

A BRIEF GUIDE TO INTERCOUNTRY ADOPTION

AC(S)A - Adoption and Children (Scotland) Act 2007

SSI 2009/182 – Adoption of Children with a Foreign Element (Scotland) Regulations 2009

Convention - Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption (The Hague, 29 May 1993; TS 40 (1994); Cm 2691).

A. Children leaving Scotland

a) A child who is habitually resident in Scotland (or is a Commonwealth citizen) should not be sent to any place outwith the British Islands (ie UK, Channel Islands and Isle of Man) for adoption there unless there is a preliminary order allowing this under AC(S)A section 59. Contravention is an offence under section 60.

b) An order under section 59 generally vests parental responsibilities and parental rights in the applicants and extinguishes parental responsibilities and parental rights previously held by others. The child must live with the applicants for 10 weeks before the application. An order can only be made if the adopters would not meet the residence/domicile requirements to apply for adoption.

c) A section 59 order may be made without any agency involvement, eg where there is a stepparent or a placement with relatives. Other placements may contravene the bar on private placements in section 75. Notice must be given to the/a local authority under section 18 and a report prepared under section 19.

d) A section 59 order may follow an agency placement, in which case a section 17 report is required. The much more stringent reporting requirements of SSI 2009/182, regs 7 and 8 must be satisfied.

e) A section 59 order is required if there is to be a Convention adoption overseas. A permanence order should be secured (SSI 2009/182 reg 46(7) – (10)). The adoption agency should comply with the reporting requirements of SSI 2009/182 reg 50.

f) A domestic adoption order may be granted under AC(S)A before the child leaves, but may not be recognised overseas.

g) A Convention adoption order may be granted. This safeguards the interests of the child and results in an adoption order that will be recognised in other Convention countries. Reports on adopters are prepared in the state where they are habitually resident and reports on the child are prepared in Scotland. A permanence order with authority to adopt should be

secured (SSI 2009/182 reg 46(7) – (10)). The adoption proceeds under the special rules applicable to Convention adoption orders.

B. Children coming to Scotland

a) There are restrictions on bringing a child who is habitually resident outwith the British Islands to Scotland for adoption other than Convention adoption (AC(S)A section 58 and SSI 2009/182 regs 3 – 6). Failure to comply is an offence under section 61.

b) There are restrictions on bringing into Scotland a child who has been adopted within the last 12 months other than by a Convention adoption (AC(S)A section 58). Certain requirements and conditions are imposed (SSI 2009/182 regs 3 – 6). Failure to comply is an offence under section 61. These restrictions apply whether or not the adoption will be recognised in Scotland.

c) An adoption abroad will be recognised in Scotland if it is a Convention adoption, an overseas adoption or an adoption otherwise recognised by the law of Scotland (eg an adoption validly created by the law of the adopters' domicile) AC(S)A section 39(1)(e), (f) and (g). An overseas adoption is one specified in regulations, section 67. The transitional provisions (SSI 2009/267 reg 12) provide that the old designation regulations continue to apply for the purpose of recognition of an overseas adoption (SI 1973/19 and SI 1995/1614).

d) A child may be brought into Scotland and a Convention adoption order made in Scotland. The adopters are approved in Scotland and the child assessed and consents dealt with in his or her state of origin. The adopters should give notice to the local authority within 14 days of the child's arrival (SSI 2009/182 reg 26). The local authority must set up a case record, visit and review (SSI 2009/182, reg 27). There is a duty to report to the court under AC(S)A section 19.

e) Convention adoptions will usually be treated as "full" adoptions, but where the adoption was a "simple" adoption in the place it was granted and there are no consents to a "full" adoption, if it would be more favourable to the child the Court of Session may direct that the extent to which the adoption should be treated as "full" may be limited (AC(S)A section 40(6) – (8)).

f) Convention and overseas adoptions may be annulled if contrary to public policy. An application should usually be made within 2 years (AC(S)A sections 68 and 69, SSI 2009/170).

Janys M Scott QC

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