

ADOPTION AND CHILDREN (SCOTLAND) ACT 2007

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Chapter 6

Adoptions With a Foreign Element

Section 60 - Restriction on removal of children for adoption outwith Great Britain

219. Subsection (1) makes it an offence for any person to take or send a protected child out of Great Britain to any place outwith the British Islands with a view to the adoption of that child. 'Protected child' is defined at subsection (9) as a child who is habitually resident in the United Kingdom or a Commonwealth citizen.
220. Subsection (2) makes it an offence for any person to assist in the transferring of care of a protected child to another person, knowing that the other person intends to take or send the child out of Great Britain which would be an offence under subsection (1). Subsection (4) then specifies the activities which would be deemed to constitute an offence under subsection (2), being facilitating the placing of the child or initiating or taking part in negotiations for such placing or in relation to an agreement to transfer the care of the child.
221. Subsection (3) outlines the exemptions to an offence committed under subsection (1). It is an offence to remove a protected child from the British Islands with a view to the adoption of that child unless an order has been made under section 59 of the Act, section 84 of the 2002 Act (giving parental responsibility prior to adoption abroad), or Article 57 of the Adoption (Northern Ireland) Order 1987 (adoption by persons domiciled outside Northern Ireland).
222. Subsection (5) makes special provision for adoptions with a foreign element where the prospective adopters are parents, relatives or guardians or step-parents of the child. The Scottish Ministers may by regulations modify the offence provisions at subsections (1) and (2) and the exceptions at subsection (3), or declare that they do not apply in relation to such persons if any conditions set out in the regulations are met.
223. Subsection (6) specifies the parliamentary procedure which applies to any regulations made under this provision. The first use of the power is subject to affirmative procedure. Thereafter such regulations will be subject to negative procedure.
224. Subsection (7) makes provision for reports by, or depositions made before, a British consular officer to be sufficient evidence in any proceedings under this section.
225. Subsection (8) prescribes the penalty for an offence under this section as a maximum of 3 months imprisonment, a fine not exceeding level 5 on the standard scale or both.