

EXECUTIVE NOTE TO

THE APPLICATIONS TO THE COURT OF SESSION TO ANNUL CONVENTION
ADOPTIONS OR OVERSEAS ADOPTIONS (SCOTLAND) REGULATIONS 2009
SSI/2009/170

1. The above instrument (“the Regulations”) was made in exercise of the powers conferred by section 69(1) of the Adoption and Children (Scotland) Act 2007 (“the 2007 Act”). The Regulations are subject to negative resolution procedure and are one of a series of statutory instruments being enacted to implement the core provisions of the 2007 Act.

Legislative Background

2. 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 the Regulations will be to restate the existing Rules of the Court of Session because the statutory authority (the 1978 Act) for the existing Rules is overtaken by the regulation making power in section 69 of the 2007 Act.

3. Section 68 of the 2007 Act provides for the Court of Session to annul a Hague Convention adoption or a Hague Convention adoption order on the grounds that the adoption or the order, as the case may be, is contrary to public policy. Where an overseas adoption or a determination under section 69 is shown to be contrary to public policy or the authority which made the adoption or determination was not competent to entertain the case, the Court of Session may order that the overseas adoption or determination should cease to be valid in Great Britain.

4. Section 69 makes supplemental provision in respect of annulment of overseas or Convention adoptions and Convention adoption orders. It specifies that the application must be made in the prescribed manner and within any prescribed period, that the adopted person or adopters must have been habitually resident in Scotland immediately before the application and that the court is bound by any finding of fact by the authority when determining whether that authority was competent to entertain the case.

5. Section 70 makes further provision in relation to overseas determinations and orders. It provides that where any authority of a Convention country (other than the UK) or the Channel Islands, the Isle of Man or any British overseas territory, has the power to authorise or review the authorisation of an adoption order made in that country or territory, or to give or review a decision revoking or annulling an adoption order or a Convention adoption, that determination will be recognised in the UK. This is subject to section 68 and any subsequent determination.

Policy Objectives

6. The purpose of the Regulations is to make provision relating to applications to the Court of Session under section 68 of the 2007 Act to:-

- (i) annul a Hague Convention adoption, a Hague Convention adoption order or an overseas adoption or determination

(ii) decide the extent to which a determination under section 70 of the 2007 Act has been affected by a subsequent determination

7. The Regulations provide that an application must be made by petition and must be made within two years of the adoption or determination to which it relates, except with the leave of the Court of Session.

Consultation

8. The Regulations simply prescribe the manner and timescale in which applications have to be made to the Court of Session and therefore no public consultation was considered necessary. However the Lord President's Office has been consulted on drafts of the regulations to ensure consistency with Court of Session rules of procedure.

Financial Effects

9. The instrument has no effect on the Scottish Government, local authorities or on the voluntary sector.

10. 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
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