Act 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.

(5) For the purposes of determining under section 106 of the Act 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

10.—• Where an adoption agency makes a decision under regulation 9(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 parent or parents of the child;
- (b) 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 responsibilities, if their whereabouts are known to the adoption agency;
- (c) the guardian of the child [if their whereabouts are known to the adoption agency]; and
- (d) 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 9(1) as to whether an application for a permanence order with authority for the child to be adopted under section 80 of the Act should be made the adoption agency must notify—

- (a) the parent or parents of the child;
- (b) 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 responsibilities 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.

(3) Where an adoption agency makes a decision under regulation 9(1) as to whether it considers a prospective adopter to be suitable to be an adoptive parent or whether they would be suitable as such for a particular child the adoption agency must notify the prospective adopter of its decision.

(4) Where the adoption agency makes a decision under regulation 9(1) that—

- (a) adoption is not in the best interests of the child and there is a better and practicable alternative to adoption;
- (b) an application for a permanence order with authority for the child to be adopted should be made under section 80 of the Act; or
- (c) an agreement made in the certificate specified in regulation 12(3)(b) or 13(3)(b) is not forthcoming,

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.

(5) In paragraphs (1)(a) and (2)(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.

Review of adoption agency decisions

11.—• Where an adoption agency makes a decision under regulation 9(1) that it does not consider a prospective adopter to be suitable to be an adoptive parent, that prospective adopter may request a review of the decision.

(1) A request for a review must be made before the end of the period of 28 days beginning with the day on which notice of the decision was made under regulation 10(3).

(2) Subject to paragraphs (4) and (5) where the adoption agency receives a request for review of its decision from the prospective adopter under paragraph (1) it must refer the case to an adoption panel for a recommendation.

(3) A referral under paragraph (3) must be made to a differently constituted adoption panel.

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

- (a) a copy of its decision and reasons made under regulation 9(1);
- (b) the report provided to the adoption panel under regulation 8(5)(c);
- (c) any further representations received by the adoption agency from the prospective adopter; and

(d) any other relevant information.

(5) The adoption panel shall consider the case referred to it under paragraph (3) and make a fresh recommendation to the adoption agency as to whether the prospective adopter is suitable to adopt a child.

(6) The adoption agency must—

(a) make a decision within 14 days from the date it receives the recommendation from the adoption panel under paragraph (5); and

(b) notify the prospective adopter of its decision.

(7) There is no right to request a review of a decision made under paragraph (7)(a).

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

12.—• This regulation applies where the adoption agency—

(a) makes a decision under regulation 9(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 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 set out in Part II 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

13.—• This regulation applies where an adoption agency makes a decision under regulation 9(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 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) Where the adoption agency considers it to be in the [best] interests of the child it must, so far as it considers it reasonably practicable to do so—
- (a) provide the parent with—
 - (i) a memorandum in the form set out in Schedule 5; and
 - (ii) a certificate in the form set out in Schedule 6;
 - (b) take such steps to ensure that—
 - (i) the parent signs and returns to the adoption agency the 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
 - (ii) the parent completes and signs the certificate set out in Schedule 7 and returns it to the adoption agency within 28 days;
 - (c) make enquiries and—
 - (i) obtain in respect of the parent the information set out in [Part II of] Schedule 1;
 - (ii) 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.
- (6) In paragraphs (2) and (3) “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 which does not include provision granting authority for the child to be adopted, has no such responsibilities or rights.

PART V

CONSENT CERTIFICATES

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

14. 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;
- (b) signed by each 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

15.—• This regulation applies where—

- (a) an adoption agency does not receive the certificate referred to in regulation 12(3)(b) or 13(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) and (3) [and (5)] of regulation 12 or 13 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 12(3)(b) or 13(3)(b) and subsequently notifies in writing to [an] [the] adoption agency that their agreement is being withdrawn.

(2) Where the adoption agency is a registered adoption service it must take such steps, if any, in relation to the case as it considers appropriate and in the [best] interests of the child.

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

PART VI

APPLICATION FOR PERMANENCE ORDER

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

16.—• 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.

(1) The adoption agency must make an application for a permanence order with authority for the child to be adopted under section 80 of the Act by the end of the period of 28 days from—

- (a) the receipt of the certificate specified in regulation 13(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 15 as though the parental agreement is not forthcoming.

(2) 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

17.—• 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) 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 12(3)(b) or 13(3)(b) confirming the agreement of each parent or guardian of the child to the decision of the adoption agency; or
- (b) regulation 15 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

18.—• 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 subject to a supervision requirement.

(1) Where regulation 15 applies the adoption agency must notify the Principal Reporter of its determination within 7 days from the date it made the determination referred to in regulation 15(3)(a).

(2) Subject to paragraph (7) 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 in relation to the child,

the adoption agency shall, within a period of 28 days from the date of the children's hearing, make an application for a permanence order with authority for the child to be adopted.

(3) Where the adoption agency receives a report from a children's hearing under section 73(13) of the 1995 Act which provides advice which does not support the decision of the adoption agency in relation to

the child the adoption agency must, within 28 days from the date of the children's hearing, review its decision.

(4) 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.

(5) Subject to paragraph (7) 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 granting authority for the child to be adopted within 28 days from the date of the children's hearing.

(6) 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

19.—• This regulation applies where an adoption agency makes a decision under regulation 9(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 44 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 counselling 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 7(1)(d)(i).

(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;
- (b) [the education authority for the area in which the prospective adopter resides where the child is of compulsory school age within the meaning of section 31 of the 1980 Act;]
- (c) the Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978(4) 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

(4) 1978 c.29.

for Learning) (Scotland) Act 2004(5)] notification as required in sub-paragraphs (b) and (c) 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 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.

(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.

Duties of adoption agency following placement for adoption

20.—• 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 case record.

(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.

(5) 2004 asp 4,

PART I
INFORMATION ABOUT THE CHILD

- 1.** Name, sex, date and place of birth and address.
- 2.** Nationality and race.
- 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 and social development.
- 6.** Names and addresses of schools attended and educational attainments.
- 7.** 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.
- 8.** 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.
- 9.** Details of any current or previous supervision requirements relating to the child imposed by a children's hearing.
- 10.** 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.
- 11.** 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.
- 12.** 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.
- 13.** 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⁽⁶⁾.
- 14.** 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.
- 15.** Whether the child has any right to or interest in any property.
- 16.** Whether an insurance policy for the payment on the death of the child of money for funeral expenses has been effected.
- 17.** A comprehensive medical report [prepared and] signed by a registered medical practitioner [or independent nurse prescriber] including such details as the medical adviser to the adoption agency considers necessary as to the circumstances of the child.

⁽⁶⁾ 2004 asp 4.

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

PART II

INFORMATION ABOUT THE CHILD'S FAMILY

19. In this Part "parent" means–

- (a) any person with parental responsibilities or parental rights in relation to the child;
- (b) subject to sections 27 to 30 of the Human Fertilisation and Embryology Act 1990⁽⁷⁾ and any regulations made thereunder any person who is the genetic father or mother of the child.

20. Name, date and place of birth of each parent and guardian of the child.

21. The marital status and date and place of marriage of the child's parents or guardian if applicable.

22. The nationality and race of the child's parents and guardian.

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

24. 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.

25. Physical description of the child's parents and guardian.

26. Details of the personality of the child's parents and guardian.

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

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

29. The past and present occupations of the child's parents.

30. Whether the child's mother, if she has parental responsibilities [and parental rights] other than those mentioned in section 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.

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

32. 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.

33. A comprehensive medical report [prepared and] signed by a registered medical practitioner [or independent nurse prescriber] including such details as the medical adviser to the adoption agency considers necessary in regard to each parent and guardian.

34. Any other relevant information about the child's parents or guardian which the adoption agency considers may assist the adoption panel [in discharging its functions].

PART III

INFORMATION ABOUT PROSPECTIVE ADOPTERS

35. Name, date and place of birth.

36. Address.

(7) 1990 c.37.

- 37.** Nationality and race.
- 38.** 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.
- 39.** Whether the prospective adopter is domiciled or habitually resident in the UK, 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.
- 40.** Whether the prospective adopter intends to apply for an [order under section 59 of the Act].
- 41.** Where there are 2 prospective adopters–
- (a) the date and place of the prospective adopter’s marriage;
 - (b) the date and place of the prospective adopter’s 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;
- 42.** 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 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.
- 43.** 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.
- 44.** Details of the prospective adopter’s parents and any of the prospective adopter’s siblings and their ages or ages at death.
- 45.** The attitudes to adoption of such other members of the prospective adopter’s household and of such of the other members of the prospective family as the adoption agency considers appropriate.
- 46.** The prospective adopter’s personality.
- 47.** Details of 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.
- 48.** 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 and possession a foster child within the meaning of section 1 of the Foster Children (Scotland) Act 1984(8) 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 or disqualified or prohibited under section 68 or 69 of the Children Act 1989(9) from fostering a child privately;
- (e) had in their care or possession a [reference to English 2002 Act];
- (f) has been convicted of an offence mentioned in Schedule 1 to the Criminal Procedure (Scotland) Act 1995(10) or an offence under Schedule 1 to the Children and Young Persons Act 1933(11);
- (g) has been convicted of an offence under section 11 of the Protection of Children (Scotland) Act 2003(12) 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 or had one or more of such children made subject to care orders under section 31 of the Children Act 1989(13);
- (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) has been refused registration as a child minder or worker in a nursery under the Children Act 1989 and details of any such occurrence.

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

50. Religious persuasion including the degree of religious observance.

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

52. Educational background.

53. Past and present occupations and interests.

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

55. Opinion of the adoption agency as to whether any adoption allowance should be considered.

56. 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.

57. Names and addresses of 2 referees (who are not close relatives) who will give personal references on the prospective adopter.

58. Name and address of the prospective adopter's registered medical practitioner.

59. A comprehensive medical report on the prospective adopter prepared and signed by a registered medical practitioner or [independent nurse prescriber] including such details as the medical adviser to the adoption agency considers necessary in the circumstances of each prospective adopter.

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

(8) 1984 c.56.

(9) 1989 c.41.

(10) 1995 c.46.

(11) 1933, [].

(12) 2003 asp 5.

(13) 1989 c.41.

SCHEDULE 2

Regulation 12(2)

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 (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. 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 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 12(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
PARENT'S AGREEMENT
IN RESPECT OF
PLACEMENT OF CHILD FOR ADOPTION

Regulation 12(2)(c)

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:

- (f) my child will go to live with adopters as that is in their interests;
- (g) 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
- (h) when the court considers an adoption application, it will seek my agreement to the making of an adoption order.

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

- (i) 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;
- (j) 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.

Signature:

Date:

*Delete as appropriate.

NOTE:

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

SCHEDULE 5

Regulation 13(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;
- [you will no longer be required to contribute financially to the upkeep of your child];
- 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. [If you are a guardian or a parent who has parental responsibilities and rights in relation to the child or have had such responsibilities and rights removed by a permanence order which does not grant authority for your child to be adopted,] 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 paragraph 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) and any other parent or guardian of the child

freely and with full understanding of what is involved, agree unconditionally to your child being adopted. The court will also have enquiries made to check that it is in the best interests of the child for 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. The grounds on which a court can dispense with a parent's agreement are that:-

- (k) the parent or guardian is dead;
- (l) the parent or guardian cannot be found, or is incapable of giving agreement;
- (m) 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;
- (n) 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;
- (o) if 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 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. If the court does not believe it to be in your child's interests for the freeing order to be revoked, you will not be able to make any further application for revocation unless the court permits this because of a change in circumstances or for any other reason. In such circumstances the adoption agency will continue with its arrangements to find an adoptive home for the child and will not be required to provide you with any further information about their progress or situation.

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 the original names as well as your name and your address when you registered his birth. Should you wish, the adoption agency will discuss with you the possible implications this may have for you in the future.

SCHEDULE 6

Regulation 13

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 13

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:

- (p) my child will go to live with adopters before the permanence order application is made if that is in their interests;
- (q) 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
- (r) when the court considers the permanence order application, it will seek my agreement to the making of the permanence order.

*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:

- (s) 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;
- (t) 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.

Signature:

Date:

*Delete as appropriate.

NOTE:

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

SCHEDULE 8

Regulation 17(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 establishes 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 where the child is to be placed for adoption (regulation 7) and where prospective adopters are assessed (regulation 8).

Part 4 concerns adoption agency decisions, their notification, review and the provision of information following such decisions. Regulation 9 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.

Regulation 11 allows a prospective adopter who has not been considered suitable to be an adoptive parent the right to request the adoption agency to review its decision. The adoption agency must refer the case to a freshly constituted adoption panel which, in turn, will consider the case and make a recommendation. There is no right to request any further review once the adoption agency makes its decision following the panel’s recommendation.

Regulations 12 and 13 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 12) or an application for a permanence order with authority for the child to be adopted should be made (regulation 13).

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 14) 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 15).

Part 6 concerns applications for permanence orders with authority for the child to be adopted subject to a supervision requirement and the circumstances under which referral must be made to the Principal Reporter of the Children’s Hearing or notification of its 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.

DEFINITION OF “PARENT”

The Act does not provide a general definition of "parent". Instead "parent" is either left undefined (in which case it bears its ordinary meaning) or is given a specific definition for a specific purpose. For example, in section 31 an adoption order cannot be made by the court unless one of 5 conditions is met. The first condition is that each parent or guardian understands the effect of the making of the adoption order and has consented (or one of the grounds for dispensing with consent is met). Here "parent" means a parent who has parental responsibilities and parental rights in respect of the child or a person whose responsibilities and rights have been removed by the making of a permanence order which does not include provision granting authority for the child to be adopted.

There are 3 different groups of "parent" referred to in the Act. Where "parent" is undefined this will include all parents with parental rights and responsibilities (which rights and responsibilities are defined in sections 1 and 2 of the Children (Scotland) Act 1995) as well as all natural parents whether or not they have such rights and responsibilities. The second group is the group defined in the example given above found in section 31 of the Act which is restricted to only those parents with parental rights and responsibilities (or where those rights and responsibilities have been removed by the making of a permanence order with no authority to adopt). Examples of this group are to be found in sections 31 and section 83 (permanence order granting authority for adoption: conditions).

The third group of parents referred to in the Act are natural parents. 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).

In these Regulations where "parent" is not defined then this will be a reference to the first group of parents (natural parents and those with parental rights and responsibilities). Where a different group of "parents" needs to be distinguished then a separate definition is given for the purposes of that provision. This paper explains in each regulation which group of parents is covered in that provision.

RESPONDENT INFORMATION FORM: DRAFT ADOPTION AGENCIES (SCOTLAND) REGULATIONS 2008

Please complete the details below and return it with your response. This will help ensure we handle your response appropriately. Thank you for your help.

Name:

Postal Address:

1. Are you responding: (please tick one box)
- (a) as an individual go to Q2a/b and then Q4
- (b) on behalf of a group/organisation go to Q3 and then Q4

INDIVIDUALS

- 2a. Do you agree to your response being made available to the public (in The Scottish Government library and/or on The Scottish Government website)?

Yes (go to 2b below)

No, not at all We will treat your response as confidential

- 2b. Where *confidentiality is not requested*, we will make your response available to the public on the following basis (please tick one of the following boxes)

Yes, make my response, name and address all available

Yes, make my response available, but not my name or address

Yes, make my response and name available, but not my address

ON BEHALF OF GROUPS OR ORGANISATIONS:

- 3 The name and address of your organisation *will be* made available to the public (in the Scottish Government library and/or on the Scottish Government website). Are you also content for your response to be made available?

Yes

No We will treat your response as confidential

SHARING RESPONSES/FUTURE ENGAGEMENT

- 4 We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for the Scottish Government to contact you again in the future in relation to this consultation response?

Yes

No