Draft Order laid before Parliament under paragraphs 1, 2 and 3 of Schedule 7 to the Scotland Act 1998, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2011 No.

CONSTITUTIONAL LAW
DEVOLUTION, SCOTLAND
CHILDREN AND YOUNG PERSONS

The Adoption and Children (Scotland) Act 2007 (Consequential Modifications) Order 2011

Made - - - - 2011

Coming into force in accordance with article 1(2)

The Secretary of State makes the following Order in exercise of the powers conferred by sections 104, 112(1) and 113(2), (4) and (5) of the Scotland Act 1998(**1**).

In accordance with section 115 of, and paragraphs 1, 2 and 3 of Schedule 7 to, that Act, a draft of this instrument has been laid before and approved by a resolution of each House of Parliament.

Citation, commencement and extent

1.—(1) This Order may be cited as the Adoption and Children (Scotland) Act 2007 (Consequential Modifications) Order 2011.

(2) This Order comes into force on the day after the day on which it is made.

(3) Subject to paragraph (4) any modification made by Schedules 1 and 2 has the same extent as the provisions being modified.

(4) Schedule 2 does not extend to Scotland.

Modifications

2. The modifications in Schedule 1 have effect.

Modifications extending to England, Wales and Northern Ireland

3. The modifications in Schedule 2 have effect.

(**1**) 1998 c.46.

Signed by the authority of the Secretary of State

Dover House,London
2011

Parliamentary Under Secretary of State
Scotland Office

SCHEDULE 1 Article 2

CONSEQUENTIAL MODIFICATIONS: GENERAL

PART 1

AMENDMENT OF ACTS

Immigration Act 1971 (c.77)

1. In section 33(1) (interpretation) of the Immigration Act 1971(**2**)—

(a) in the definition of "Convention adoption" for "the Adoption (Scotland) Act 1978" substitute "the Adoption and Children (Scotland) Act 2007"; and

(b) in the definition of "legally adopted" at the end insert "or by regulations made by the Scottish Ministers under section 67(1) of the Adoption and Children (Scotland) Act 2007".

Child Abduction and Custody Act 1985 (c.60)

2.—(1) The Child Abduction and Custody Act 1985 is amended as follows.

(2) In section 9 (suspension of court's powers in cases of wrongful removal)(**3**) for paragraph (d) substitute—

"(d) making, varying, amending or revoking a permanence order under section 80 of the Adoption and Children (Scotland) Act 2007 (including a deemed permanence order having effect by virtue of article 13(1) or 14(2) of the Adoption and Children (Scotland) Act 2007 (Commencement No. 4, Transitional and Savings Provisions) Order 2009 (S.S.I. 2009/267)).".

(3) In section 20 (suspension of court's powers)(**4**) for paragraph (d) of subsection (2) substitute—

"(d) in the case of proceedings for the making, varying, amending or revoking of a permanence order under section 80 of the Adoption and Children (Scotland) Act 2007 (including a deemed permanence order having effect by virtue of article 13(1) or 14(2) of the Adoption and Children (Scotland) Act 2007 (Commencement No. 4, Transitional and Savings Provisions) Order 2009 (S.S.I. 2009/267)), make, vary, amend or revoke such an order;".

Children Act 1989 (c.41)

3.—(1) The Children Act 1989 is amended as follows.

(2) In section 11B(**5**) (contact activity directions: further provision) after subsection 5(c)(ii) insert —

"(iii) by virtue of an application under section 30 of the Adoption and Children (Scotland) Act 2007 where subsection (3) of that section applies; or".

(3) In Schedule 8 (privately fostered children), paragraph 5 for sub-paragraph (b) substitute—

"(b) section 119 of the Adoption and Children (Scotland) Act 2007; or".

Social Security Contributions and Benefits Act 1992 (c.4)

(**2**) The definition of "Convention adoption" was inserted by the Adoption (Intercountry Aspects) Act 1999 (c.18), Schedule 2, paragraph 2(a) and amended by the Adoption and Children Act 2002 (c.38), section 139 and Schedule 3, paragraph 15(a). The definition of "legally adopted" was amended by the Adoption (Intercountry Aspects) Act 1999 (c.18), Schedule 2, paragraph 2(b) and the Adoption and Children Act 2002 (c.38), section 139 and Schedule 3, paragraph 15(b).
(**3**) Section 9(d) was substituted by the Children (Scotland) Act 1995 (c.36), Schedule 4.
(**4**) Subsection (2)(d) was substituted by the Children (Scotland) Act 1995 (c.36), Schedule 4.
(**5**) Section 11B was inserted by the Children and Adoption Act 2006 (c.20), section 1.

4. In section 171ZL(4B) (entitlement) of the Social Security Contributions and Benefits Act 1992(**6**) at the end insert—

"(c) in the case of an adoption or expected adoption under the law of Scotland he is a member of a relevant couple within the meaning of section 29(3) of the Adoption and Children (Scotland) Act 2007".

Family Law Act 1996 (c.27)

5. In section 62 of the Family Law Act 1996(**7**) (meaning of "cohabitants", "relevant child" and "associated persons")—

(a) after subsection (7)(b) insert—

", or

(c) he is the subject of a Scottish permanence order which includes provision granting authority to adopt";

(b) after subsection (7) insert—

"(8) In subsection (7)(c) "Scottish permanence order" means a permanence order under section 80 of the Adoption and Children (Scotland) Act 2007 (asp 4) (including a deemed permanence order having effect by virtue of article 13(1), 14(2), 17(1) or 19(2) of the Adoption and Children (Scotland) Act 2007 (Commencement No. 4, Transitional and Savings Provisions) Order 2009 (S.S.I. 2009/267)).".

Adoption and Children Act 2002 (c.38)

6.—(1) The Adoption and Children Act 2002 is amended as follows.

(2) In section 47 (conditions for making adoption orders)(**8**)—

(a) in subsection (6) for the words from "is free" to "Northern Ireland" (where first appearing) substitute—

"—

(a) is the subject of a Scottish permanence order which includes provision granting authority for the child to be adopted, or

(b) is free for adoption by virtue of an order made,";

(b) after subsection (9) insert—

"(10) In this section, "Scottish permanence order" means a permanence order under section 80 of the Adoption and Children (Scotland) Act 2007 (asp 4) (including a deemed permanence order having effect by virtue of article 13(1), 14(2), 17(1) or 19(2) of the Adoption and Children (Scotland) Act 2007 (Commencement No. 4, Transitional and Savings Provisions) Order 2009 (S.S.I. 2009/267)).".

(3) In section 85(2)(b) (restrictions on taking children out) for "section 49 of the Adoption (Scotland) Act 1978 (c.28)" substitute "section 59 of the Adoption and Children (Scotland) Act 2007 (asp 4)".

(4) In section 96(1) (excepted payments) after "the Adoption (Scotland) Act 1978 (c.28)" insert ", the Adoption and Children (Scotland) Act 2007 (asp 4)".

(5) In section 105 (effect of certain Scottish orders and provisions)—

(a) in subsection (2) from the beginning to the words "effect in Scotland" substitute "A Scottish permanence order which includes provision granting authority for the child to be adopted has the same effect in England and Wales as it has in Scotland";

(**6**) Section 171ZL was inserted by the Employment Act 2002 (c.22), section 4. Subsection (4B) was inserted by S.I. 2006/2012.
(**7**) Subsection (7) was inserted by the Adoption and Children Act 2002 (c.38), Schedule 3, paragraph 87.
(**8**) Section 47 was amended by the Civil Partnership Act 2004 (c.33), section 79.

(b) for subsection (3) substitute—

"(3) Any person who contravenes any of the provisions of the Adoption and Children (Scotland) Act 2007 mentioned in subsection (3A) is guilty of an offence and is liable on summary conviction to imprisonment for a term not exceeding 3 months, or a fine not exceeding level 5 on the standard scale or both.

(3A) The provisions are—

(a) section 20 (restrictions on removal: child placed for adoption);

(b) section 21 (restrictions on removal: notice of intention to adopt given);

(c) section 22 (restrictions on removal: application for adoption order pending).";

(c) in subsection (4) for "section 29 of that Act (order to return or not to remove child)" substitute "section 24 of the Adoption and Children (Scotland) Act 2007 (return of child removed in breach of certain provisions)";

(d) after subsection (4) insert—

"(5) In this section, "Scottish permanence order" means a permanence order under section 80 of the Adoption and Children (Scotland) Act 2007 (asp 4) (including a deemed permanence order having effect by virtue of article 13(1), 14(2), 17(1) or 19(2) of the Adoption and Children (Scotland) Act 2007 (Commencement No. 4, Transitional and Savings Provisions Order 2009 (S.S.I. 2009/267)).".

(6) In section 107 (use of adoption records from other parts of the British Islands) for paragraph (a) substitute—

"(a) in Scotland under section 56(1) or (2) of the Adoption and Children (Scotland) Act 2007 (asp 4) (admissibility of extracts as evidence),".

(7) In section 144 (general interpretation etc.)(**9**) in the definition of "Scottish adoption order" at the end insert "or section 28(1) of the Adoption and Children (Scotland) Act 2007 (asp 4)".

(8) In Schedule 2 (disclosure of birth records by Registrar General), in paragraph 3(1)(b) for "section 45 of the Adoption (Scotland) Act 1978 (c.28)" substitute "section 55(4)(b) of the Adoption and Children (Scotland) Act 2007 (asp 4)".

PART 2

AMENDMENT OF SECONDARY LEGISLATION

Personal Injuries (Civilians) Scheme 1983 (S.I. 1983/686)

7. In article 2(2) (definitions) of the Personal Injuries (Civilians) Scheme 1983(**10**) for "section 38 of the Adoption (Scotland) Act 1978" substitute "section 39 of the Adoption and Children (Scotland) Act 2007".

Income Support (General) Regulations (Northern Ireland) 1987 (S.R. 1987 No. 459)

8. In Schedule 9 to the Income Support (General) Regulations (Northern Ireland) 1987(**11**) (sums to be disregarded in the calculation of income other than earnings) in paragraph 25(1)(b) at the end insert "or in accordance with an adoption allowance scheme made under section 71 of the Adoption and Children (Scotland) Act 2007 (adoption allowances scheme)".

Income Support (General) Regulations 1987 (S.I. 1987 No. 1967)

(**9**) Section 144 was amended by the Courts Act 2003 (c.39), Schedule 8, paragraph 414 and by the Civil Partnership Act 2004 (c.33), section 79.

(**10**) The relevant amending instrument is S.I. 2001/420.

(**11**) S.R. 1987 No. 459 was amended by regulation 2(8)(b)(i) of S.R. 2005 No. 424 and regulation 2(6)(e)(i) of S.R. 2008 No. 498.