

ADOPTION AND CHILDREN (SCOTLAND) ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Chapter 6

Adoptions With a Foreign Element

Section 58 - Restriction on bringing children into the United Kingdom

205. The provisions of this section apply where a person who is habitually resident in the British Islands (“British resident”) either brings, or causes another to bring, a child habitually resident outwith the British Islands into the United Kingdom for the purposes of adoption; or, brings, or causes another to bring, a child adopted by the British resident under an external adoption effected within a period of 12 months from that adoption.
206. Subsection (2) extends the reference to adoption by the British resident to include the British resident and another person. Subsection (3) excludes this section from applying if the child is intended to be adopted under a Convention adoption order. “Convention adoption order” is defined at section 119(1) of the Act and means an adoption made under the law of a country that has acceded to or ratified the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption 1993.
207. Subsection (4) defines an external adoption as an adoption, other than a Convention adoption, effected under the law of any country or territory outside of the British Islands.
208. Subsection (5) allows regulations to be made which require a person to apply to an adoption agency for an assessment of his or her suitability to adopt and provide the agency with any information it may require for the purpose of the assessment if he or she intends to bring, or cause another to bring, a child into the United Kingdom under the circumstances specified in this section.
209. Subsection (6) allows regulations to prescribe the conditions which must be met in respect of a child brought into the United Kingdom under the circumstances specified in this section.
210. Subsection (7) allows regulations to provide for any provision in Chapter 2 to apply with modifications, or not to apply, to a child brought into the United Kingdom for adoption purposes.
211. Subsection (8) allows the Scottish Ministers to make regulations exempting adoptions from the application of this section where the prospective adopter is either a relative or guardian, or a step-parent of the child and any prescribed conditions are met.
212. Subsection (9) specifies the parliamentary procedure which applies on the first exercise of the power to make a statutory instrument containing regulations under subsection (8). The instrument will be subject to draft affirmative procedure when first made. Subsequent use of the power will be subject to negative resolution procedure.