EXECUTIVE NOTE TO

THE ADOPTION AND CHILDREN (SCOTLAND) ACT 2007 (MODIFICATION OF SUBORDINATE LEGISLATION) ORDER 2009
SSI 2009/429

1. The above instrument (the 2009 Order) was made in exercise of the powers conferred by sections 116 of the Adoption and Children (Scotland) Act 2007 ("the 2007 Act"). The instrument is subject to negative resolution procedure.

2. This instrument is one of two statutory instruments to be laid to make amendments to existing legislation as a consequence of the coming into force of the 2007 Act. The purpose of the instrument is to make changes to subordinate legislation.

3. The 2009 Order is designed to ensure that those references to provisions in the Adoption (Scotland) Act 1978 ("the 1978 Act"), and the Children (Scotland) Act 1995 ("the 1995 Act") which have been repealed by the 2007 Act are amended so that the legislation now contains references to the updated provisions in the 2007 Act.

Legislative Background

4. The 2007 Act came fully into force on 28 September 2009 at which point most of the 1978 Act, and its associated regulations were repealed. The 2009 Order is designed to address the effect that these repeals have on references in other pieces of legislation.

5. Most of the amendments are straightforward replacements of references to the repealed sections with equivalent sections in the 2007 Act.

The Children (Reciprocal Enforcement of Prescribed Orders etc. (England and Wales and Northern Ireland) (Scotland) Regulations 1996

6. These Regulations provide for the reciprocal enforcement between Scotland and England and Wales and Scotland and Northern Ireland of various orders in respect of children and young persons. In regulation 1 the definition of "corresponding England and Wales Order" and "corresponding Northern Ireland Order" refers to "the Scottish supervision requirement or parental responsibilities order" which is listed in column 1 of Schedule 4. Similar references to parental responsibility orders are made throughout the regulations. Parental Responsibilities Orders were repealed and replaced with permanence orders under the 2007 Act. We are therefore replacing references to Parental Responsibilities Orders with references to permanence orders.

The Children's Hearings (Scotland) Rules 1996

7. Rule 22(1) refers to section 22A of the 1978 Act which has now been repealed. We are therefore substituting this with a reference to the equivalent section in the 2007 Act. Similar changes are being made in Rule 22(8) where sections 16 and 18 of the 1978 Act are mentioned, although section 18 is being retained, essentially to enable freeing orders to remain in force until 28 September 2010 in accordance with the provisions of the Adoption and Children (Scotland) Act 2007 (Commencement No. 4, Transitional and Savings

Provisions) Order 2009. The references to the 1978 Act in Form 24 of the Schedule to the Rules are also being changed.

The Regulation of Care (Applications and Provision of Advice) (Scotland) Order 2002

8. This Order specifies the information which is to be provided by a person who makes an application for registration of a care service under the Registration of Care (Scotland) Act 2001. Paragraph 20(a)(vi) of the Schedule to the 2002 Order (which specifies the information which must be submitted on application for registration) refers to any previous approval to operate an adoption agency under section 3 of the 1978 Act. Since paragraph 20 requires the applicant to say whether he/she has "at any time" been granted approval, we are amending sub-paragraph (vi) by adding "or has registered as a provider of an adoption service under Part 1 of the Regulation of Care (Scotland) Act 2001" after "1978".

The Civil Legal Aid (Scotland) Regulations 2002

9. Regulation 18 makes provision for making legal aid available in emergency situations. Regulation 18(2)(o) refers to opposing a freeing order or an application by a local authority for a "parental responsibilities order under section 86 of the Act". Freeing orders will remain in force for a year after implementation of the 2007 Act so the reference is remaining in force for that year, it will be automatically removed on the 28 September 2010. The reference to a "parental responsibilities order under section 86 of the 1995 Act" is being changed to a "permanence order under section 80 of the Adoption and Children (Scotland) Act 2007".

The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003

10. In paragraph 2 of Schedule 3 to the 2003 Order the definition of "adopt" refers to sections 12 and 17 of the 1978 Act. The equivalent to section 12 is section 28 of the 2007 Act but there is no equivalent to section 17. The definition of a Convention adoption order now rests on the definition in section 119(1) of the 2007 Act which is that a "Convention adoption order" means an adoption order which, by virtue of regulations under section 1 of the Adoption (Intercountry Aspects) Act 1999, is made as a Convention adoption order. We are therefore replacing the references in the definition with reference to the 2007 Act and the Adoptions with a Foreign Element (Scotland) Regulations 2009.

The Police Act 1997 (Criminal Records) (Scotland) Regulations 2006

11. These Regulations make detailed provision in relation to applications for criminal conviction certificates, criminal record certificates and enhanced criminal record certificates under Part 5 of the Police Act 1997 Regulation 11 prescribes the purposes for which an enhanced criminal record certificate can be required, and the matters for which purposes exempted questions can be asked. Paragraph (o) of regulation 11 refers to sections 1(3A) and (4) and 65(1) of the 1978 Act and defines that the investigations of an adoption agency is one of the occasions an enhanced criminal record certificate can be sought. We propose to amend this by defining adoption agency for this purpose in the regulations rather than rely on what would be a complicated reference to numerous pieces of legislation.

12. Regulation 12 sets out the individuals in relation to whom an exempted question can be asked. Regulation 12(7) refers to regulation 7 of the Adoption Agencies (Scotland)

Regulations 1996. These Regulations are being revoked by the Adoption Agencies (Scotland) Regulations 2009. The equivalent to regulation 7 is regulation 3 of the 2009 Regulations and the 2009 Order makes this change.

St Mary's Music School (Aided Places) (Scotland) Regulations 2001

13. Paragraph 4 of the Appendix to Schedule 1 of the Regulations indicates the income which should be disregarded for the computation for this scheme. This paragraph refers to the adoption allowance under section 51(5) of the 1978 Act. The equivalent to section 51(5) is section 71 of the 2007 Act. In view of the savings provision built into the Adoption Support Services and Allowances (Scotland) Regulations 2009 we are keeping the reference to section 51(5) and adding reference to section 71 of the 2007 Act .

Consultation

14. There has not been a consultation on the 2009 Order.

Financial Effects

15. The majority of the amendments made by the 2009 Order are designed to ensure the continued operation of the legislation with respect to adoption. Those amendments which are not straightforward updates to references to the 2007 Act refer to the repeal of Freeing Orders and Parental Responsibility Orders. The 2007 Act creates a new, flexible court order, the Permanence Order, which can be used in order to meet the individual needs of each child. Therefore the extent to which the parental rights and responsibilities are extinguished from the birth parent can be different in each case. References to the Freeing Orders and Parental Responsibility Orders are being amended to make reference to a Permanence Order which most closely will replicate the circumstances of the Freeing Order or Parental Responsibility Order in these pieces of subordinate legislation. Therefore there will be no financial burdens created by the 2009 Order.

Children, Young People and Social Care Directorate