
SCOTTISH STATUTORY INSTRUMENTS

2008 No. 303

CHILDREN AND YOUNG PERSONS

The Adoptions with a Foreign Element (Special Restrictions on Adoptions from Abroad) (Scotland) Regulations 2008

Made - - - - 10th September 2008
Laid before the Scottish
Parliament - - - - 11th September 2008
Coming into force - - 7th October 2008

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 64(3), 65(1) and 117(2)(a) and (3) of the Adoption and Children (Scotland) Act 2007⁽¹⁾ and all other powers enabling them to do so.

Citation and commencement

1. These Regulations may be cited as the Adoptions with a Foreign Element (Special Restrictions on Adoptions from Abroad) (Scotland) Regulations 2008 and come into force on 7th October 2008.

Interpretation

2.—(1) In these Regulations—

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

“request” means a request that is made in writing by the prospective adopters stating that the Scottish Ministers should take any step as mentioned in section 64(1) of the Act despite an order having been made under section 62(3) of the Act in relation to the State of origin; and

“the State of origin” means the country or territory from which the prospective adopters wish to bring a child into the United Kingdom.

(2) For the purposes of these Regulations the Scottish Ministers are “satisfied that the case is exceptional” if they are satisfied that they should take any step as mentioned in section 64(1) of the Act despite an order having been made under section 62(3) of the Act in relation to the State of origin.

(3) Any reference in these Regulations to anything done in writing or produced in written form includes a reference to an electronic communication as defined in the Electronic Communications Act 2000⁽²⁾ which has been recorded and is consequently capable of reproduction.

(1) 2007 asp 4.

(2) 2000 c. 7; as amended by paragraph 158 of Schedule 17 to the Communications Act 2003 (c. 21).

(4) An electronic communication may only be sent to a person if that person has consented in writing to the use of that method of communication and transmission is to an e mail address provided by the recipient.

(5) An electronic communication shall be taken to be received on the day after the day of its transmission.

Receipt of a request

3.—(1) On receipt of a request, the Scottish Ministers must—

- (a) acknowledge receipt of the request in writing as soon as is practicable;
- (b) make such enquiries of the prospective adopters as appear necessary to clarify—
 - (i) the reasons why the prospective adopters consider that the Scottish Ministers should be satisfied that the case is exceptional; or
 - (ii) any other information that has been submitted by the prospective adopters;
- (c) make such further enquiries as they consider appropriate; and
- (d) ask the prospective adopters whether there is any further information that they have not submitted but that they consider relevant to the request.

(2) The Scottish Ministers may defer making a determination in accordance with regulation 4 until—

- (a) the prospective adopters confirm that there is no further information that they consider relevant to the request; or
- (b) where the prospective adopters indicate that there is further information that they consider relevant to the request; that information has been received.

Determining whether an exception to the special restrictions should be made

4.—(1) In determining whether they are satisfied that the case is exceptional, the Scottish Ministers must—

- (a) consider all the information they hold that is relevant to the request; and
- (b) take into account the matters referred to in regulation 6.

(2) After making a determination, the Scottish Ministers must—

- (a) notify the prospective adopters in writing as to whether they are satisfied that the case is exceptional; and
- (b) where they are not so satisfied, give reasons.

Further requests

5.—(1) This regulation applies where the Scottish Ministers have made a determination in accordance with regulation 4 and the prospective adopters submit a further request.

(2) The Scottish Ministers must consider that further request if they consider that it contains—

- (a) new information; or
- (b) information that might have led to them being satisfied that the case was exceptional if it had been available at the time they made the determination.

Matters to be taken into account

6.—(1) In determining under regulation 4 whether or not they are satisfied that a case is exceptional, the Scottish Ministers must take the following matters into account (whether or not they also take other matters into account)—

- (a) where the prospective adopters wish to adopt a particular child—
 - (i) the circumstances leading to the child becoming available for adoption;
 - (ii) whether any competent authority in the State of origin has made a decision in relation to the adoption or availability for adoption of the child;
 - (iii) the relationship of the child to the prospective adopters, including how and when it was formed;
 - (iv) the child’s particular needs and the capacity of the prospective adopters to meet those needs; and
 - (v) the reasons why the State of origin was placed on the restricted list⁽³⁾; or
- (b) in any other case, the reasons why the State of origin was placed on the restricted list.

(2) In this regulation, a “competent authority” means a court or a person who performs functions which correspond to the functions of an adoption agency or to the functions of the Scottish Ministers in respect of intercountry adoption.

Imposition of extra conditions

7.—(1) The Scottish Ministers may specify in the restricted list, in relation to any restricted country⁽⁴⁾, a step which is not otherwise provided for by virtue of any enactment but which, by virtue of the arrangements between the United Kingdom and that country or territory, the Scottish Ministers normally take in connection with the bringing in of a child where that country or territory is concerned.

(2) If a step has been specified under paragraph (1), the condition which is to be met for the purposes of section 65(1)(b) of the Act is that the Scottish Ministers have notified the prospective adopters in writing that the adoption may proceed.

(3) A notification for the purpose of paragraph (2) must state that it is given for the purpose of that paragraph.

St Andrew’s House, Edinburgh
10th September 2008

ADAM INGRAM
Authorised to sign by the Scottish Ministers

(3) “Restricted list” is defined in section 62(5) of the Adoption and Children (Scotland) Act 2007 as the list of restricted countries.
(4) “Restricted country” is defined in section 62(4) of the Adoption and Children (Scotland) Act 2007 as being a country or territory in relation to which a declaration that special restrictions are for the time being to apply has effect.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision under the Adoption and Children (Scotland) Act 2007 (“the Act”) in relation to restrictions on adoptions from abroad. Where an order has been made under section 62(3) of the Act specifying a country to which special restrictions will apply, the Scottish Ministers will not be permitted to take any steps to further the bringing of children into the United Kingdom from that country for the purposes of adoption. However, the Scottish Ministers may decide to take those steps if they are satisfied that they should do so in a particular case. These Regulations set out the procedures to be followed by the Scottish Ministers when determining whether or not to take those steps. They also allow the Scottish Ministers to specify existing additional steps which they must take in relation to adoptions from certain restricted countries and extra conditions are imposed in that regard.

Regulation 3 applies where the Scottish Ministers receive a request from prospective adopters asking them to take the steps which they are not permitted to take due to special restrictions being in place. The Scottish Ministers are required under regulation 3(1) to acknowledge receipt of that request and to make various further enquiries of the prospective adopters where necessary or appropriate. Regulation 3(2) allows the Scottish Ministers to defer making a determination until such time as the prospective adopters have provided further information or indicated that there is no further relevant information.

Regulation 4(1) requires the Scottish Ministers to consider all the information they have at their disposal and the matters set out in regulation 6 when making a determination. Under regulation 4(2) they are required to notify the prospective adopters as to the result of that determination. Under regulation 5 the Scottish Ministers need not consider a further request if they consider that it does not offer any new information or does not contain any information that might have changed their original determination. Regulation 6 sets out the matters to be taken into account by the Scottish Ministers when making a determination.

Regulation 7(1) allows the Scottish Ministers to specify, in the restricted list, additional steps which have been agreed between the United Kingdom and a restricted country, which are not otherwise provided for by any enactment, but which the Scottish Ministers normally take in connection with bringing a child from the restricted country into the United Kingdom. Where such steps are specified in the restricted list, regulation 7(2) provides that the Scottish Ministers must notify the prospective adopters in writing before the adoption of a child from that country can proceed. Any person who brings, or causes another person to bring, a child into the United Kingdom for the purposes of adoption in contravention of this condition commits an offence.