

**2011 No. 159**

**CHILDREN AND YOUNG PERSONS**

**The Adoptions with a Foreign Element (Scotland) Amendment  
Regulations 2011**

<i>Made</i>	- - - -	<i>24th February 2011</i>
<i>Laid before the Scottish Parliament</i>		<i>25th February 2011</i>
<i>Coming into force</i>	- -	<i>21st March 2011</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 58(6) and (7) and 117(2)(b) of the Adoption and Children (Scotland) Act 2007<sup>(a)</sup> 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 (Scotland) Amendment Regulations 2011 and come into force on 21st March 2011.

**Amendment of the Adoptions with a Foreign Element (Scotland) Regulations 2009**

2.—(1) The Adoptions with a Foreign Element (Scotland) Regulations 2009<sup>(b)</sup> are amended as follows.

(2) In regulation 4(2)(a) (conditions applicable in respect of a child brought into the United Kingdom)—

- (a) for both references to “Secretary of State” substitute “Scottish Ministers”;
- (b) for “has” substitute “have”.

(3) In regulation 5(2)(a)(v) (functions imposed on the local authority), omit “the Secretary of State and”.

**Consequential amendments**

3.—(1) The Additional Paternity Leave (Adoptions from Overseas) Regulations 2010<sup>(c)</sup> are amended as follows.

(2) In regulation 2(1) (interpretation), in paragraph (b) of the definition of “relevant central authority” omit “Part 3 of”.

4.—(1) The Additional Statutory Paternity Pay (Adoptions from Overseas) Regulations 2010<sup>(d)</sup> are amended as follows.

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(a) 2007 asp 4.  
(b) S.S.I. 2009/182; as amended by S.S.I 2010/173.  
(c) S.I. 2010/1059.  
(d) S.I. 2010/1057.

(2) In regulation 2(1) (interpretation and scope), in paragraph (b) of the definition of “relevant central authority” omit “Part 3 of”.

**5.—**(1) The Ordinary Statutory Paternity Pay (Adoption), Additional Statutory Paternity Pay (Adoption) and Statutory Adoption Pay (Adoptions from Overseas) (Persons Abroad and Mariners) Regulations 2010(**a**) are amended as follows.

(2) In regulation 4(2)(d) (application of the Statutory Paternity Pay and Statutory Adoption Pay (Persons Abroad and Mariners) Regulations 2002 to adoptions from overseas), in paragraph (b) of the definition of “relevant central authority” omit “Part 3 of”.

**6.—**(1) The Statutory Paternity Pay (Adoption) and Statutory Adoption Pay (Adoptions from Overseas) (No. 2) Regulations 2003(**b**) are amended as follows.

(2) In regulation 2(1) (interpretation and scope), in paragraph (b) of the definition of “relevant domestic authority” for “Intercountry Adoption (Hague Convention) (Scotland) Regulations” substitute “Adoptions with a Foreign Element (Scotland) Regulations 2009”.

**7.—**(1) The Statutory Paternity Pay (Adoption) and Statutory Adoption Pay (Adoptions from Overseas) (Administration) Regulations 2003(**c**) are amended as follows.

(2) In regulation 3(2)(d) (application of the Statutory Paternity Pay and Statutory Adoption Pay (Administration) Regulations 2002 to adoptions from overseas), in paragraph (b) of the definition of “relevant domestic authority” for “Intercountry Adoption (Hague Convention) (Scotland) Regulations 2003” substitute “Adoptions with a Foreign Element (Scotland) Regulations 2009”.

**8.—**(1) The Paternity and Adoption Leave (Adoption from Overseas) Regulations 2003(**d**) are amended as follows.

(2) In regulation 4(2)(b) (interpretation), in paragraph (b) of the definition of “relevant domestic authority” for “Intercountry Adoption (Hague Convention) (Scotland) Regulations 2003” substitute “Adoptions with a Foreign Element (Scotland) Regulations 2009”.

**9.—**(1) The Social Security Contributions and Benefits Act 1992 (Application of Parts 12ZA and 12ZB to Adoptions from Overseas) Regulations 2003(**e**) are amended as follows.

(2) In Schedule 1 (application of Part 12ZA of the Act to adoptions from overseas), in the entry modifying section 171ZJ(1), in paragraph (b) of the definition of “relevant domestic authority” for “Intercountry Adoption (Hague Convention) (Scotland) Regulations 2003” substitute “Adoptions with a Foreign Element (Scotland) Regulations 2009”.

(3) In Schedule 2 (application of Part 12ZB of the Act to adoptions from overseas), in the entry modifying section 171ZS(1), in paragraph (b) of the definition of “relevant domestic authority” for “Intercountry Adoption (Hague Convention) (Scotland) Regulations 2003” substitute “Adoptions with a Foreign Element (Scotland) Regulations 2009”.

*ADAM INGRAM*

Authorised to sign by the Scottish Ministers

St Andrew’s House,  
Edinburgh  
24th February 2011

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(a) S.I. 2010/150.  
(b) S.I. 2003/1194; as amended by S.I. 2004/488 and S.I. 2005/2114.  
(c) S.I. 2003/1192.  
(d) S.I. 2003/921; as amended by S.I. 2005/2114.  
(e) S.I. 2003/499; as amended by S.I. 2004/488 and S.I. 2010/153.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make amendments to the Adoptions with a Foreign Element (Scotland) Regulations 2009 (“the principal Regulations”). Under regulation 4(2) of the principal Regulations, prior to a child’s entry into the United Kingdom in circumstances where section 58 of the Adoption and Children (Scotland) Act 2007 (“the Act”) applies, the prospective adopters must, *inter alia*, receive from the Secretary of State notification in writing that the Secretary of State has issued a certificate to the relevant foreign authority confirming that conditions prescribed in sub-paragraph (a)(i) and (ii) are met.

The Scottish Ministers have taken on the function, as regards Scotland, of issuing such certificates in respect of all adoptions to which the principal Regulations apply and providing the written notification prescribed in regulation 4(2). Accordingly, regulation 2(2) of these Regulations amends regulation 4(2) of the principal Regulations, replacing the references to the Secretary of State with references to the Scottish Ministers.

Regulation 2(3) amends regulation 5(2) of the principal Regulations, removing the local authorities’ duty to place on case records information received from the Secretary of State, where a child is brought into the United Kingdom in circumstances where section 58 of the Act applies and notice has been given by the adopters to the relevant local authority in accordance with section 18(2) of the Act. This amendment is made in consequence of the amendment made by regulation 2(2) of these Regulations.

Regulations 3 to 9 make amendments in consequence of the amendment made by regulation 2(2) to ensure that statutory instruments, which refer to the certificate mentioned in regulation 4(2) of the principal Regulations, reflect that the Scottish Ministers shall issue such certificates in respect of all adoptions to which the principal Regulations apply.

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