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SCOTTISH STATUTORY INSTRUMENTS

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**2009 No. 182**

The Adoptions with a Foreign  
Element (Scotland) Regulations 2009

PART 2

BRINGING CHILDREN INTO, AND TAKING  
CHILDREN OUT OF, THE UNITED KINGDOM

CHAPTER 2

TAKING CHILDREN OUT OF THE UNITED KINGDOM

**Orders under section 59 of the Act: requirements**

7.—(1) This regulation prescribes, for the purposes of subsection (3) of section 59 of the Act (preliminary order where child to be adopted abroad), the requirements to be satisfied before an order under that section may be made in the case where the prospective adopters (within the meaning of that section) intend to adopt a child otherwise than under a Convention adoption<sup>(1)</sup>.

(2) This regulation applies in the case of a child placed for adoption with the prospective adopters by an adoption agency.

(3) The requirements are—

(a) that the adoption agency has—

- (i) confirmed to the court that it has complied with the requirements imposed on it under Parts IV and V of the Adoption Agencies Regulations; and
- (ii) submitted to the court the things mentioned in regulation 8;

(b) that the relevant foreign authority has—

- (i) confirmed in writing to the adoption agency that the prospective adopters have been counselled and that the legal implications of adoption have been explained to them;
- (ii) prepared a report on the suitability of the prospective adopters to be adoptive parents;
- (iii) determined and confirmed in writing to the adoption agency that the prospective adopters are eligible and suitable to adopt in the country or territory in which the adoption is to be effected; and
- (iv) confirmed to the adoption agency that the child is or will be authorised to enter and reside permanently in that country or territory;

(c) in a case where there is only one prospective adopter, that the prospective adopter has confirmed in writing to the adoption agency that the prospective adopter will accompany the child out of Great Britain and into the country or territory where the adoption is to be effected; and

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<sup>(1)</sup> The expression “Convention adoption” is defined in section 119(1) of the Act.

- (d) in a case where there are two prospective adopters, that they have confirmed in writing to the adoption agency—
  - (i) that both will so accompany the child; or
  - (ii) if the adoption agency and the relevant foreign authority have confirmed that it is necessary for only one so to accompany the child, that one of them will do so.

**Matters to be submitted to the court under regulation 7**

8. The things to be submitted to the court under regulation 7(3)(a)(ii) are—
- (a) a copy of the recommendations of the adoption panel under regulation 6(2) of the Adoption Agencies Regulations;
  - (b) if regulation 6(4) of those Regulations applies, a copy of the report of the adoption panel mentioned in that regulation;
  - (c) a copy of the report on the health of the child mentioned in regulation 18(1)(d) of those Regulations and any report obtained in accordance with regulation 18(2) of those Regulations;
  - (d) a copy of the report and information mentioned in regulation 18(1)(i) of those Regulations; and
  - (e) a copy of the written reports mentioned in regulation 25(1)(b) of those Regulations.

**Application of the Act in respect of orders under section 59**

9.—(1) Subject to paragraphs (2), (3) and (4) the provisions of Chapter 2 of Part 1 of the Act, as they relate to adoption orders, apply to orders under section 59 of the Act so far as the nature of the provision permits and unless the contrary intention is shown.

(2) The following provisions of the Act which relate to adoption orders apply to orders under section 59 of the Act subject to the following:—

- (a) in section 28, omit subsections (1), (3), (4), (5) and (6);
- (b) in section 29, omit subsections (1)(c) and (2); and
- (c) in section 30, omit subsections (1)(c), (3)(d) and (6).

(3) For the purposes of section 14(1) of the Act, a court considering an application for an order under section 59 in respect of a child is to be treated as a court coming to a decision relating to the adoption of a child.

(4) The following provisions of Chapter 2 of Part 1 of the Act do not apply to orders under section 59 of the Act:—

- (a) section 15;
- (b) section 21;
- (c) section 22;
- (d) section 24;
- (e) section 25;
- (f) section 26;
- (g) section 34.

(5) Sections 53 to 55 and paragraphs 1 to 4 of schedule 1 to the Act, as they relate to adoption orders, apply to orders made under section 59 of the Act as if—

- (a) in each place where the words “adoption order” appear there were substituted “order under section 59”;

- (b) in each place where the words “adopted person” appear there were substituted “person subject to an order made under section 59”;
- (c) in section 55(1) and paragraph 3 of schedule 1 where the words “Adopted” appear there were substituted “Proposed foreign adoption”; and
- (d) in paragraph 3 of schedule 1 where the words “Re-adopted” appear there were substituted “Proposed foreign re-adoption”.