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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 I  
GENERAL**

**Citation and interpretation**

1.—(1) This Order may be cited as the Adoption and Children (Scotland) Act 2007 (Commencement No. 4, Transitional and Savings Provisions) Order 2009.

(2) In this Order—

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

“the 1978 Act” means the Adoption (Scotland) Act 1978(1);

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

“the Agencies Regulations 1996” means the Adoption Agencies (Scotland) Regulations 1996(3);

“the Agencies Regulations 2009” means the Adoption Agencies (Scotland) Regulations 2009(4);

“the appointed day” means 28th September 2009;

“the Foreign Element Regulations” means the Adoptions with a Foreign Element (Scotland) Regulations 2009(5);

“freeing order” means an order granted under section 18(6) of the 1978 Act or varied under section 21(7) of that Act;

“the Hague Convention Regulations” means the Intercountry Adoption (Hague Convention) (Scotland) Regulations 2003(8);

“the Overseas Adoption Regulations” means the Adoption of Children from Overseas (Scotland) Regulations 2001(9);

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(1) 1978 c.28.

(2) 1995 c.36.

(3) S.I. 1996/3266 as amended by S.I. 2002/3135, S.S.I. 2003/242 and S.S.I. 2005/517. These instruments are made under the 1978 Act and will be revoked on the appointed day.

(4) S.S.I. 2009/154.

(5) S.S.I. 2009/182.

(6) Section 18 was amended by section 88 of, and Schedule 10 to, the Children Act 1989 c.41 and by section 98(1) of, and Schedule 2 to, the 1995 Act.

(7) Section 21 was amended by section 98(1) of, and Schedule 2 to, the 1995 Act.

(8) S.S.I. 2003/19 as amended by S.S.I. 2005/517. S.S.I. 2003/19 will be revoked on the appointed day by S.S.I. 2009/182.

(9) S.S.I. 2001/236.

“parental responsibilities order” has the meaning given by section 86 of the 1995 Act<sup>(10)</sup>;

## PART II

### COMMENCEMENT

#### **Appointed day**

2. All the provisions of the Act, in so far as not already in force, come into force on the appointed day.

## PART III

### TRANSITIONAL AND SAVINGS PROVISIONS

#### CHAPTER 1

#### ADOPTION

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

3.—(1) Where, before the appointed day, an application for an adoption order has been made under section 14 (adoption by married couple) or 15 (adoption by one person)<sup>(11)</sup> of the 1978 Act and not yet determined the provisions of that Act continue to have effect in respect of that application.

(2) Where a court has postponed the determination of an application for an adoption order made under the 1978 Act and granted an order under section 25 (interim orders)<sup>(12)</sup> of that Act, that order will continue to have effect.

#### **Restrictions on removal of children: pending applications for adoption**

4. Sections 28 (restrictions on removal where applicant has provided home for 5 years)<sup>(13)</sup> and 29 (return of child taken away in breach of s.27 or 28)<sup>(14)</sup> of the 1978 Act continue to have effect where an application for an adoption order has been made under section 14 or 15 of the 1978 Act and not yet determined on the appointed day.

#### **Cases in progress under the Agencies Regulations 1996**

5.—(1) This article applies where a case is still in progress on the appointed day under a provision of the Agencies Regulations 1996.

(2) Any action or decision under a provision of the Agencies Regulations 1996 will, on or after the appointed day, be treated as if it were an action or decision under the corresponding provision of the Agencies Regulations 2009.

(3) Where, before the appointed day, an adoption panel has considered—

- (a) whether adoption is in the best interests of the child;
- (b) whether a prospective adopter is suitable to adopt a child; or

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<sup>(10)</sup> Section 86 of the 1995 Act is repealed by section 120(2) of, and schedule 3 to, the Act.

<sup>(11)</sup> Sections 14 and 15 were amended by section 15(1) of, and Schedule 2 to, the Adoption (Intercountry Aspects) Act 1999 c.18.

<sup>(12)</sup> Section 25 was amended by the 1995 Act, Schedule 2.

<sup>(13)</sup> Section 28 was amended and repealed in part by the 1995 Act, Schedules 2 and 5.

<sup>(14)</sup> Section 29 was amended by the Children Act 1989 c.41, Schedule 10 and the Adoption and Children Act 2002 c.38, Schedule 3.

(c) whether a prospective adopter would be a suitable adoptive parent for a particular child, and no decision on that question has been made by the adoption agency before the appointed day, the Agencies Regulations 1996 continue to apply for the purposes of making that decision.

(4) Where an adoption agency makes a decision under the Agencies Regulations 1996 (whether before the appointed day or, by virtue of paragraph (3), on or after that day) that a prospective adopter is suitable to adopt a particular child—

(a) the Agencies Regulations 1996 continue to apply for the purposes of placing the child with the prospective adopter; and

(b) any such placement will be treated as if it were made under the Agencies Regulations 2009.

(5) Where an adoption agency makes a decision under the Agencies Regulations 1996 (whether before the appointed day or, by virtue of paragraph (3), on or after that day) that a prospective adopter is not suitable to be an adoptive parent—

(a) the Agencies Regulations 1996 continue to apply for the purposes of providing notification of its decision; and

(b) regulations 8 (approval of prospective adopters) and 9 (review of adoption agency decisions) of the Agencies Regulations 2009 will not apply.

## CHAPTER 2

### INTERCOUNTRY ADOPTION

#### **Application for Convention adoption orders**

6. Where, before the appointed day, an application for a Convention adoption order has been made in accordance with the Hague Convention Regulations and section 17(15) (convention adoption orders) of the 1978 Act and not yet determined, those Regulations and the provisions of that Act continue to apply in respect of that application.

#### **Hague Convention adoption cases in progress**

7.—(1) This article applies where a case is still in progress on the appointed day under a provision of the Hague Convention Regulations.

(2) Any action or decision under a provision of the Hague Convention Regulations will, on or after the appointed day, be treated as if it were an action or decision under the corresponding provision of the Foreign Element Regulations.

(3) Where, before the appointed day, an adoption panel has considered—

(a) whether or not adoption by a person habitually resident in a Convention country outside the British Islands is in the best interests of the child; or

(b) whether a prospective adopter is suitable to adopt a child,

and no decision has been made by the adoption agency before the appointed day, the Hague Convention Regulations will continue to apply for the purposes of making that decision.

(4) Where an adoption agency makes a decision under the Hague Convention Regulations (whether before the appointed day or, by virtue of paragraph (3), on or after that day) that a prospective adopter is not suitable to adopt a child, regulation 8(4) to (9) (adoption agency decision, notification and review procedure) of the Hague Convention Regulations will apply.

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(15) Section 17 was substituted by section 3 of the Adoption (Intercountry Aspects) Act 1999 c.18.

### **Non-Convention adoption cases in progress**

**8.**—(1) This article applies where a case is still in progress on the appointed day under a provision of the Overseas Adoption Regulations.

(2) Any action or decision under a provision of the Overseas Adoption Regulations will, on or after the appointed day, be treated as if it were an action or decision under the corresponding provision of the Foreign Element Regulations.

(3) Paragraphs (4) and (5) apply where, before the appointed day, the prospective adopter has received notification from the Secretary of State that the Secretary of State is prepared to issue the certificate referred to in regulation 3(2)(c) of the Overseas Adoption Regulations.

(4) Where the prospective adopter has visited the child but the child has not entered the United Kingdom before the appointed day regulation 4(2)(b) to (d) of the Foreign Element Regulations will not apply.

(5) Where the child has entered the United Kingdom but the prospective adopter has not, before the appointed day, given notice of intention to adopt in accordance with regulation 3(3) of the Overseas Adoption Regulations, regulation 4(2)(b) to (d) and (3) of the Foreign Element Regulations will not apply.

### **Non-Convention adoptions: local authority functions following receipt of notice of intention to adopt**

**9.**—(1) This article applies where notice of intention to adopt is given before the appointed day by a prospective adopter in accordance with regulation 3(3) of the Overseas Adoption Regulations.

(2) For the purposes of regulation 5(1)(b) of the Foreign Element Regulations notice is deemed to have been given in accordance with section 18(2) (notification to local authority of adoption application) of the Act.

(3) Where the local authority has not visited the child and the prospective adopter before the appointed day and more than one week has elapsed since the receipt of the notice referred to in paragraph (1) the date of receipt of that notice is deemed to be 28th September 2009 for the purposes of regulation 5(2)(f) and (g) of the Foreign Element Regulations.

(4) Where the local authority has visited the child and the prospective adopter before the appointed day—

- (a) the authority must, if it has not already done so, carry out the functions imposed by regulation 5(2)(f) to (i) of the Foreign Elements Regulations; and
- (b) where the review considering the matters referred to in regulation 5(2)(h) of the Foreign Elements Regulations has not been carried out before the appointed day, the date of receipt of the notice referred to in paragraph (1) is deemed to be 28th September 2009 for the purposes of regulation 5(2)(g) of those Regulations.

### **Applications under section 47 of the 1978 Act**

**10.** Where, before the appointed day, an application under section 47(16) (annulment etc. of overseas adoptions) of the 1978 Act has been made to the Court of Session and not yet determined the provisions of the 1978 Act have effect in respect of that application.

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(16) Section 47 was amended by section 139 of, and Schedule 3 to, the Adoption and Children Act 2002 (c.38).

### Applications under section 49 of the 1978 Act

11. Where, before the appointed day, an application for an order under section 49(17) (adoption of children abroad) of the 1978 Act has been made to the court and not yet determined the provisions of the 1978 Act have effect in respect of that application.

### Designation of Overseas Adoptions

12. Despite the repeal of sections 60(4) (orders, rules and regulations)(18) and 65(2) (interpretation: overseas adoption)(19) of the 1978 Act, the following Orders continue to have effect as they did immediately before the appointed day and are deemed to have been made under section 67 (meaning of “overseas adoption”) of the Act:—

- (a) the Adoption (Designation of Overseas Adoptions) Order 1973(20); and
- (b) the Adoption (Designation of Overseas Adoptions) (Variation) (Scotland) Order 1995(21).

## CHAPTER 3

### PARENTAL RESPONSIBILITIES ORDERS

#### Parental responsibilities orders made before the appointed day: deemed permanence order

13.—(1) A child who is subject to a parental responsibilities order immediately before the appointed day 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) (permanence order: mandatory provision) of the Act;
- (b) the following ancillary provisions specified in section 82(1) (permanence orders: ancillary provisions) of the Act vesting in the local authority:—
  - (i) the parental responsibilities mentioned in section 1(1) (parental responsibilities) of the 1995 Act(22); and
  - (ii) the parental rights mentioned in section 2(1) (parental rights) of the 1995 Act(23); and
- (c) any condition in the parental responsibilities order imposed under section 86(5) (parental responsibilities order: general) of the 1995 Act which—
  - (i) specifies arrangements for contact between the child and any other person; or
  - (ii) determines any question in connection with any parental responsibilities or parental rights in relation to the child or any other aspect of the welfare of the child.

(3) In this article “local authority” means the authority on whose application the parental responsibilities order was made.

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(17) Section 49 was amended by section 98(1) of, and Schedule 2 to, the 1995 Act.

(18) Section 60 was amended by the 1995 Act, Schedules 2 and 5; the Adoption (Intercountry Aspects) Act 1999 c.18, section 15 and Schedule 2; the Regulation of Care (Scotland) Act 2001 asp 8, section 79 and schedule 3; and the Adoption and Children Act 2002 c.38, Schedule 3.

(19) Section 65 was amended: by the Children Act 1989 c.41, Schedule 10; the Age of Legal Capacity (Scotland) Act 1991 c.50, Schedule 1; the Local Government etc. (Scotland) Act 1994 c.39, Schedule 13; the 1995 Act, section 94 and Schedules 5 and 9; the Adoption (Intercountry Aspects) Act 1999 c.18, sections 13, 15 and 18 and Schedules 3 and 9; the Regulation of Care (Scotland) Act 2001 asp 8, section 79 and Schedule 3; the Family Law (Scotland) Act 2006 asp 2, Schedule 3; and by S.I. 1996/2203.

(20) S.I. 1973/19 as amended by S.I. 1993/690 and 1995/1614.

(21) S.I. 1995/1614.

(22) Section 1(1) is prospectively amended by the Human Fertilisation and Embryology Act 2008 c.22, Schedule 6.

(23) Section 2(1) is prospectively amended by the Human Fertilisation and Embryology Act 2008 c.22, Schedule 6.

### **Applications for parental responsibilities orders under the 1995 Act**

**14.**—(1) Where, before the appointed day, an application for a parental responsibilities order has been made to the sheriff under section 86(1) of the 1995 Act and not yet determined sections 86 to 89 of that Act continue to have effect in respect of that application.

(2) Where the sheriff makes a parental responsibilities order following an application referred to in paragraph (1) the child who is subject to that order shall be treated as if they were subject to a permanence order and article 13(2) and (3) applies to that deemed permanence order.

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

**15.**—(1) This article applies where a child is subject to a permanence order by virtue of article 13(1) or 14(2) and an application to vary, amend or revoke the permanence order is made under section 92 (variation of ancillary provisions in order), 93 (amendment of order to grant authority for child to be adopted) or 98 (revocation) 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 parental responsibilities order in respect of the child, vest in a local authority.”.

(3) Section 93 of the Act applies as if for paragraph (b) in subsection (6) in the definition of “parent” there were substituted—

“(b) who, by virtue of the making of a parental responsibilities order, no longer has any such responsibilities or rights.”.

(4) In section 94 (proceedings) 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 parental responsibilities order in respect of the child, vest in a local authority;

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

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

(5) 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 parental responsibilities order in respect of the child, vest in a local authority.

## **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(24) (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—

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(24) Section 21 was amended by section 98(1) of, and Schedule 2 to, the 1995 Act.

“(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.

St Andrew’s House,Edinburgh  
25th June 2009

*ADAM INGRAM*  
Authorised to sign by the Scottish Ministers