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SCOTTISH STATUTORY INSTRUMENTS

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**2009 No. 267**

**The Adoption and Children (Scotland) Act  
2007 (Commencement No. 4, Transitional  
and Savings Provisions) Order 2009**

**PART III**

**TRANSITIONAL AND SAVINGS PROVISIONS**

**CHAPTER 4**

**FREEING ORDERS**

**Freeing orders made before the appointed day**

**16.**—(1) This article applies where a child is subject to a freeing order—

- (a) immediately before the appointed day; or
- (b) by virtue of an order granted following an application referred to in article 18.

(2) Subject to section 35 (effect of order on existing rights etc.) of the Act the freeing order shall continue to have effect until 28th September 2010.

(3) Despite their repeal the provisions of the 1978 Act continue to have effect as they did immediately before the appointed day to the extent required for the purposes of paragraph (2).

**Deemed permanence order granting authority for the child to be adopted**

**17.**—(1) Where, immediately before 28th September 2010 a child is subject to a freeing order by virtue of article 16 that child shall be treated as if they were subject to a permanence order.

(2) The permanence order will be deemed to consist of—

- (a) the mandatory provision specified in section 81(1) of the Act;
- (b) the following ancillary provisions specified in section 82(1) of the Act vesting in the local authority:—
  - (i) the parental responsibilities mentioned in section 1(1) of the 1995 Act;
  - (ii) the parental rights mentioned in section 2(1) of the 1995 Act; and
- (c) provision granting authority for the child to be adopted.

(3) In this article “local authority” means the authority in whom the parental responsibilities and parental rights in relation to the child were transferred by virtue of the freeing order or a variation thereof granted under section 21(1) (variation of section 18 order so as to substitute one adoption agency for another) of the 1978 Act.

### **Applications for freeing orders under the 1978 Act**

**18.** Where, before the appointed day, an application for a freeing order has been made under section 18 (freeing child for adoption) of the 1978 Act and not yet determined the provisions of the 1978 Act have effect in respect of that application.

### **Applications to revoke freeing orders under section 20 of the 1978 Act**

**19.—(1)** Where an application to revoke a freeing order under section 20 of the 1978 Act has been made immediately before 28th September 2010 and not yet determined by the court, the provisions of the 1978 Act have effect in respect of that application.

(2) Where paragraph (1) applies and the court determines not to revoke the freeing order the child who is subject to that freeing order shall be treated as if they were subject to a permanence order and article 17(2) and (3) applies to that deemed permanence order.

### **Applications for adoption orders where freeing order in place**

**20.—(1)** This article applies where an application is made for an adoption order under section 29 (adoption by certain couples) or 30 (adoption by one person) of the Act in respect of a child who is subject to a freeing order.

(2) Section 31 (parental etc. consent) of the Act applies as if for subsection (7) there were substituted—

“(7) The second condition is that the child has been freed for adoption by virtue of an order made under section 18 of the Adoption (Scotland) Act 1978.”.

### **Applications to vary or revoke a deemed permanence order**

**21.—(1)** This article applies where a child is subject to a permanence order by virtue of article 17(1) or 19(2) and an application to vary or revoke the permanence order is made under section 92 or 98 of the Act.

(2) Section 92 of the Act applies as if for paragraph (d) of subsection (3) there were substituted—

“(d) any person in whom were vested any parental responsibilities or parental rights which, by virtue of the making of a freeing order in respect of the child, vest in a local authority.”.

(3) In section 94 of the Act—

(a) for the purposes of subsection (1) the reference to any person who is affected by the order includes any person in whom were vested any parental responsibilities or parental rights which, by virtue of the making of a freeing order in respect of the child, vest in a local authority;

(b) subsection (3) applies as if for paragraph (d) there were substituted—

“(d) any person in whom were vested any parental responsibilities or parental rights which, by virtue of the making of a freeing order in respect of the child, vest in a local authority.”.

(4) For the purposes of section 98(2)(b) of the Act the reference to any other person affected by the order includes any person in whom were vested any parental responsibilities or parental rights which, by virtue of the making of a freeing order in respect of the child, vest in a local authority.