

2009 No. 147 (C. 10)

CHILDREN AND YOUNG PERSONS

**The Adoption and Children (Scotland) Act 2007
(Commencement No. 3) Order 2009**

Made - - - -

9th April 2009

The Scottish Ministers make the following Order in exercise of the powers conferred by section 121(2) of the Adoption and Children (Scotland) Act 2007(a).

Citation and interpretation

1.—(1) This Order may be cited as the Adoption and Children (Scotland) Act 2007 (Commencement No. 3) Order 2009.

(2) In this Order “the Act” means the Adoption and Children (Scotland) Act 2007.

Appointed day

2.—(1) The day appointed for the coming into force of the provisions of the Act specified in column 1 of the Schedule is 20th April 2009.

(2) The subject matter of each provision of the Act specified in column 1 is listed in column 2 of the Schedule.

(3) The provisions of the Act specified in column 1 of the Schedule come into force only for the purpose of making regulations, orders or rules under the provision so specified.

ADAM INGRAM

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
9th April 2009

(a) 2007 asp 4.

SCHEDULE

Article 2

Provisions of the Act coming into force on 20th April 2009 only for the purpose of making regulations, orders or rules

<i>Column 1</i> <i>Provision of the Act</i>	<i>Column 2</i> <i>Subject matter</i>
Section 3(b)	Adoption service: regulations
Section 8	Adoption agencies: regulations about carrying out of functions
Section 9(3)	Assessment of needs for adoption support services
Section 13	Regulations
Section 20(1)	Restrictions on removal: child placed for adoption with consent
Section 37	Information to be kept about adoptions
Section 38	Disclosure of information kept under relevant enactment
Section 49(7)	Reassessment of needs for adoption support services
Section 53(4) (only in relation to paragraphs 1(1), 6(3), (4) and (5), and 7(4) and (11) of schedule 1 to the Act)	Adopted Children Register and index
Section 58(5), (6), (7) and (10)	Restriction on bringing children into the United Kingdom
Section 59(3) and (6)	Preliminary order where child to be adopted abroad
Section 61(1)	Regulations under section 58: offences
Section 69(1)	Section 68: supplementary provision
Section 71(1)(a), (3) and (4)	Adoption allowances schemes
Section 74	Disclosure of medical information about parents
Section 95(2)	Duty of children's hearing to prepare report for court
Section 104	Permanence orders: rules of procedure
Section 106(3)	Child subject to supervision requirement: duty to refer to Principal Reporter
Section 108	Rules: appointment of curators <i>ad litem</i> and reporting officers
Section 114	Rules of procedure
Schedule 1 paragraphs 1(1), 6(3), (4) and (5) and 7(4) and (11)	Registration of adoptions

EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into force certain provisions of the Adoption and Children (Scotland) Act 2007 (“the Act”). Article 2(1) brings into force, on 20th April 2009, all the provisions of the Act listed in the Schedule to the Order. Article 2(3) provides that all these provisions only come into force for the purpose of enabling regulations, orders or rules to be made under them.

Section 3(b) gives the Scottish Ministers the power to make regulations relating to adoption services.

Section 8(1) gives the Scottish Ministers the power to make regulations relating to a registered adoption service carrying out its functions. Subsection (2) gives the Scottish Ministers the power to make regulations relating to a local authority carrying out its functions of making or participating in arrangements for the adoption of children. Subsection (3) sets out matters which regulations made under section 8 may, in particular, include being the circumstances in which a local authority proposing to make arrangements for the adoption of a child must apply for a permanence order which includes provision granting authority for the child to be adopted and the period within which such an application must be made.

Section 9(3) provides that an assessment of needs for adoption support services carried out under this section must be done in such a manner as may be prescribed in regulations made by the Scottish Ministers and local authorities must have regard to such prescribed matters.

Section 13 gives the Scottish Ministers the power to make regulations relating to various aspects of the provision of an adoption service. Subsection (1)(a) enables regulations to determine which local authority is responsible for the provision of an adoption service and the making of an assessment of needs under section 9. Subsection (1)(b) enables regulations to determine when and under what circumstances a local authority’s duty to provide an adoption service ends. Subsection (1)(c) enables provision to be made about the circumstances in which a local authority can continue to provide an adoption service after the duty to provide such a service has ended. Subsection (1)(d) enables regulations to specify the arrangements that may be made by a local authority when a person to whom it is supplying an adoption service moves outwith the authority’s area. Subsection (1)(e) enables regulations to specify with whom arrangements under subsection (1)(d) can be made. Subsection (1)(f) enables regulations to be made concerning the assessment of needs for adoption support services of someone who has moved or intends to move from one local authority area to another or from outwith Scotland to Scotland. Subsection (2) provides that regulations made under this section can be exercised to make different provision for different adoption services.

Section 20 gives the Scottish Ministers the power to make regulations with regard to consent to the placement of a child for adoption.

By virtue of section 37, the Scottish Ministers have the power to make regulations with regard to the information which an adoption agency must keep in relation to adoptions, and the form and manner in which such information must be kept.

By virtue of section 38(1), the Scottish Ministers have the power to make regulations in relation to disclosure by adoption agencies, to adopted persons and other persons, of information about adoptions held by adoption agencies under section 37 or any other enactment which imposes a requirement to keep records relating to adoptions. Subsection (2) provides that such regulations may include provision: giving adoption agencies discretion as to whether or not to disclose information in certain circumstances; specifying conditions which are to apply to the disclosure of information; specifying circumstances in which information should not be disclosed to certain categories of adopted persons; and providing for the review of decisions of adoption agencies in connection with the disclosure of information and the conditions applicable to such disclosure.

Section 49(7) provides that where a local authority is making a reassessment of needs for adoption support services it should do so in such manner, and having regard to such matters, as may be prescribed by regulations made by the Scottish Ministers.

Section 53(4) gives effect to schedule 1 which makes provision about the registration of adoptions and the amendment of adoption orders.

Section 58(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. 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. Subsection (7) allows regulations to provide for any provision in Chapter 2 of the Act to apply with modifications, or not to apply, to a child brought into the United Kingdom for adoption purposes.

Section 59(3) provides that a court order made under this section (to vest parental responsibilities and parental rights in prospective adopters who the court is satisfied intend to adopt a child under the law of a country outwith the British Islands) may not be made unless any requirements prescribed by regulations are satisfied. Subsection (6) enables regulations to provide for any provision of the Act, which relates to adoption orders, to apply, with or without modifications, to court orders under section 59.

Section 61(1) makes it an offence for any person to bring, or cause another to bring, a child into the United Kingdom in circumstances where section 58 of the Act applies, if the person has not complied with any requirement imposed under section 58(5), or has not met any condition which the person is required to meet by virtue of section 58(6), before any time prescribed by regulations made by the Scottish Ministers.

Section 69(1) provides that any application for an order or decision under section 68 must be made in the manner prescribed in regulations made by the Scottish Ministers and within such period as may be prescribed.

Section 71(1) requires local authorities to prepare an adoption allowances scheme within a period as the Scottish Ministers may by order direct. Subsection (3) enables the Scottish Ministers to make regulations in relation to adoption allowances schemes. Subsection (4) sets out what such regulations may particularly include: the procedure to be followed to decide whether or not someone should be paid an adoption allowance; the circumstances in which an allowance can be paid; factors to be taken into account in deciding how much allowance should be paid; the procedure for review, variation and termination of any such allowance; the information about allowances that should be supplied to potential adopters; and the procedure to be followed in drawing up, making alterations to or revoking an adoption allowances scheme.

Section 74(1) gives the Scottish Ministers power to make regulations in relation to the disclosure of information about the health of the natural parents of a child who will be, may be, or has been adopted. Any such regulations must ensure that a person to whom such information is disclosed is subject to a duty of confidentiality in respect of this information (subsection (2)). However, by virtue of subsection (3), information may be disclosed to the child and to persons who are to, or may, adopt, or have already adopted the child. Subsection (4) lists matters which any regulations made by virtue of subsection (1) may cover. These are: the types of persons by whom, and to whom, such information is to be disclosed; the circumstances in which this information is to be disclosed; the type of information which is or is not to be disclosed; the circumstances in which consent to the disclosure of such information is not required; and the processing of the information by a person to whom it is disclosed.

Section 95(2) concerns the interaction between the children's hearing and the court to which an application to make or vary a permanence order has been made. It provides that where there is a 'live' application for a permanence order in relation to a child, or for variation of such an order, and where a children's hearing proposes to make or modify a supervision requirement under the

Children (Scotland) Act 1995 (c.36) (“the 1995 Act”) in respect of that child, the children’s hearing must prepare a report for the court to which the application re the permanence order has been made. That report must contain such information as Scottish Ministers may prescribe in regulations.

Section 104 provides for rules of court to be made detailing court procedure in respect of applications for permanence orders.

Section 106(1) and (2) provides that, where a registered adoption service intends to place for adoption a child who is subject to a supervision requirement under the 1995 Act, the registered adoption service must refer the case to the Principal Reporter. Subsection (3) gives the Scottish Ministers the power to make regulations specifying a time period in which such a referral should be made.

Section 108 requires rules of court to be made providing for the appointment of curators *ad litem* and reporting officers for children in respect of whom applications are made for: an adoption order; a permanence order; or an order under section 59 (preliminary order where child to be adopted abroad).

Section 114 provides for rules of court to be made dealing generally with all matters of procedure required by virtue of the Act.

Schedule 1 paragraph 1 provides for every adoption order to contain a direction to the Registrar General to make an entry in the Adopted Children Register and this entry must be in the form prescribed by regulations made by the Registrar General with the approval of the Scottish Ministers. Paragraph 6 relates to the registration of adoptions made under a registrable foreign adoption, which is defined as an adoption which satisfies prescribed requirements, and is also a Convention adoption or an overseas adoption. An application under paragraph 6 must be made in the prescribed manner by a prescribed person and must provide prescribed particulars. Prescribed means prescribed by regulations made by the Registrar General with the approval of the Scottish Ministers. Paragraph 7(4) provides for the Registrar General to prescribe by regulations, with the approval of the Scottish Ministers under sub-paragraph (11), the manner in which any amendment to an adoption order or revocation of a direction must be communicated to the Registrar General.

NOTE AS TO EARLIER COMMENCEMENT ORDERS

(This note is not part of the Order)

The Adoption and Children (Scotland) Act 2007 (“the Act”) received Royal Assent on 15th January 2007 and sections 116, 117 and 121 came into force on that day. The first commencement order, the Adoption and Children (Scotland) Act 2007 (Commencement No. 1) Order 2008 (S.S.I. 2008/130), was made on 19th March 2008. The second commencement order, the Adoption and Children (Scotland) Act 2007 (Commencement No. 2) Order 2008 (S.S.I. 2008/282), was made on 18th August 2008. The provisions of the Act commenced by those Orders are detailed in the table below.

<i>Provision</i>	<i>Purpose</i>	<i>Date of Commencement</i>	<i>S.S.I. No.</i>
Section 2(3)	Only in relation to the definition of “registered adoption service” in section 119(1) of the Act	7th April 2008	2008/130
Sections 62 to 65		1st September 2008	2008/282
Section 119(1)		7th April 2008	2008/130
Section 120(1)	Only in relation to paragraph 9(1) and (5) of schedule 2 to the Act	7th April 2008	2008/130
Schedule 2 paragraph 9(1) and (5)		7th April 2008	2008/130

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