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SCOTTISH STATUTORY INSTRUMENTS

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**2009 No. 182**

The Adoptions with a Foreign  
Element (Scotland) Regulations 2009

PART 2

BRINGING CHILDREN INTO, AND TAKING  
CHILDREN OUT OF, THE UNITED KINGDOM

CHAPTER 1

BRINGING CHILDREN INTO THE UNITED KINGDOM

**Requirements applicable in respect of bringing, or causing another to bring, a child into the United Kingdom**

3. A person intending to bring, or to cause another to bring, a child into the United Kingdom in circumstances where section 58 of the Act applies must—

- (a) apply in writing to an adoption agency for an assessment of the person's suitability to adopt a child; and
- (b) give the adoption agency any information it may require for the purpose of the assessment.

**Conditions applicable in respect of a child brought into the United Kingdom**

4.—(1) This regulation prescribes the conditions for the purposes of section 58(6) of the Act in respect of a child brought into the United Kingdom in circumstances where section 58 applies.

(2) Prior to the child's entry into the United Kingdom, the prospective adopters must—

- (a) receive from the Secretary of State notification in writing that the Secretary of State has issued a certificate confirming to the relevant foreign authority—
  - (i) that the prospective adopters have been assessed and approved as eligible and suitable to be adoptive parents in accordance with the Adoption Agencies Regulations; and
  - (ii) that if entry clearance and leave to enter and remain, as may be necessary, is granted and not revoked or curtailed, and an adoption order is made or an overseas adoption<sup>(1)</sup> is effected, the child will be authorised to enter and reside permanently in the United Kingdom;
- (b) before visiting the child in the State of origin—
  - (i) notify the adoption agency of the details of the child to be adopted;
  - (ii) provide the adoption agency with any information and reports received from the relevant foreign authority; and

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(1) The expression "overseas adoption" is defined in section 67 of the Act.

- (iii) discuss with the adoption agency the proposed adoption and any information and reports so received;
- (c) visit the child in the State of origin (and, where the prospective adopters are a couple, each of them must so visit the child); and
- (d) after that visit—
  - (i) confirm in writing to the adoption agency that the prospective adopters have done so and wish to proceed with the adoption;
  - (ii) provide the adoption agency with any additional reports and information received on or after that visit; and
  - (iii) notify the adoption agency of the date the prospective adopters expect to enter the United Kingdom with the child.
- (3) On entering the United Kingdom, the child must be accompanied by the prospective adopters (and, where the prospective adopters are a couple, the child must be accompanied by both members of the couple unless the adoption agency and the relevant foreign authority have agreed that it is necessary for only one of them to do so).
- (4) Except where an overseas adoption is, or is to be, effected, the prospective adopters must within the period of 14 days beginning with the date on which the child is brought into the United Kingdom give notice to the relevant local authority—
  - (a) of the child’s arrival in the United Kingdom; and
  - (b) of the prospective adopters' intention—
    - (i) to apply for an adoption order in accordance with section 18(2) of the Act; or
    - (ii) not to give the child a home.
- (5) In a case where the prospective adopters have given notice in accordance with paragraph (4) and subsequently move their home into the area of another local authority, they must within 14 days of so moving confirm in writing to that authority—
  - (a) the child’s arrival in the United Kingdom; and
  - (b) that notice of the prospective adopters' intention has been given in accordance with paragraph (4)(b).
- (6) In this regulation, “entry clearance” has the same meaning as in the Immigration Act 1971(2).

### **Functions imposed on the local authority**

- 5.—(1) This regulation applies where—
  - (a) a child is brought into the United Kingdom in circumstances where section 58 of the Act applies; and
  - (b) notice has been given by the prospective adopters to the relevant local authority in accordance with section 18(2) of the Act of their intention to apply for an adoption order.
- (2) The local authority must—
  - (a) if it has not already done so, set up a case record in respect of the child and place on it any information received from—
    - (i) the relevant foreign authority;
    - (ii) the adoption agency (if it is not the local authority);
    - (iii) the prospective adopters;

- (iv) the entry clearance officer; and
- (v) the Secretary of State and the Scottish Ministers;
- (b) send to the Scottish Ministers written notification of the child's arrival in the United Kingdom;
- (c) send the prospective adopters' registered medical practitioner (and, where required in cases where the prospective adopters are a relevant couple<sup>(3)</sup>, the registered medical practitioner of each member of the couple) written notification of the child's arrival in the United Kingdom and send with that notification a written report of the child's health history and current state of health (so far as is known);
- (d) send to the Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978<sup>(4)</sup> in whose area the prospective adopters have their home written notification of the child's arrival in the United Kingdom;
- (e) where the child is of school age (as defined in section 31 of the Education (Scotland) Act 1980<sup>(5)</sup>), send to the education authority in whose area the prospective adopters have their home written notification of the child's arrival in the United Kingdom and information, if known, about—
  - (i) the child's educational history; and
  - (ii) whether the child has additional support needs (within the meaning of the Education (Additional Support for Learning) (Scotland) Act 2004<sup>(6)</sup>);
- (f) ensure that the child and the prospective adopters are visited within one week of receipt of the notice mentioned in paragraph (1)(b) and thereafter not less than once a week until the review mentioned in sub-paragraph (g) and thereafter at such frequency as the local authority may (subject to sub-paragraphs (g) and (h)) decide;
- (g) unless the child no longer has a home with the prospective adopters or an adoption order is made in respect of the child—
  - (i) carry out a review of the child's case not more than 4 weeks after receipt of the notice mentioned in paragraph (1)(b);
  - (ii) within 3 months of that review, visit the child and prospective adopters and, if the local authority considers it necessary, carry out a further review of the child's case; and
  - (iii) thereafter at intervals not exceeding 6 months, visit the child and prospective adopters and, if the local authority considers it necessary, carry out a further review of the child's case;
- (h) when carrying out a review, consider—
  - (i) the child's needs, welfare and development and whether any changes need to be made to meet those needs or assist that development;
  - (ii) the arrangements for the provision of adoption support services<sup>(7)</sup> and whether there should be any re-assessment of the need for those services; and
  - (iii) the need for further visits and reviews; and
- (i) ensure that—

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(3) The expression "relevant couple" is defined in section 29(3) of the Act.

(4) 1978 c. 29. Section 2 was amended by the National Health Service and Community Care Act 1990 c. 19, sections 28 and 66(1) and Schedule 9; the National Health Service Reform (Scotland) Act 2004 asp 7, section 11 and Schedule 1; and the Smoking, Health and Social Care (Scotland) Act 2005 asp 13, section 42(1) and Schedule 2.

(5) 1980 c. 44.

(6) 2004 asp 4.

(7) The expression "adoption support services" is defined in section 1(5) of the Act.

- (i) where necessary, advice is given to the prospective adopters as to the child's needs, welfare and development;
- (ii) written reports are made of all visits and reviews of the case and placed on the child's case record; and
- (iii) during visits carried out in accordance with this paragraph, advice is given, where appropriate, to the prospective adopters and the child as to the availability of adoption support services.

(3) Part VIII of the Adoption Agencies (Scotland) Regulations applies to any case record set up in respect of the child as a consequence of this regulation as if that record had been created under those Regulations.

(4) In a case where the prospective adopters fail, within 2 years of the local authority's receiving the notice mentioned in paragraph (1)(b), to make an application under section 29 or section 30 of the Act, the authority must review the case.

- (5) For the purposes of the review referred to in paragraph (4), the local authority must consider—
- (a) the child's needs, welfare and development and whether any changes need to be made to meet those needs or assist that development;
  - (b) the arrangements, if any, in relation to the exercise of parental responsibilities and parental rights in relation to the child;
  - (c) the terms upon which leave to enter the United Kingdom is granted and the immigration status of the child;
  - (d) the arrangements for the provision of adoption support services and whether there should be any re-assessment of the need for those services; and
  - (e) in conjunction with the appropriate agencies, the arrangements for meeting the child's health care and educational needs.

(6) In a case where a local authority ("the original authority") receives the notice mentioned in paragraph (1)(b) and is further notified by the prospective adopters that they intend to move, or have moved, their home into the area of another local authority ("the new authority"), the original authority must, within 14 days of receipt of such further notification, notify the new authority of—

- (a) the name, sex, date of birth and place of birth of the child;
- (b) the name, sex and date of birth of the prospective adopters;
- (c) the date of the child's arrival in the United Kingdom;
- (d) the date the original authority received the notice mentioned in paragraph (1)(b);
- (e) (if known), whether an application for an adoption order in respect of the child has been made and the stage of those proceedings; and
- (f) any other relevant information.

(7) In this regulation, "entry clearance officer" means a person responsible for the grant or refusal of entry clearance; and "entry clearance" has the same meaning as in the Immigration Act 1971.

#### **Application of Chapter 2 of Part 1 of the Act**

**6.—(1)** This regulation applies in the case of a child brought into the United Kingdom in circumstances where section 58 of the Act applies.

(2) Subsection (6) of section 21 of the Act (restrictions on removal: notice of intention to adopt given) does not apply.

(3) Section 25 of the Act (return of child placed for adoption by adoption agency) applies as if—

- (a) for paragraphs (a) and (b) of subsection (1) there were substituted “a child is brought into the United Kingdom in circumstances where section 58 applies”;
- (b) in subsection (2)–
  - (i) after “adopters” there were inserted “of the child in question”; and
  - (ii) for “agency or society” there were substituted “local authority for the area in which they have their home (“the authority”)”;
- (c) for “agency or society” in subsection (3) there were substituted “authority”;
- (d) in subsection (6)–
  - (i) for “return” there were substituted “deliver”;
  - (ii) in each of paragraphs (a) and (b), for “agency or, as the case may be, society” there were substituted “authority”;
- (e) in subsection (8) for “return” there were substituted “deliver”; and
- (f) in subsection (9)–
  - (i) for “returned” there were substituted “delivered”; and
  - (ii) for the words from “child's” to the end of that subsection there were substituted “authority”.

## CHAPTER 2

### TAKING CHILDREN OUT OF THE UNITED KINGDOM

#### **Orders under section 59 of the Act: requirements**

7.—(1) This regulation prescribes, for the purposes of subsection (3) of section 59 of the Act (preliminary order where child to be adopted abroad), the requirements to be satisfied before an order under that section may be made in the case where the prospective adopters (within the meaning of that section) intend to adopt a child otherwise than under a Convention adoption<sup>(8)</sup>.

(2) This regulation applies in the case of a child placed for adoption with the prospective adopters by an adoption agency.

(3) The requirements are—

- (a) that the adoption agency has—
  - (i) confirmed to the court that it has complied with the requirements imposed on it under Parts IV and V of the Adoption Agencies Regulations; and
  - (ii) submitted to the court the things mentioned in regulation 8;
- (b) that the relevant foreign authority has—
  - (i) confirmed in writing to the adoption agency that the prospective adopters have been counselled and that the legal implications of adoption have been explained to them;
  - (ii) prepared a report on the suitability of the prospective adopters to be adoptive parents;
  - (iii) determined and confirmed in writing to the adoption agency that the prospective adopters are eligible and suitable to adopt in the country or territory in which the adoption is to be effected; and
  - (iv) confirmed to the adoption agency that the child is or will be authorised to enter and reside permanently in that country or territory;
- (c) in a case where there is only one prospective adopter, that the prospective adopter has confirmed in writing to the adoption agency that the prospective adopter will accompany

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<sup>(8)</sup> The expression “Convention adoption” is defined in section 119(1) of the Act.

the child out of Great Britain and into the country or territory where the adoption is to be effected; and

- (d) in a case where there are two prospective adopters, that they have confirmed in writing to the adoption agency—
  - (i) that both will so accompany the child; or
  - (ii) if the adoption agency and the relevant foreign authority have confirmed that it is necessary for only one so to accompany the child, that one of them will do so.

#### **Matters to be submitted to the court under regulation 7**

- 8. The things to be submitted to the court under regulation 7(3)(a)(ii) are—
  - (a) a copy of the recommendations of the adoption panel under regulation 6(2) of the Adoption Agencies Regulations;
  - (b) if regulation 6(4) of those Regulations applies, a copy of the report of the adoption panel mentioned in that regulation;
  - (c) a copy of the report on the health of the child mentioned in regulation 18(1)(d) of those Regulations and any report obtained in accordance with regulation 18(2) of those Regulations;
  - (d) a copy of the report and information mentioned in regulation 18(1)(i) of those Regulations; and
  - (e) a copy of the written reports mentioned in regulation 25(1)(b) of those Regulations.

#### **Application of the Act in respect of orders under section 59**

9.—(1) Subject to paragraphs (2), (3) and (4) the provisions of Chapter 2 of Part 1 of the Act, as they relate to adoption orders, apply to orders under section 59 of the Act so far as the nature of the provision permits and unless the contrary intention is shown.

(2) The following provisions of the Act which relate to adoption orders apply to orders under section 59 of the Act subject to the following:—

- (a) in section 28, omit subsections (1), (3), (4), (5) and (6);
- (b) in section 29, omit subsections (1)(c) and (2); and
- (c) in section 30, omit subsections (1)(c), (3)(d) and (6).

(3) For the purposes of section 14(1) of the Act, a court considering an application for an order under section 59 in respect of a child is to be treated as a court coming to a decision relating to the adoption of a child.

(4) The following provisions of Chapter 2 of Part 1 of the Act do not apply to orders under section 59 of the Act:—

- (a) section 15;
- (b) section 21;
- (c) section 22;
- (d) section 24;
- (e) section 25;
- (f) section 26;
- (g) section 34.

(5) Sections 53 to 55 and paragraphs 1 to 4 of schedule 1 to the Act, as they relate to adoption orders, apply to orders made under section 59 of the Act as if—

- (a) in each place where the words “adoption order” appear there were substituted “order under section 59”;
- (b) in each place where the words “adopted person” appear there were substituted “person subject to an order made under section 59”;
- (c) in section 55(1) and paragraph 3 of schedule 1 where the words “Adopted” appear there were substituted “Proposed foreign adoption”; and
- (d) in paragraph 3 of schedule 1 where the words “Re-adopted” appear there were substituted “Proposed foreign re-adoption”.