EXECUTIVE NOTE

THE ADOPTION AND CHILDREN (SCOTLAND) ACT 2007 (MODIFICATION OF ENACTMENTS) ORDER 2010 (SSI 2010/DRAFT)

1. The above instrument (the 2010 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 affirmative 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 primary legislation.

3. The 2010 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Adoption (Scotland) Act 1978 ("the 1978 Act"), and the Children (Scotland) Act 1995 ("the 1995 Act") which have been repealed by the 2007 Act are amended so that the legislation now contains references to the updated provisions in the 2007 Act.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at which point most of the 1978 Act, and its associated regulations, along with certain sections of the 1995 Act, were repealed. The 2010 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 Most of the amendments are straightforward replacements of references to the repealed sections with equivalent sections in the 2007 Act. There will be 4 amendments to the 2007 Act itself. These are corrections errors in references and omissions in the Act. Amendments are to be made to the following enactments.

Registration of Births, deaths and Marriages (Scotland) Act 1965 (the "1965 Act")

6. Section 39E of the 1965 Act (as inserted by the Local Electoral Administration and Registration Services (Scotland) Act 2006) relates to the issuing of extracts of the register of births or deaths. Section 39E(5) places exceptions on the issuing of information relating to the Adopted Children Register. The sections under which the Adopted Children Register and "a register or book" currently refers to the 1978 Act. Reference will now need to be made to the sections in the 2007 Act under which the Adopted Children Register is being maintained, namely section 53(1) of the 2007 Act.

Social Work (Scotland) Act 1968 ("the 1968 Act")

7. Section 10 of the 1968 Act will be amended by the removal of the word "support" after "adoption". This change has been made to bring the terminology in line with that of the 2007 Act.

Foster Children (Scotland) Act 1984 ("the 1984 Act")

8. Section 7 of the 1984 Act prescribes the persons who are disqualified from keeping foster children. This section is being amended to include those persons who have had all

their parental rights and responsibilities extinguished by the new court order introduced by the 2007 Act, the Permanence Order.

Civil Evidence (Family Mediation) (Scotland) Act 1995 ("the 1995 Act")

9. Section 2(1) of the 1995 Act exempts information from the rule of inadmissibility as evidence in civil proceedings. Subsection (d)(iii) refers to information which occurred during family mediation in proceedings for an adoption order. The Section was amended in the 2007 Act to make reference to that Act. However, the section of the 2007 Act erroneously referred to section 29(1) instead of section 28(1) of the 2007 Act and we are correcting this in the 2010 Order.

Children (Scotland) Act 1995 ("the Children Act")

10. Section 52 of the Children Act refers to the conditions under which a referral to a children's hearing is made. Subsection (2)(l) makes one of the conditions that the child is:

- being provided with accommodation by a local authority under section 25 of the Children Act,
- or is the subject of a parental responsibilities order obtained under section 86 of the Children Act
- and, in either case, his behavior is such that special measures are necessary for his adequate supervision in his interest or the interest of others

11. Parental Responsibilities Orders are repealed and replaced with permanence orders under the 2007 Act;, we are therefore replacing this reference with a reference to a Permanence Order under the 2007 Act.

Regulation of Care (Scotland) Act 2001 ("the 2001 Act")

12. Subsection (13) of section 2 of the 2001 Act is being repealed as there is no equivalent to section 1(4)of the 1978 Act to which this provision refers. Subsections (11) and (12) of section 2 of the 2001 Act were amended by the 2007 Act and will cover this definition.

13. Section 25(6)(b) was amended by the 2007 Act to refer to sections 8 and 37 of the 2007 Act for the purposes of gathering information during an inspection of a service. Reference to sections 3 and 13 of the 2007 Act will also need to be made in this section. Therefore we are making amendments to correct this error.

Local Electoral Administration and Registration Services (Scotland) Act 2006 ("the 2006 Act")

14. The 2006 Act is being amended at section 58 which relates to the issuing of material held by the Registrar General. Subsection (2) of the section 58 exempts certain material from that which can be issued by the Registrar generally. Subparagraph (k) refers to information kept on the Adopted Children Register kept under the 1978 Act. Therefore this is being amended to refer to the Adopted Children Register kept under the 2007 Act.

Adoption and Children (Scotland) Act 2007 ("the 2007 Act")

15. The 2007 Act will be amended in section 10 where the word adoption will be removed from in front of services. This amendment brings the reference to services provided by the local authority in line with the section 1 of the 2007 Act and does not restrict them to those specifically identified as "adoption services".

16. Subsection (10) of section 26 of the 2007 Act is being repealed as this is not necessary. This provided a definition of "registered adoption society" which is now provided in section 119 of the 2007 Act.

17. Subsection (2) of section 76 of the 2007 Act refers to a registered adoption service. This is defined in the interpretation as being a service registered under the Adoption and Children Act 2002, but this Act is not mentioned in section 76. Therefore, where Section 76 refers to "that Act" this will be changed to refer to "the 2002 Act".

18. Section 109 of the 2007 Act prescribes those applications which must be heard in private. This provision is being amended to include reference to proceedings relating to an application under section 98 of the 2007 Act. This will ensure that all proceedings for Permanence Orders will be heard in private, and corrects an omission which would have meant that proceedings for revoking a permanence order would not be subject to this requirement.

Consultation

19. There has not been a consultation on the 2010 Order.

Financial Effects

20. The majority of the amendments made by the 2010 Order are designed to ensure the continued operation of the legislation with respect to adoption. Those amendments which are not straight forward 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 Order 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 Acts. Therefore there will be no financial burdens created by the 2010 Order.

Children, Young People and Social Care Directorate