
SCOTTISH STATUTORY INSTRUMENTS

2009 No. 267

**The Adoption and Children (Scotland) Act
2007 (Commencement No. 4, Transitional
and Savings Provisions) Order 2009**

PART III

TRANSITIONAL AND SAVINGS PROVISIONS

CHAPTER 2

INTERCOUNTRY ADOPTION

Application for Convention adoption orders

6. Where, before the appointed day, an application for a Convention adoption order has been made in accordance with the Hague Convention Regulations and section 17(1) (convention adoption orders) of the 1978 Act and not yet determined, those Regulations and the provisions of that Act continue to apply in respect of that application.

Hague Convention adoption cases in progress

7.—(1) This article applies where a case is still in progress on the appointed day under a provision of the Hague Convention Regulations.

(2) Any action or decision under a provision of the Hague Convention Regulations will, on or after the appointed day, be treated as if it were an action or decision under the corresponding provision of the Foreign Element Regulations.

(3) Where, before the appointed day, an adoption panel has considered—

- (a) whether or not adoption by a person habitually resident in a Convention country outside the British Islands is in the best interests of the child; or
- (b) whether a prospective adopter is suitable to adopt a child,

and no decision has been made by the adoption agency before the appointed day, the Hague Convention Regulations will continue to apply for the purposes of making that decision.

(4) Where an adoption agency makes a decision under the Hague Convention Regulations (whether before the appointed day or, by virtue of paragraph (3), on or after that day) that a prospective adopter is not suitable to adopt a child, regulation 8(4) to (9) (adoption agency decision, notification and review procedure) of the Hague Convention Regulations will apply.

Non-Convention adoption cases in progress

8.—(1) This article applies where a case is still in progress on the appointed day under a provision of the Overseas Adoption Regulations.

(2) Any action or decision under a provision of the Overseas Adoption Regulations will, on or after the appointed day, be treated as if it were an action or decision under the corresponding provision of the Foreign Element Regulations.

(3) Paragraphs (4) and (5) apply where, before the appointed day, the prospective adopter has received notification from the Secretary of State that the Secretary of State is prepared to issue the certificate referred to in regulation 3(2)(c) of the Overseas Adoption Regulations.

(4) Where the prospective adopter has visited the child but the child has not entered the United Kingdom before the appointed day regulation 4(2)(b) to (d) of the Foreign Element Regulations will not apply.

(5) Where the child has entered the United Kingdom but the prospective adopter has not, before the appointed day, given notice of intention to adopt in accordance with regulation 3(3) of the Overseas Adoption Regulations, regulation 4(2)(b) to (d) and (3) of the Foreign Element Regulations will not apply.

Non-Convention adoptions: local authority functions following receipt of notice of intention to adopt

9.—(1) This article applies where notice of intention to adopt is given before the appointed day by a prospective adopter in accordance with regulation 3(3) of the Overseas Adoption Regulations.

(2) For the purposes of regulation 5(1)(b) of the Foreign Element Regulations notice is deemed to have been given in accordance with section 18(2) (notification to local authority of adoption application) of the Act.

(3) Where the local authority has not visited the child and the prospective adopter before the appointed day and more than one week has elapsed since the receipt of the notice referred to in paragraph (1) the date of receipt of that notice is deemed to be 28th September 2009 for the purposes of regulation 5(2)(f) and (g) of the Foreign Element Regulations.

(4) Where the local authority has visited the child and the prospective adopter before the appointed day—

- (a) the authority must, if it has not already done so, carry out the functions imposed by regulation 5(2)(f) to (i) of the Foreign Elements Regulations; and
- (b) where the review considering the matters referred to in regulation 5(2)(h) of the Foreign Elements Regulations has not been carried out before the appointed day, the date of receipt of the notice referred to in paragraph (1) is deemed to be 28th September 2009 for the purposes of regulation 5(2)(g) of those Regulations.

Applications under section 47 of the 1978 Act

10. Where, before the appointed day, an application under section 47(2) (annulment etc. of overseas adoptions) of the 1978 Act has been made to the Court of Session and not yet determined the provisions of the 1978 Act have effect in respect of that application.

(2) Section 47 was amended by section 139 of, and Schedule 3 to, the Adoption and Children Act 2002 (c.38).

Applications under section 49 of the 1978 Act

11. Where, before the appointed day, an application for an order under section 49(3) (adoption of children abroad) of the 1978 Act has been made to the court and not yet determined the provisions of the 1978 Act have effect in respect of that application.

Designation of Overseas Adoptions

12. Despite the repeal of sections 60(4) (orders, rules and regulations)(4) and 65(2) (interpretation: overseas adoption)(5) of the 1978 Act, the following Orders continue to have effect as they did immediately before the appointed day and are deemed to have been made under section 67 (meaning of “overseas adoption”) of the Act:—

- (a) the Adoption (Designation of Overseas Adoptions) Order 1973(6); and
- (b) the Adoption (Designation of Overseas Adoptions) (Variation) (Scotland) Order 1995(7).

(3) Section 49 was amended by section 98(1) of, and Schedule 2 to, the 1995 Act.

(4) Section 60 was amended by the 1995 Act, Schedules 2 and 5; the Adoption (Intercountry Aspects) Act 1999 c.18, section 15 and Schedule 2; the [Regulation of Care \(Scotland\) Act 2001 asp 8](#), section 79 and schedule 3; and the Adoption and Children Act 2002 c.38, Schedule 3.

(5) Section 65 was amended: by the Children Act 1989 c.41, Schedule 10; the Age of Legal Capacity (Scotland) Act 1991 c.50, Schedule 1; the Local Government etc. (Scotland) Act 1994 c.39, Schedule 13; the 1995 Act, section 94 and Schedules 5 and 9; the Adoption (Intercountry Aspects) Act 1999 c.18, sections 13, 15 and 18 and Schedules 3 and 9; the [Regulation of Care \(Scotland\) Act 2001 asp 8](#), section 79 and Schedule 3; the [Family Law \(Scotland\) Act 2006 asp 2](#), Schedule 3; and by S.I. 1996/2203.

(6) S.I. 1973/19 as amended by S.I. 1993/690 and 1995/1614.

(7) S.I. 1995/1614.