

EXECUTIVE NOTE

THE ADOPTIONS WITH A FOREIGN ELEMENT (SCOTLAND) AMENDMENT REGULATIONS 2011

SSI 2011/159

1. The above instrument was made in exercise of the powers conferred by sections 58(6) and (7) and 117(2)(b) of the Adoption and Children (Scotland) Act 2007. The instrument is subject to negative resolution procedure.

Legislative Background

2. Section 58 of the Adoption and Children (Scotland) Act 2007 (“the Act”) makes provision regarding the processes and conditions which must be complied with where a person brings, or causes another to bring, a child habitually resident outside of the British Islands into the United Kingdom for the purposes of adoption.
3. Section 58(6) allows the Scottish Ministers to make regulations prescribing the conditions to be met in respect of a child brought into the United Kingdom for the adoption where the 1993 Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption does not apply. The regulations made under this sub-section are currently the Adoptions with a Foreign Element (Scotland) Regulations 2009.
4. Section 58(7) enables the Scottish Ministers to make regulations that provide for any provision of Chapter 2 of the Act to apply, with or without modifications, in relation to a child brought into the United Kingdom for non-Convention adoptions. Chapter 2 stipulates that the Scottish Ministers may make regulations for or in connection with specifying the information which an adoption agency must keep in relation to adoptions.
5. Although the Scottish Ministers have devolved responsibility for intercountry adoption, an administrative arrangement is outlined in the Adoptions with a Foreign Element (Scotland) Regulations 2009 for adoptions between Scotland and countries that have not ratified or acceded to the 1993 Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption (the “Hague Convention”). This arrangement sees the Secretary of State for Education issuing a certificate indicating the applicants’ eligibility and suitability to adopt for residents of Scotland. This certificate is issued by the Scottish Ministers for cases between Scotland and a country which has ratified or acceded to the Hague Convention.

Policy Background and Objectives

6. Currently applications take different routes depending upon whether the child’s country of origin has ratified or acceded to the Hague Convention. Although the application is processed by the Scottish Government, “non-Hague Convention” cases must have their certificate issued by the Secretary of State for Education. This means that these applications are going through duplicate processes and may be subject to delay.

7. The Adoptions with a Foreign Element (Scotland) Amendment Regulations 2011 (SSI 2011/159) make amendments to the Adoptions with a Foreign Element (Scotland) Regulations 2009 (SSI 2009/182) in order to effect the full transfer of responsibility for intercountry adoption to the Scottish Ministers. The Scottish Ministers will then be responsible for issuing the certificate indicating the eligibility and suitability of the prospective adopters in all intercountry adoption cases.

Consultation

8. The Adoptions with a Foreign Element (Scotland) Amendment Regulations 2011 relate to procedural matters relevant to the Scottish Ministers and therefore impact primarily on the Scottish Government rather than the public, businesses, charities or the voluntary sector.
9. Given the procedural nature of the impact there was no consultation on the draft Regulations.

Financial Effect

10. As these Regulations only affect the procedures undertaken by Scottish Ministers in processing a case to adopt a child from overseas, the Regulations will not create any extra financial burden on Scottish Government, local authorities or adoption agencies.

Children and Families Directorate
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