

EXECUTIVE NOTE TO
THE ADOPTION AGENCIES (SCOTLAND)
REGULATIONS 2009 (SSI 2009/154)

1. The above instrument (the 2009 Regulations) was made in exercise of the powers conferred by sections 8, 20, 37, 106 and 117(2) of the Adoption and Children (Scotland) Act 2007 (the 2007 Act). The instrument is subject to negative resolution procedure.

2. This instrument is one of a series of statutory instruments to be laid to implement the core provisions of the 2007 Act. The purpose of the instrument is to govern how adoption agencies (local authorities and registered adoption services) exercise their functions in relation to adoption under the 2007 Act. The Regulations provide an essential framework within which adoption agencies are required to take certain steps before making fundamental decisions about individual adoption cases. The regulatory framework is designed to safeguard the welfare of each child and protect the rights of their parents and adopters by providing for a rigorous decision making process.

Legislative Background

3. The 2007 Act replaces the Adoption (Scotland) Act 1978 (the 1978 Act) and modernises entirely the existing legal framework for domestic and intercountry adoption. The effect of these Regulations will largely be to restate the existing provisions of the Adoption Agencies (Scotland) Regulations 1996 but with some variation and additions to take account of the changes introduced by the 2007 Act. The need for new Regulations is primarily because the existing statutory authority (the 1978 Act) is overtaken by the 2007 Act rather than any inherent defects, although some amendments and additions have been made. The new provisions largely focus on the permanence order with authority to adopt, which replaces the freeing order. New provisions require agencies to have regard to the views of the child, taking account of their age and maturity, to be taken into account when an agency is considering adoption and for the views of other relatives of the child to be taken into account where an agency is placing the child for adoption. There are also new provisions enabling (a) prospective adopters to seek a review of an agency's decision that they were unsuitable to be adoptive parents and (b) agencies to review the suitability of persons as adoptive parents where no child has been placed for adoption within 2 years of being approved as suitable.

4. The 2009 Regulations prescribe the arrangements which adoption agencies need to put in place for carrying out their functions in relation to adoption:

- Part 2 establishes adoption panels and makes provision for their constitution, composition, meetings and functions;
- Part 3 provides for the duties of adoption agencies in the assessment of prospective adopters and their approval and review of approval (included here are new provisions allowing prospective adopters to request a review of the agency decision and an automatic review by the agency where no child has been placed by a prospective adopter or where a child has been placed but review is considered necessary or appropriate to protect the welfare of the child;

- Part 4 concerns the functions of agencies when adoption is being considered for a child;
- Part 5 makes provision for consent certificates and the circumstances under which an adoption agency, which is a local authority, shall determine to proceed as though parental consent is not forthcoming;
- Part 6 concerns applications for permanence orders with authority to adopt;
- Part 7 makes provision for the placing of a child for adoption; and
- Part 8 makes provision for creating and maintaining case records for children and prospective adopters.

Policy Background

5. The Regulations underpin a number of policy objectives. These are to:

- Replace the current Adoption Agencies (Scotland) Regulations 1996;
- Modernise and improve adoption law and practice under the 2007 Act, including providing for the new permanence order with authority to adopt; and
- Provide an essential framework within which adoption agencies are required to take certain steps before making fundamental decisions about individual adoption cases.

Consultation

6. Draft Regulations were published on the Consultations section of the Scottish Government web site. This consultation was supplemented by discussions with the Association of Directors of Social Work's Adoption and Fostering Sub-Group and the Scottish Committee of the British Association for Adoption and Fostering. Responses were in broad agreement with the principles of the Regulations. However, as a result of comments included in those responses, some technical changes were made to the Regulations to clarify their intent.

Financial Effects

7. The instrument has no significant effect on the Scottish Government, local authorities or on the voluntary sector as the Regulations largely restate the existing provisions of the Adoption Agencies (Scotland) Regulations 1996. As such, adoption agencies already meet the costs of performing the various functions. The introduction of permanence orders will be cost neutral for local authorities and may, in fact, result in savings. While permanence orders will result in better outcomes for looked after children, the number of children for whom orders would require to be made is unlikely to change. Increasing the number of children who are adopted would result in savings associated with the cost of caring for looked after children. For children who are not adopted and who remain as looked after children, the conditions of each permanence order will vary to take account of the specific needs of an

individual child. Therefore, the cost to local authorities of each permanence order will differ. On balance, however, the cost of a child subject to a permanence order is likely to be similar to costs for children subject to freeing orders and parental responsibilities orders.

8. A Regulatory Impact Assessment has not been submitted with the instrument as it is considered that the instrument will have no impact on business.

Children, Young People and Social Care Directorate