

2001 No. 236

CHILDREN AND YOUNG PERSONS

**The Adoption of Children from Overseas (Scotland)
Regulations 2001**

Made 14th June 2001

Laid before the Scottish Parliament 18th June 2001

Coming into force 2nd July 2001

The Scottish Ministers, in exercise of powers conferred by sections 9(2) and (3) and 50A(1) of the Adoption (Scotland) Act 1978(a) and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Adoption of Children from Overseas (Scotland) Regulations 2001 and shall come into force on 2nd July 2001.

(2) These Regulations extend to Scotland only.

Interpretation

2. In these Regulations—

“the 1978 Act” means the Adoption (Scotland) Act 1978;

“the 1996 Regulations” means the Adoption Agencies (Scotland) Regulations 1996(b);

“adoption panel” has the same meaning as in the 1996 Regulations;

“prospective adopter” means a person habitually resident in the British Islands who at any time brings into the United Kingdom for the purpose of adoption (other than adoption by a parent, guardian or relative) a child who is habitually resident outside those Islands.

Requirements applying to prospective adopters

3.—(1) The requirements which a prospective adopter must satisfy for the purposes of section 50A(1) of the 1978 Act before bringing a child into the United Kingdom are those prescribed in paragraph (2).

(2) The requirements are that—

(a) the prospective adopter has applied to an adoption agency for assessment of their suitability to be an adoptive parent and has followed such procedure and provided such information to the agency as it may request in order to enable it to undertake such an assessment;

(b) an adoption agency has notified the prospective adopter in writing of a decision to approve them as suitable to be an adoptive parent; and

(a) 1978 c.28. Section 50A was inserted by the Adoption (Intercountry Aspects) Act 1999 (c.18), section 14. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46) and section 16 of the Adoption (Intercountry Aspects) Act 1999.

(b) S.I. 1996/3266.

- (c) the Secretary of State for Health has notified the prospective adopter in writing that they are prepared to issue a certificate confirming to the relevant overseas authority that the prospective adopter has been assessed and approved as suitable to be an adoptive parent and that the child will be authorised to reside permanently within the British Islands, if entry clearance is granted and an adoption order is made.

(3) A prospective adopter must also within the period of fourteen days beginning with the date on which they bring the child into the United Kingdom give notice to the local authority within whose area they have their home of–

- (a) their intention to apply for an adoption order, in accordance with section 22 of the 1978 Act (a); or
- (b) their intention not to give the child a home.

(4) In this regulation–

“adoption agency”(b) includes an adoption agency within the meaning of section 1 of the Adoption Act 1976(c) and Article 3 of the Adoption (Northern Ireland) Order 1987;

“relevant overseas authority” means a person or body performing functions in the country in which the child is habitually resident which correspond to the functions of an adoption agency;

“entry clearance” has the same meaning as in the Immigration Act 1971(d)

Duties of an adoption agency and adoption panel functions in respect of a prospective adopter

4.—(1) This regulation applies to–

- (a) a local authority to which a prospective adopter has applied for assessment in accordance with regulation 3(2)(a); and
- (b) an approved adoption society which has agreed to assess a prospective adopter who has applied to it in accordance with that regulation.

(2) The adoption agency shall assess a prospective adopter in accordance with regulation 10 (duties of adoption agencies in assessing prospective adopters) of the 1996 Regulations.

(3) An adoption panel to which the case of a prospective adopter is referred shall consider the case and make a recommendation to the referring adoption agency as to whether the prospective adopter is suitable to be an adoptive parent, in accordance with regulation 11 (adoption panel functions) of those Regulations.

(4) The adoption agency shall–

- (a) make a decision as to the suitability of the prospective adopter to be an adoptive parent and notify them of its decision, in accordance with regulation 12 (adoption agency decisions and notifications) of the 1996 Regulations; and
- (b) where the agency has decided to approve the prospective adopter as suitable to be an adoptive parent, notify the Scottish Ministers in writing of that decision and provide to them–
 - (i) all information considered by the adoption panel before making a recommendation to the agency as to whether the prospective adopter is suitable to be an adoptive parent; and

(a) Section 22 was amended by the Children Act 1989 (c.41) Schedule 10, Part II, paragraph 38.

(b) By virtue of section 1(4) of the Adoption (Scotland) Act 1978 “adoption agency” means a local authority or an approved adoption society.

(c) 1976 c.36.

(d) 1971 c.77.

- (ii) such other information relating to the prospective adopter's case as they may require.

St Andrew's House,
Edinburgh
14th June 2001

JACK McCONNELL
A member of the Scottish Executive

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations impose requirements with which a person who is habitually resident in the British Islands must comply before and after bringing a child who is habitually resident outside those Islands into the United Kingdom for the purpose of adoption. Failure to comply with these requirements would result in the commission of an offence under section 50A(1) of the Adoption (Scotland) Act 1978.

The prospective adopter is required to undergo assessment by an adoption agency, be approved as suitable to be an adoptive parent and have received notification from the Secretary of State that he is willing to issue a certificate confirming that the prospective adopter has been assessed and approved and that the child will be authorised to reside permanently in the British Islands if entry clearance is granted and an adoption order is made. The prospective adopter is required to notify their local authority of their intention to apply for an adoption order, or alternatively that they do not intend to give the child a home, within fourteen days after bringing the child into the United Kingdom.

The Regulations also specify the procedure to be followed by an adoption agency and adoption panel in relation to assessment and approval of a person wishing to adopt a child from overseas, and require the provision of certain information to the Scottish Ministers.

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