

ADOPTION (INTERCOUNTRY ASPECTS) ACT 1999

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Miscellaneous and supplemental – sections 14 to 18

Section 14. Restriction on bringing children into the United Kingdom for adoption

65. Section 14 inserts an additional section after section 56 of the 1976 Act and section 50 of the 1978 Act (restriction on removal of children for adoption outside Great Britain).
66. The new section 56A or 50A makes it a criminal offence for a person habitually resident in the British Islands to bring to the United Kingdom for the purposes of adoption a child who is habitually resident outside those islands unless they comply requirements to be prescribed by regulations.
67. These requirements may apply either prior to the child's arrival or within a period to be prescribed and following a child's arrival; for example, if adopters fail to notify their local authority or the child's arrival within a specified period. The offence does not apply to a parent, guardian or relative of the child.
68. Under the general law, proceedings for an offence may only be brought within six months from the date the offence was committed. However, the new subsection (4) provides that proceedings for an offence under section 56A or section 50A may be brought within a period of six months from the date on which sufficient evidence in the opinion of the prosecutor to warrant the proceedings came to his knowledge. But, proceedings may not be brought more than three years after the offence was committed.
69. The purpose of this amendment is to deter those who bring children to the UK for the purposes of adoption without authority and who fail to make the presence of the child known to the statutory authorities until at least six months have expired (after which under the 1976 Act they would not have been liable to prosecution). The importance of declaring the presence of the child to a local authority is that the child automatically becomes a 'protected child' under section 32 the 1976 and 1978 Acts, placing a responsibility of the local authority to make regular visits to be satisfied about the child's safety and welfare.

Section 15. Amendments and repeals

70. Subsection (1) provides that the enactments mentioned in Schedule 2 are to have effect subject to the amendments specified in that Schedule which are either minor amendments or amendments consequential upon the provisions of this Act.
71. **Schedule 2** amends the Local Authority and Social Services Act 1970 to provide that functions under the Convention will be social services functions; amends the Immigration Act 1971 to provide for Convention adoptions; amends the Family Law Act 1986 to make clear that the court may make a declaration in respect of a Convention

*These notes refer to the Adoption (Intercountry Aspects) Act
1999 (c.18) which received Royal Assent on 27 July 1999*

adoption. It also makes minor amendments to the 1976 Act, mostly to remove references to the 1965 Convention which are no longer required.

72. [Schedule 3](#) deals with repeals, mainly relating to the 1965 Convention (for the effect of which see also clause 17).
73. Subsection (2) provides for the enactments in Schedule 3 to be repealed to the extent specified in that Schedule.

Section 16. Devolution

74. This section deals with devolution matters. There is provision for commencement orders and regulations only to be made after consultation with the National Assembly for Wales. The Act is to be treated as a pre-commencement enactment for the purposes of the Scotland Act 1998.

Section 17. Savings for adoptions etc. under 1965 Convention

75. Savings are made in respect of the 1965 Convention which will remain in force in the UK until it is repudiated. So far as the United Kingdom is concerned, there are known to be two or three adoption orders made under the 1965 Convention affecting British citizens. Section 17 therefore provides that the provisions of the 1976 Act and 1978 Act relating to the 1965 Convention which are amended by clauses 3 to 6 and 8 and Schedule 2 of this Act are to have effect without these amendments in any adoption involving the 1965 Convention.

Section 18. Short title, interpretation commencement and extent

76. Subsection (1) provides the Act its short title.
77. Subsection (2) defines "the 1976 Act" and "the 1978 Act" and "the Convention".
78. Subsection (3) empowers the Secretary of State to make orders bringing the Act into force in whole or in part and at different times.
79. Subsections (4) and (5) provide for the Act to extend to Great Britain save for amendments to those statutes which have a wider extent (British Nationality Act 1981, Immigration Act 1971).