EXPLANATORY MEMORANDUM TO

THE ADOPTION AND CHILDREN (SCOTLAND) ACT 2007 (CONSEQUENTIAL MODIFICATIONS) ORDER 2011

2011 No. [XXXX]

1.

1.1 This Explanatory Memorandum has been prepared by the Scotland Office and is laid before Parliament by Command of Her Majesty.

1.2 This Memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the Instrument

2.1 This Order makes amendments consequential on the Adoption and Children (Scotland) Act 2007 ("the 2007 Act") and the secondary legislation made thereunder. The 2007 Act, and its associated regulations, restate and amend the law relating to adoption as well as making further provision in respect of the care of children. The Order updates existing legislation to take account of the changes in Scottish adoption law. The aim is to preserve the effect of the current legislation in England, Wales and Northern Ireland and the current cross-border processes.

3. Matters of Special Interest to the Joint Committee on Statutory Instruments

3.1 The Order is to be made in exercise of the powers conferred by sections 104, 112(1) and 113(2), (4) and (5) of the Scotland Act 1998 ("the 1998 Act"). Section 104 of the 1998 Act provides for subordinate legislation to be made in the UK Parliament which contains provisions which are necessary or expedient in consequence of any Act of the Scottish Parliament; in this case the 2007 Act. The Order is subject to affirmative resolution procedure in the UK Parliament.

3.2 This Order is necessary and expedient in consequence of the 2007 Act. The Order preserves the recognition of Scottish Adoption Orders in legislation within the rest of the United Kingdom. The 2007 Act also introduces a new type of Order, the Permanence Order, in relation to parental rights and responsibilities, and repeals provisions related to previous similar court orders. This Order ensures that, where appropriate, the transfer of parental rights and responsibilities through the Permanence Order is recognised in legislation within the rest of the United Kingdom.

4. Legislative Context

4.1 The 2007 Act replaces the Adoption (Scotland) Act 1978 ("the 1978 Act"), restating and updating existing provisions as well as creating new provisions for adoption in Scotland.

4.2 Several pieces of legislation that apply throughout the United Kingdom, or in one or more of England, Wales and Northern Ireland make

reference to Orders made under the 1978 Act . Following the repeal of that Act and its replacement by the 2007 Act, these references no longer make sense and therefore the legislation does not work as intended. This is particularly true in relation to Orders made under the 1978 Act relating to the transfer of parental rights and responsibilities - these Orders have now been replaced by Permanence Orders (and accordingly the courts throughout the United Kingdom can no longer grant an Order under the 1978 Act).

4.3 This Order accordingly makes amendments to existing legislation to ensure that references to Adoption Orders include Orders made under the 2007 Act, and that references to Orders which transfer parental rights and responsibilities from the natural parents are also recognised where appropriate.

5. Territorial Extent and Application

5.1 The modifications made to existing legislation by this Order have the same extent as the legislation modified.

6. European Convention on Human Rights

6.1 The Parliamentary Under Secretary of State for Scotland, Rt. Hon. David Mundell MP, has made the following statement regarding Human Rights:

> '*In my view the provisions of the Adoption and Children (Scotland) Act 2007 (Consequential Modifications) Order 2011 are compatible with the Convention rights*'.

7. Policy Background

What is being done and why

7.1 The objective of the 2007 Act is to improve, modernise and extend adoption in Scotland and to provide greater stability for children who cannot live with their birth families. The legislation that it replaced was over 25 years old and had not been substantially updated for 10 years. The key aims of the 2007 Act were stated by the Scottish Government to be "to increase the number of potential adopters and to improve stability for children who cannot live with their birth families, but for whom adoption is not an option."

7.2 The 2007 Act was influenced by the work of the Adoption Policy Review Group, chaired by retired Sheriff Principal Graham Cox QC. This worked over the period 2001 – 2005 to look at ways of improving the adoption system in Scotland. Its work was carried out in two phases. The first phase looked at ways in which adoption practices could be improved within the existing legislative framework. The Group believed, however, that some improvements necessitated changes to existing legislation and this was covered in its Phase 2 Report: *Adoption - Better Choices for our Children*, published in June 2005. Subsequent consultation on these proposals through the Scottish Government consultation paper: *Secure and safe homes for our most vulnerable children: proposals for action* indicated widespread support for these proposals from a range of stakeholders.

7.3 The amendments made to existing legislation by this Order are largely of a technical nature. They are required to ensure that existing legislation continues to operate effectively by recognising that it is now the 2007 Act and regulations made under it (and not the 1978 Act) that governs adoption in Scotland and that the new Permanence Orders made under the 2007 Act have replaced the Orders made under the 1978 Act that transferred parental rights and responsibilities.

7.4 The amendments, modifications and repeals made by Schedules 1 and 2 of the Order accordingly therefore generally substitute suitable references to the 2007 Act, or regulations made thereunder for references to the 1978 Act, or provisions of it, in existing legislation, or supplement existing references to the 1978 Act with references to the appropriate provision of the 2007 Act or regulations made thereunder as appropriate. They also have the effect of repealing provision that is effectively made redundant following the coming into force of the 2007 Act.

7.5 The Order makes a number of provisions that make consequential amendments to primary and secondary legislation. Further details of which are set out in the Annex which accompanies this Explanatory Memorandum.

Consolidation

7.6 This does not apply in relation to this Order because there is nothing to consolidate the Order with.

8. Consultation Outcome

8.1 The UK Government Departments with policy responsibility for the legislation which this Order affects have been consulted during the drafting of this Order. All amendments contained in this Order have the approval of the relevant UK Government departments.

9. Guidance

9.1 Adoption is broadly devolved and so guidance on the working of the 2007 Act and associated legislation is a matter for the Scottish Government. Additionally, UK Government departments with policy responsibility for the legislation being amended in this Order will be able to provide guidance to stakeholders if required.

10. Impact

10.1 There will be no impact on business, charities or voluntary bodies as this Order is designed to continue the existing arrangements for recognising Permanence Orders made by the courts in Scotland.

10.2 There will be no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this Instrument as the changes made by this Order will have no impact on the private or voluntary sector.

11. Regulating Small Business

11.1 The legislation does not apply to small business.

12. Monitoring and Review

12.1 The effect of this Order is purely consequential. It does not create new policy or frameworks and therefore no monitoring or review of the effects of this Order is required.

13. Contact

13.1 Lizzie Walker at the Scotland Office, Tel: 020 7270 6811 or Email: lizzie.walker@scotlandoffice.gsi.gov.uk can answer any queries regarding the Instrument.

Annex

Primary Legislation

1.1 *The Immigration Act 1971* provides for the policy on the right of individuals to enter and remain in the United Kingdom and the occasions under which individuals may be deported. Family members of individuals who have been given indefinite leave to remain or who may be deported include children who may have been adopted into the family. The definition of "legally adopted" in the 1971 Act refers to adoptions under the Adoption (Scotland) Act 1978 and "convention adoptions" which are also defined in the 1971 Act as being made under the Adoption (Scotland) Act 1978. From 28 September 2009 adoptions were made under the 2007 Act. However, transitional arrangements for the 2007 Act maintained the recognition of adoptions made under the provisions of the 1978 Act. Therefore, we are amending the definition of "legally adopted" to include the Adoption and Children (Scotland) Act 2007 and maintain the reference to the 1978 Act. "Convention adoptions" will now be recognised under the 2007 Act and therefore we are amending the definition of "Convention adoption" to substitute reference to the 1978 Act with reference to the 2007 Act.

1.2 *The Child Abduction and Custody Act 1985* enables the United Kingdom to ratify two international Conventions relating respectively to the civil aspects of international child abduction and to the recognition and enforcement of custody decisions. For both of these conventions the Contracting State to which the child has been removed is required to decide on the merits of rights of custody. In Scotland this is construed as making an order relating to parental rights and responsibilities under section 86 of the 1978 Act. To continue the provisions allowing the UK to ratify the conventions references to the section 86 Order are required to be amended to an Order under section 80 of the 2007 Act.

1.3 *The Children Act 1989* provides the legislative framework for the care and maintenance of children who are looked after by the Local Authority and children 'in need' within a Local Authority's area. The Act introduces the notion of 'parental responsibility'. Under the Act, the Local Authority has a duty to safeguard and promote the welfare of 'children in need' in its area and children who are looked after. The Act also provides for Court Orders relating to parental responsibility and residence of the child. Section 11B of the 1989 Act provides for the courts to direct contact activities with respect to contact orders, specifically providing which orders cannot be subject to contact activity directions. An adoption order made under the 1978 Act is included as an excepted order unless that adoption order is made by virtue of s14 of the 1978 Act where one of the couple is the mother or the father of the child, or by virtue of section 15(1)(aa) of the 1978 Act (where the single applicant is married to the natural parent of the child and that applicant has PRR). Sections 14 and 15 of the 1978 Act are being repealed. Changes to the 1989 Act are required to maintain the policy intention of excepting adoption orders.

1.4 *The Social Security Contributions and Benefits Act 1992* provides for the framework for benefits such as adoption pay. Where a couple adopts a child, one of them can receive Statutory Adoption Pay for up to 39 weeks. The other is able to receive Statutory Paternity Pay. This reflects the provisions for birth parents when a child is born. Section 171ZL of the 1992 Act was amended by the Adoption and Children Act 2002 (Consequential Amendment to Statutory Adoption Pay) Order 2006. The effect of the amendment was to exclude one member of a relevant couple from being able to apply for statutory adoption pay and brought the provisions in line with the Adoption and Children Act 2002 provisions which enabled unmarried couples in England and Wales to adopt a child. At the time of that amendment the 2007 Act was not enacted and so in a case in Scotland the reference is still to married couple. As unmarried couples can now adopt in Scotland an amendment is required to bring the policy in line with the rest of Great Britain and the legislation in Scotland.

1.5 *The Family Law Act 1996* makes provisions with respect to: divorce and separation; legal aid in connection with mediation in disputes relating to family matters; rights of occupation of certain domestic premises. Section 62 defines, for the purpose of rights of occupation, relevant child, cohabitant and associated person. Persons are defined as being associated with reference to the adoption of a child, or where a child has been freed for adoption. Currently the section refers to being freed for adoption under the Adoption (Scotland) Act 1978. As the provisions allowing children to be adopted are now contained in a Permanence Order with Authority to Adopt the original reference is being repealed and replaced with a reference to permanence orders.

1.6 *The Adoption and Children Act 2002* ("the 2002 Act") provides the framework for adoption in England and Wales. It provides for the child's welfare to be the paramount consideration; places a duty on local authorities to maintain an adoption service; provides for intercountry adoption; and ensures that Scottish orders are recognised in England and Wales. In making provision for adoption, the 2002 Act sets the conditions under which a child can be adopted. Section 47 of the Act indicates that no child with a parent or guardian can be adopted unless one of three conditions are met, these are that: the parents consent to the adoption; the child was placed for adoption by an adoption agency either with consent of the parents or under a placement order; or the child has been freed for adoption by virtue of an order made in Scotland or Northern Ireland where consent has already been dealt with by a court. In order to maintain the policy that a child cannot be placed for adoption without consent of the birth parents having been given or disposed of an amendment to change the reference to the Order required in Scotland is made. This will mean reference is now made to the Permanence Order with Authority to Adopt, and any Permanence Order which has been amended to include authority to adopt.

1.7 The adoption of children, who are resident in the United Kingdom, by persons out with the UK, requires a Court Order allowing that child to be removed from the UK to the receiving country. In making this provision, the 2002 Act recognises the order that is made in Scotland as well as those made in other areas of the UK. In order to maintain the policy that the adoptive parents require the Courts leave to proceed with the adoption, and that orders made in the rest of the UK are recognised as providing this leave, an amendment to replace the reference to the 1978 Act order to that in section 59 of the Adoption and Children (Scotland) Act 2007 is made.

1.8 *The 2002 Act* makes it an offence for anyone to receive payment in connection with adoption, unless that payment is an "excepted payment". The definition of excepted payment includes payments in relation to adoption allowances and support plans, including those arrangements made under the legislation in Scotland. The transitional arrangements in the Adoption Support Services and Allowances (Scotland) Regulations 2009 allow for the continuation of any arrangements made under the Adoption (Scotland) Act 1978. As the policy of excepting payments made to adopters to support the placement of a child with them from those payments deemed to be an offence is to continue to include payments made under Scottish legislation, an amendment is made to continue to recognise the payments made under the 1978 Act as well as the payments made under new arrangements under the 2007 Act.

1.9 The 2002 Act allows recognition of adoption orders made in Scotland. However, the references in English legislation are to Parental Responsibility rather than Parental Rights and Responsibilities as it is in Scotland. Section 105 of the 2002 Act makes provision for the recognition of Scottish Adoption Orders and freeing orders under the 1978 Act, with the relevant change to the reference to Parental Rights and Responsibilities. As freeing orders are no longer granted, and any in effect are deemed to be Permanence Orders with Authority to Adopt, reference is now being made to orders made under section 80 of the 2007 Act. Similarly, section 105 also provides for the recognition of the offences committed when a person removes a child from a placement unlawfully, and the court orders requiring the return of the child to the placement. These references are changed to the relevant sections in the 2007 Act. Section 144 of the 2002 Act defines Scottish Adoption Order with reference to the 1978 Act. Adoption orders made under the 1978 Act remain in force. However, in order to recognise new adoption orders, reference is now being made to the 2007 Act as well.

1.10 *The 2002 Act* allows any document which is receivable as evidence in adoption proceedings in Scotland to also be used in proceedings in England. Reference is made to adoption proceedings under the 1978 Act. As no further proceedings will be heard under the 1978 Act this is changed to proceedings under the 2007 Act. Finally, the Registrar General can disclose information to an adopted person about their birth records. The reference to the section under which the information and connections to the birth register are held is changed to that in the 2007 Act.

Secondary Legislation

Legislation Related to Children

2.1 *The Disqualification from Caring for Children (England) Regulations 2002* makes provision for the circumstances in which a person is disqualified from fostering a child privately in England. By virtue of section 65 of the Children Act 1989, a person who is disqualified from fostering a child privately is also disqualified from carrying on a children's home. A person who has lost their parental rights and responsibilities through an order of the court in Scotland would be disqualified, under these regulations, from privately fostering a child in England. The 2007 Act introduces a new court order which will remove the parental rights and responsibilities from a birth parent. Therefore, to maintain the consistency of policy intention, reference to the new court order is included in the list of grounds for disqualification in regulation 2.

2.2 *As the Disqualification from Caring for Children (Wales) Regulations 2004* are identical in policy intent but extend the provisions to include Wales, a similar amendment is being made to these regulations also.

2.3 *The Childcare (Disqualification) Regulations 2009* specifically define the categories of people who are disqualified from registering as childcare providers in England. The circumstances under which a person is disqualified include Scottish court orders which remove their parental rights and responsibilities. In order to maintain the policy intent of these regulations amendments are being made to include reference to the new order as well as to freeing orders under the 1995 Act. Parallel provision is made in respect of the Child Minding and Day Care (Disqualification) (Wales) Regulations 2010.

2.4 *The Adoption (Northern Ireland) Order 1987* defines the law and policy on adoption in Northern Ireland. The Order provides for the arrangements for adoption, the recognition of adoption orders, and the care and protection of children who are waiting for adoption. The policy intent is similar to that in Scotland and the rest of the United Kingdom in that a Health and Social Services Trust is required to provide an adoption service to meet the needs of the families and children in their area, the child must be placed by an adoption agency, and live with the prospective adopters before an adoption order can be made. There are also similar provisions on removing a child from the prospective adopters and on removing a child from the United Kingdom for adoption. Where appropriate, the provisions refer to Scottish legislation, these include: the definition of an adoption agency; the definition of an adoption order, the definition of freeing a child for adoption, and provisions for adopting a child abroad.

2.5 In order to ensure that these references remain up to date, changes are being made in the interpretation section to the definitions above. We are also changing the reference to a registered adoption service in Article 11 (restriction on arranging adoptions and placing children) to ensure that Scottish adoption agencies continue to be recognised for this purpose; including the permanence order with authority to adopt as a court order which "frees a child for adoption" and deals with the parental agreement required for adoption; ensuring the provisions stopping birth parents from removing the child from an adoption placement are maintained by placing new references to the 2007 Act into Article 30; including registered adoption services that are not local authorities into the organisations that adopted people are referred to for support services on accessing their birth records; and updating the reference to the court order required when taking a child out of the United Kingdom for adoption.

2.6 *The Adoption Agencies Regulations (Northern Ireland) 1989* set forth rules relating to the operation of adoption agencies. They contain provisions on adoption panels required to be established by adoption agencies; the duties of agencies toward a child and the child's parents or guardian, prospective adopters, and proposed placements; decisions and notifications; case review; confidentiality and preservation of case records; annual reports; and access to and transfer of case records, among other things. The provisions in these regulations recognise Scottish Orders freeing a child for adoption so that they can be adopted in a court in Northern Ireland. The 2007 Act repealed and replaced freeing orders with the Permanence Order with Authority to Adopt; this is made under section 80 of the 2007 Act. Therefore, in order to retain the policy intention, an amendment is made to recognise section 80 orders in regulations 1, 9, 13 and 17 of the Adoption Agencies Regulations (Northern Ireland) 1989.

2.7 *The Children (Northern Ireland) Order 1995* provides the legislation and policy on the care and protection of children. Article 107 of the Order refers to privately fostered children and provides for the occasions under which a child would not be considered to be privately fostered. A child is not considered to be privately fostered if he is placed in the care of a person who proposes to adopt him under arrangements made by an adoption agency. Currently the article defines an adoption agency in Scotland with reference to the 1978 Act. In order to maintain the status quo reference is being made to the 2007 Act.

2.8 *The Adoption of Children from Overseas Regulations (Northern Ireland) 2002* provides the legislation and policy in Northern Ireland for adopting children from abroad. As in Scotland, adopters are required to be assessed as suitable to adopt by an adoption agency. This can include an adoption agency in other parts of the United Kingdom if the adopters were resident there at that time, and recognition of the assessment is set out in the regulations. The definition of an adoption agency in Scotland was originally contained in the 1978 Act, which has subsequently been repealed. An amendment is required to maintain the recognition of Scottish adoption agencies for this purpose.

2.9 *Intercountry Adoption (Hague Convention) Regulations (Northern Ireland) 2003* provides the policy and legislation for adoptions between Northern Ireland and other countries that have acceded to or ratified the Hague Convention on the Protection of Children and Co-operation in respect of Intercountry Adoption. Where Northern Ireland is the State of Origin, the country in which the child resides before the adoption, a court must first have made an Order freeing that child for adoption. The Regulations recognise Scottish court orders under section 18 of the 1978 Act. This has been repealed and replaced by a Permanence Order with Authority to Adopt and amendments are being made to retain the policy intention.

2.10 *The Children (Reciprocal Enforcement of Prescribed Orders etc. (England and Wales and Northern Ireland)) (Scotland) Regulations 1996* provides for the recognition of court Orders transferring Parental Rights and Responsibilities and Supervision Requirements in other parts of the United Kingdom. This allows for children who were subject to a supervision requirement or a Parental Responsibility Order, and subsequently moved to England, Wales or Northern Ireland, to be recognised as being the subject of an equivalent order in that country. As Parental Responsibility Orders have been replaced by Permanence Orders an amendment is required to ensure that the policy remains the same. The amendment will also include deemed Permanence Orders under the transitional arrangements for the 2007 Act.

Support and Benefits Legislation

3.1 The legislation being amended includes policy on housing renewal grants, the National Assistance Regulations covering Local Authority arranged accommodation, family credits, Employment and Support Allowance, Income Support, Disability Working Allowance, Jobseeker's Allowance, Council Tax Benefit. Although this represents a broad range of policy areas, the provisions which are being amended all relate to the means testing aspect of the benefit. The amendments are required to recognise and disregard payments made under the adoption allowances scheme created by the 2007 Act when calculating income. However, the secondary legislation made under the 2007 Act allows the continuation of arrangements for adoption allowances under the 1978 Act, therefore, the amendments being made ensure that these arrangements continue to be recognised also.

3.2 *The Child Benefit (General) Regulations 2006* provide the conditions under which a person will be entitled to Child Benefit in respect of a child or qualifying young person. Regulation 16 applies provisions under which a person may be eligible to Child Benefit notwithstanding that the child or young person is in detention or care. However, if a looked-after child is placed with a person for adoption and the local authority is making a payment in respect of the child accommodation under specified provisions then that person is not eligible for Child Benefit. The definition of being placed for adoption makes reference to the Adoption Agencies (Scotland) Regulations 1996, made under the 1978 Act. This reference must be amended to reflect the new legislation and maintain the status quo. Reference will now be made to the Adoption Agencies (Scotland) Regulations 2009.

3.3 *Section 8 of the Tax Credits Act 2002* provides that entitlement of a person or persons to child tax credit is dependent on him, or (in the case of a joint claim) either or both of them, being responsible for a child or qualifying young person. The Child Tax Credit Regulations 2002 provide the meaning of "responsible" and set out ages and qualifying conditions for children and qualifying young persons. The Child Tax Credit Regulations 2002 include in the conditions when a person is not responsible for a child where that child has been placed with them pursuant to the Children (Scotland) Act 1995 and the Local Authority is bearing the cost. The reference to the regulations under which a child is placed for adoption is being replaced with references to the regulations made under the 2007 Act. In addition, the reference to the provision for paying carers, repealed under the 2007 Act, is replaced by a reference to regulation 33 of the Looked After Children (Scotland) Regulations, made under section 110 of the 2007 Act.

3.4 *Housing Benefit and Council Tax Benefit are income-related benefits* intended to help people, respectively, meet their rental costs or council tax liability. The benefits are payable to people who are on a low income ("low" being determined by their personal and family circumstances) and can be paid to people whether or not they are in remunerative work. The adoption allowances paid under regulations associated with 1978 Act are disregarded when calculating income for these benefits. Provision is also made for circumstances when a child is not considered to be a member of the household for the purposes of the determination of the applicable category of dwelling used to find the eligible rent to be met by Housing Benefit, and includes when a child has been placed for adoption (but not yet adopted) under the regulations associated with the 1978 Act. The reference to the regulations under which a child is placed for adoption is being replaced with references to the regulations made under the 2007 Act. Amendments are required to recognise and disregard payments made under the adoption allowances scheme created by the 2007 Act when calculating income. However, the secondary legislation made under the 2007 Act allows the continuation of arrangements for adoption allowances under the 1978 Act, therefore, the amendments being made ensure that these arrangements continue to be recognised also.

3.5 *The amendments to the Child Support (Maintenance Assessments and Support Cases) Regulations 1992* mean that any payment made under the Adoption and Children (Scotland) Act 20017 is disregarded as income when calculating the net income of a parent with care or an absent parent for assessing the absent parent's liability for child support maintenance. As the secondary legislation made under the 2007 Act allows the continuation of arrangements for adoption allowances under the 1978 Act, the amendments being made ensure that these arrangements continue to be recognised also.

Statutory Adoption and Paternity Pay and Leave, and Flexible Working Legislation

4.1 The *regulations relating to Statutory Paternity Pay (SPP) and Statutory Adoption Pay (SAP)* provide for the conditions under which SPP and SAP are payable, the evidence required, the point at which pay begins, the funding of employers' liabilities to make payments and the obligations on employers in connection with such payments. They are all made with reference to the Social Security Contributions and Benefits Act 1992.

The policy relating to these payments has not changed. However, as children are now being placed under the 2007 Act rather than the 1978 Act we are required to amend the interpretation sections for each of these pieces of legislation in order to recognise the new legislation.

4.2 The regulations on paternity and adoption leave relate to the rights to paternity and adoption leave provided for in the *Employment Rights Act 1996*. Where a couple adopts a child, one of them can take adoption leave for up to 52 weeks. The other is able to take paternity leave for one or two weeks. This reflects the provisions for birth parents when a child is born. The right is available to employees with 26 weeks' qualifying service by the time they are notified of having been matched with a child for adoption. Adoption leave and pay policy has not changed. However, as children are now being placed under the 2007 Act rather than the 1978 Act we are required to amend the interpretation sections for each of these pieces of legislation in order to recognise the new legislation.

4.3 *The Social Security Contributions and Benefits Act 1992* (Application of Parts 12ZA and 12ZB to Adoptions from Overseas) Regulations 2003 apply Parts 12ZA and 12ZB of the 1992 Act to adoptions from overseas, which are defined as adoptions of children who enter Great Britain from outside the United Kingdom in connection with or for the purposes of adoption which does not involve the placement of a child for adoption under the law of any part of the United Kingdom. The eligibility requirements for receiving Statutory Adoption Pay when a child is adopted from overseas includes a requirement that the adopter has received an "official notification" from the "relevant domestic authority". The relevant domestic authority for Scotland is defined by reference to the Intercountry Adoption (Hague Convention) Regulations 2003. However, under the 2007 Act new regulations have been made with respect to intercountry adoption and an amendment is required to continue to recognise Scottish Ministers as the relevant domestic authority in Scotland. Reference is now being made to Adoptions with a Foreign Element (Scotland) Regulations 2009.

4.4 *The Flexible Working (Eligibility, Complaints and Remedies) Regulations 2002 and the Flexible Working (Eligibility, Complaints and Remedies) (Northern Ireland) Regulations 2003* relate to the statutory right to request a variation to the terms and conditions of an employee's contract of employment to enable the employee to care for a child or certain adults. This right is provided for in the Employment Rights Act 1996. Entitlement to request a contract variation to enable them to care for a child is available to an employee with 26 weeks' qualifying service, who is the mother, father, adopter, guardian, or foster parent of the child, or the partner or spouse of any of these relatives, and who has or expects to have responsibility for the upbringing of the child. In order to maintain the policy intention of these regulations amendments to the interpretation sections are being made to recognise the 2007 Act and associated regulations.

Miscellaneous Legislation

5.1 *The Data Protection legislation* relates to the exemption of personal information collected under certain enactments from disclosure under the Data Protection Act 1998. Disclosure of information collected for the purposes of adoption is strictly regulated in the 2007 Act.

To ensure that access to this information remains the sole policy of the adoption legislation the Data Protection (Miscellaneous Subject Access Exemptions) Order 2000 is amended to reflect information collected under the 1978 Act and the 2007 Act.

5.2 *The Personal Injuries (Civilians) Amendment Scheme 1983* makes provision for the payment of pensions and allowances to or in respect of civilians who were killed or injured during World War Two as a result of actions by the enemy or in the performance of civil defence duties. Reference is made in the definitions to adoptions under the 1978 Act. As with other definition changes, we are amending this to reflect the new legislation and no change in policy is being made.

5.3 *The Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006* makes provision for pensions and other awards in respect of disablement or death due to service in the naval, military or air forces. The pension or other award is also payable to children orphaned to partners who have children in the case of a member of the armed forces whose death is due to service, this would include children who had been adopted. Reference is made in the definitions to adoptions under the 1978 Act. As with other definition changes, we are amending this to reflect the new legislation and no policy change is made.

Modifications extending to England, Wales and Northern Ireland only

6.1 *Schedule 2 of the instrument* makes modifications to UK enactments and to secondary legislation which do not extend to Scotland. The amendments and repeals to primary legislation have already been made, for Scotland only, by the 2007 Act, schedules 2 and 3. Schedule 2, therefore, ensures that these are extended to the rest of the UK, where appropriate.

6.2 In addition the Schedule includes amendments and revocations made in respect of the secondary legislation in that Schedule. These have also already been made, for Scotland only, in the Adoptions with a Foreign Element (Scotland) Amendment Regulations 2011 (SSI 2011/159). Those Regulations were made following a change in the administrative arrangements for the processing of intercountry adoption (non-Hague Convention adoption) cases in the UK. They came into force on 21st March 2011 and made amendments to the instruments listed in Schedule 2 only in so far as they extend to Scotland to include references to the Adoptions with a Foreign Element (Scotland) Regulations 2009.

6.3 The amendments or repeals in Schedule 2 either remove textual amendments to provisions in the Adoption (Scotland) Act 1978 which are no longer in force (for example, the Care Standards Act 2000) or update existing references to the 1978 Act to substitute references to the 2007 Act where appropriate (for example, the Child Support Act 1991).

Health and Social Services and Social Security Adjudications Act 1983

7.1 The Schedule repeals those provisions which made textual amendments to *the Adoption (Scotland) Act 1978* which are no longer in force.

Child Abduction and Custody Act 1985

8.1 *The amendment to paragraph 5 of Schedule 3 of this Act* has been made to include adoption orders and permanence orders made under the 2007 Act. The 1985 Act gives effect to the Hague Convention on International Child Abduction to protect children from cross-border abduction. The 2007 Act amends Schedule 3, para 5 which defines "custody orders" for the purposes of the 1985 Act to include adoption orders effected under the new Act and permanence orders. Section 25 has effect outwith Scotland incorporating the references to Scottish adoption orders and permanence orders. Section 25 provides that where an order is made under Part I of the Act requiring a child to be returned or a decision is registered in accordance with Article 16 of the Convention, any custody order ceases to have effect. Accordingly the amended definition to include adoption orders and permanence orders in Scotland is extended to England, Wales and Northern Ireland.

8.2 Paragraph 5(ii) and (iia) in Schedule 3 of the 1985 Act have also been included in the repeals Schedule.

Family Law Act 1986

9.1 *The 2007 Act* amends section 1 which defines "Part I order" to include adoption orders and permanence orders under the 2007 Act. Chapter II of Part I of the 1986 Act deals with jurisdiction of courts in England & Wales where there is a Scottish order in place – section 6 provides that where a Scottish "Part I order" comes into force at a time when another Part I order made by a court in England & Wales has effect, then that order ceases to have effect.

Child Support Act 1991

10.1 *The amendment is to section 26(3)* which deal with disputes about parentage and refers to adopted children. It is the definition of "adopted" which is adjusted to include 2007 Act adoptions. This amendment does not extend to Northern Ireland which has its own legislation that does not need to be amended.

Children (Scotland) Act 1995

11.1 *Sections 44 and 93* extend to the rest of the UK and so the amendments to those provisions in schedule 2 of the 2007 Act have been carried over. Similarly, the repeal of the definition of “parental responsibilities” order contained within section 93 is replicated here.

Adoption (Intercountry Aspects) Act 1999

12.1 Section 1 was amended by the 2007 Act to ensure that references to “enactments” include acts of the Scottish Parliament. Those provisions of the 1999 Act which have been repealed are textual amendments to provisions of the Adoption (Scotland) Act 1978 which are no longer in force.

Care Standards Act 2000

13.1 *Paragraph 6 of Schedule 4* makes textual amendments to the 1978 Act which are now no longer applicable and so repealed.

Adoption and Children Act 2002

14.1 *Section 123 of this* Act concerns restrictions on advertisements and subsection (3) thereof refers to offences committed under Scottish and Northern Irish legislation. That provision is amended to refer to the 2007 Act. Sections 132 to 134 and paragraphs 21 to 35 and 84 of Schedule 3 have been repealed as they make amendments to provisions of the Adoption (Scotland) Act 1978 which are no longer in force.

Income Tax (Trading and Other Income) Act 2005

15.1 *Section 745 of this Act* concerns exemptions from liability for income tax in respect of certain payments made under the Adoption (Scotland) Act 1978. The amendments, and repeal, therefore ensure that this provision now refers to payments made under the 2007 Act.