
STATUTORY INSTRUMENTS

2003 No. 118

**CHILDREN AND YOUNG
PERSONS, ENGLAND AND WALES**

**The Intercountry Adoption (Hague
Convention) Regulations 2003**

Made - - - - 26th January 2003
Laid before Parliament 30th January 2003
Coming into force - - 1st June 2003

The Secretary of State for Health, in exercise of the powers conferred on him by section 1(1) and (3) to (5) of the Adoption (Intercountry Aspects) Act 1999⁽¹⁾ and sections 9(2) and (3), 17 and 67(5) of the Adoption Act 1976⁽²⁾, and of all other powers enabling him in that behalf, after consultation with the National Assembly for Wales⁽³⁾, hereby makes the following regulations:

PART 1

General

Citation, commencement and application

1.—(1) These Regulations may be cited as the Intercountry Adoption (Hague Convention) Regulations 2003 and shall come into force on 1st June 2003.

(2) These Regulations apply to England and Wales only.

Interpretation

2. In these Regulations—

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- (1) 1999 c. 18. Section 1 of the Adoption (Intercountry Aspects) Act 1999 (“the 1999 Act”) enables the Secretary of State to make regulations to give effect to the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, concluded at the Hague on 29 May 1993 (“the Convention”).
- (2) 1976 c. 36. The functions of the Secretary of State under section 9 of the Adoption Act 1976 (“the 1976 Act”) have been transferred to the National Assembly for Wales under S.I.1999/692. However, the effect of section 1(6) of the 1999 Act is that the Secretary of State may exercise those powers to give effect to the provisions of the Hague Convention. Section 17 was substituted by section 3 of the 1999 Act.
- (3) By virtue of section 16(1) of the 1999 Act any function of the Secretary of State under section 1 of that Act or section 17 of the 1976 Act is exercisable only after consultation with the National Assembly for Wales.

“the 1976 Act” means the Adoption Act 1976;

“the 1999 Act” means the Adoption (Intercountry Aspects) Act 1999;

“the Adoption Agencies Regulations” means the Adoption Agencies Regulations 1983(4) subject to the modifications set out in Schedule 4;

“adoption agency” means a local authority or an appropriate voluntary organisation which is an accredited body for the purposes of the Convention(5);

“adoption panel” has the same meaning as in the Adoption Agencies Regulations;

“CA of the receiving State” means, in relation to a Convention country(6) other than the United Kingdom, the Central Authority of the receiving State;

“CA of the State of origin” means, in relation to a Convention country other than the United Kingdom, the Central Authority of the State of origin;

“contact order” has the meaning given in section 8(1) of the Children Act 1989(7);

“eligible to adopt”, except in regulation 8(4)(a), has the meaning given in regulation 4;

“prospective adopter” means a married couple or a person who makes an application under regulation 3;

“receiving State” has the same meaning as in Article 2 of the Convention;

“relevant Central Authority”(8) means—

(a) in Part 2—

- (i) in relation to a prospective adopter who is habitually resident in England, the Secretary of State; and
- (ii) in relation to a prospective adopter who is habitually resident in Wales, the National Assembly for Wales; and

(b) in Part 3—

- (i) in relation to a local authority in England, the Secretary of State; and
- (ii) in relation to a local authority in Wales, the National Assembly for Wales;

“relevant local authority” in Part 2 has the meaning given in regulation 15;

“State of origin” has the same meaning as in article 2 of the Convention.

PART 2

Requirements, procedure, recognition and effect of adoption in England and Wales where the United Kingdom is the receiving State

Application for determination of eligibility, and assessment of suitability, to adopt

3.—(1) A married couple or a person habitually resident in the British Islands who wishes to adopt a child habitually resident in a Convention country outside the British Islands shall apply to an adoption agency for a determination of eligibility, and an assessment of his suitability, to adopt.

(4) S.I.1983 No. 1964; relevant amending instruments are S.I. 1997/649 and 2308, 2001/2992 and 2002/2469 and 3220.

(5) See section 2(2A) of the 1999 Act as amended by section 116 of, Schedule 4 paragraph 27 to the Care Standards Act 2000. The term “Convention” is defined in section 72(1) of the 1976 Act as amended by section 8 of the 1999 Act.

(6) The term “Convention country” is defined in section 72(1) of the 1976 Act as amended by section 8 of the 1999 Act.

(7) 1989 c. 41.

(8) Under section 2(1) of the 1999 Act, the functions under the Convention of the Central Authority are to be discharged in relation to England by the Secretary of State and in relation to Wales by the National Assembly for Wales.

(2) An application under this regulation shall be made in writing and include such information as the agency may require.

Eligibility requirements

4. An adoption agency may not consider any person eligible to adopt unless the application under regulation 3 is made by a married couple or one person and—

- (a) in the case of an application by a married couple they have both—
 - (i) attained the age of 21 years; and
 - (ii) been habitually resident in any part of the British Islands for a period of not less than 1 year ending with the date of the application; or
- (b) in the case of an application by one person, he—
 - (i) has attained the age of 21 years; and
 - (ii) has been habitually resident in any part of the British Islands for a period of not less than 1 year ending with the date of the application.

Requirement to provide counselling and information

5.—(1) Where an application is made in accordance with regulation 3, the adoption agency must—

- (a) provide a counselling service for the prospective adopter;
- (b) explain to him the legal implications of adoption and the procedure in relation to adopting a child under the Convention; and
- (c) provide him with written information about the matters referred to in sub-paragraph (b).

(2) Paragraph (1) does not apply if the adoption agency is satisfied that the requirements set out in that paragraph have been carried out in respect of the prospective adopter by another adoption agency.

Requirement to carry out police checks

6.—(1) An adoption agency must take steps to obtain—

- (a) in respect of the prospective adopter, an enhanced criminal record certificate within the meaning of section 115 of the Police Act 1997⁽⁹⁾ including the matters specified in subsection (6A) of that section; and
- (b) in respect of any other member of his household aged 18 or over, an enhanced criminal record certificate under section 115 of that Act.

(2) An adoption agency may not consider a person to be suitable to be an adoptive parent if he or any member of his household aged 18 or over—

- (a) has been convicted of an offence specified in Schedule 2 to the Adoption Agencies Regulations committed at the age of 18 or over; or
- (b) has been cautioned by a constable in respect of such an offence which, at the time the caution was given, he admitted.

Requirement to notify

7.—(1) The adoption agency must notify a prospective adopter in writing as soon as possible after becoming aware that—

(9) 1997 c. 50.

- (a) he is not eligible to adopt because he does not meet the requirements of regulation 4; or
 - (b) he is not suitable to be an adoptive parent by virtue of regulation 6.
- (2) In a case to which paragraph (1)(b) applies the notification must specify the conviction, or as the case may be, the caution in question.

Procedure in respect of carrying out an assessment

8.—(1) Where the adoption agency—

- (a) is satisfied that the prospective adopter is eligible to adopt in accordance with the provisions in regulation 4; and
- (b) considers he may be suitable to be an adoptive parent following any information provided or made available as a consequence of the carrying out of the requirements imposed by regulation 5 or otherwise,

it must set up a case record in respect of him and place on it any information obtained under that regulation or otherwise.

(2) The adoption agency must obtain such particulars as are referred to in Part VI of Schedule 1 to the Adoption Agencies Regulations together with, so far as is reasonably practicable, any other relevant information which may be required by the adoption panel.

(3) The adoption agency must obtain a written report—

- (a) from a registered medical practitioner about the health of the prospective adopter which must deal with matters specified in Part VII of Schedule 1 to the Adoption Agencies Regulations;
- (b) about the premises where the prospective adopter intends to live with any child who might be adopted by him; and
- (c) of each of the interviews with the persons nominated by the prospective adopter to provide personal references for him,

and in a case where the agency is not the local authority in whose area the prospective adopter has his home, it must also obtain a written report about him from that authority.

(4) The adoption agency must prepare a written report which must—

- (a) state the Convention country from which the prospective adopter wishes to adopt a child, confirm that he is eligible to adopt a child under the law of that Convention country and provide any other information which that Convention country usually requires;
- (b) include the agency's assessment of the prospective adopter's suitability to be an adoptive parent;
- (c) include any other observations of the agency on the matters referred to in regulations 3 to 6 and this regulation; and
- (d) include information and observations regarding the prospective adopter's identity, background, family and medical history, social environment, reasons for adoption, ability to undertake an intercountry adoption as well as the characteristics of the children for whom he would be qualified to care for and any other information which may be relevant.

(5) The adoption agency must notify the prospective adopter that his application is to be referred to the adoption panel and at the same time send him a copy of the agency's report referred to in paragraph (4), inviting him to send any observations in writing to the agency on the report within 28 days, beginning with the date on which the notification was sent.

(6) At the end of the period of 28 days referred to in paragraph (5) (or earlier if any observations made by the prospective adopter are received before the 28 days has expired) the adoption agency must pass the report referred to in paragraph (4) together with all relevant information obtained

by it under this regulation (including the prospective adopter's observations on the report), to the adoption panel.

Function of adoption panel

9.—(1) Subject to paragraph (2), the function of an adoption panel is to consider the case of the prospective adopter referred to it by the adoption agency and make a recommendation to that agency as to whether the prospective adopter is suitable to be an adoptive parent.

(2) In considering what recommendation to make, the adoption panel—

- (a) must consider and take into account all information and reports passed to it in accordance with regulation 8(6);
- (b) may request the adoption agency to obtain any other relevant information which the panel considers necessary; and
- (c) may obtain legal advice as it considers necessary in relation to the case.

Adoption agency decision and notification

10.—(1) The adoption agency must take into account the recommendation of the adoption panel in coming to a decision about whether the prospective adopter is suitable to be an adoptive parent.

(2) No member of an adoption panel shall take part in any decision made by the adoption agency under paragraph (1).

(3) If the adoption agency decide to approve the prospective adopter as suitable to be an adoptive parent, it must notify him in writing of its decision.

(4) If the adoption agency consider that the prospective adopter is not suitable to be an adoptive parent, it must—

- (a) notify the prospective adopter in writing that it proposes not to approve him as suitable to be an adoptive parent;
- (b) send with that notification its reasons together with a copy of the recommendations of the adoption panel, if different; and
- (c) invite the prospective adopter to submit any representations he wishes to make within 28 days.

(5) If within the period of 28 days referred to in paragraph (4), the prospective adopter has not made any representations, the adoption agency may proceed to make its decision and shall notify the prospective adopter in writing of its decision together with the reasons for that decision.

(6) If within the period of 28 days referred to in paragraph (4), the adoption agency receive further representations from the prospective adopter, it may refer the case together with all the relevant information to the adoption panel for further consideration.

(7) The adoption panel must reconsider any case referred to it under paragraph (6) and make a fresh recommendation to the adoption agency as to whether the prospective adopter is suitable to be an adoptive parent.

(8) The adoption agency must make a decision on the case but if the case has been referred to the adoption panel under paragraph (6) it must make the decision only after taking into account any recommendation of the adoption panel made under paragraph (7).

(9) As soon as possible after making the decision under paragraph (8), the adoption agency must notify the prospective adopter in writing of its decision, stating its reasons for that decision if they do not consider the prospective adopter to be suitable to be an adoptive parent, and of the adoption panel's recommendations, if this is different from the adoption agency's decision.

Procedure following approval by adoption agency

11.—(1) Where the adoption agency is satisfied that the prospective adopter is eligible to adopt and has approved him as suitable to be an adoptive parent (“the decision”) it must send to the relevant Central Authority—

- (a) written confirmation of the decision; and
- (b) the report prepared for the purpose of regulation 8(4).

(2) The relevant Central Authority may seek further information from the adoption agency, if that Authority considers it is appropriate to do so.

(3) If the relevant Central Authority is satisfied that the adoption agency has complied with these Regulations and that all the relevant information has been supplied by that agency, the Authority must send to the CA of the State of origin—

- (a) a certificate in the form set out in Schedule 1 confirming that the—
 - (i) prospective adopter is eligible to adopt;
 - (ii) prospective adopter has been assessed in accordance with these Regulations;
 - (iii) prospective adopter has been approved as suitable to be an adoptive parent;
 - (iv) child will be authorised to enter and reside permanently in the United Kingdom if entry clearance, and leave to enter or remain as may be necessary, is granted and not revoked or curtailed and a Convention adoption order or Convention adoption(10) is made;
- (b) a copy of the decision; and
- (c) a copy of the report prepared for the purpose of regulation 8(4).

(4) The relevant Central Authority must notify the adoption agency and the prospective adopter in writing that the certificate and the documents referred to in paragraph (3) have been sent to the CA of the State of origin.

Procedure following receipt of the Article 16 Information from the CA of the State of origin

12.—(1) Where the relevant Central Authority receive from the CA of the State of origin, the Article 16 Information relating to the child whom the CA of the State of origin considers should be placed for adoption with the prospective adopter, the relevant Central Authority must send that Information to the adoption agency.

(2) The adoption agency must consider the Article 16 Information and—

- (a) send that Information to the prospective adopter;
- (b) meet with him to discuss the Article 16 Information and the proposed placement; and
- (c) if appropriate, offer a counselling service and further information as required.

(3) Where—

- (a) the procedure in paragraph (2) has been followed;
- (b) the prospective adopter (and where the prospective adopters are a married couple each of them) has visited the child in the State of origin; and
- (c) after that visit to the child, the prospective adopter confirmed in writing that he—
 - (i) has visited that child; and
 - (ii) wishes to proceed to adopt the child,

(10) Section 72(1) of the 1976 Act as amended by section 8 of the 1999 Act defines “Convention adoption” and “Convention adoption order”.

the adoption agency must notify the relevant Central Authority that the requirements specified in sub-paragraph (a), (b) and (c) have been satisfied and at the same time it must confirm that it is content that the adoption should proceed.

(4) Where the relevant Central Authority has received notification from the adoption agency under paragraph (3), the relevant Central Authority shall—

- (a) notify the CA of the State of origin that—
 - (i) the prospective adopter wishes to proceed to adopt the child;
 - (ii) it is prepared to agree with the CA of the State of origin that the adoption may proceed; and
- (b) confirm to the CA of the State of origin that—
 - (i) in the case where the requirements specified in section 1(5A) of the British Nationality Act 1981⁽¹¹⁾ are met that, the child will be authorised to enter and reside permanently in the United Kingdom; and
 - (ii) in any other case, if entry clearance and leave to enter and remain, as may be necessary, is granted and not revoked or curtailed and a Convention adoption order or a Convention adoption is made, the child will be authorised to enter and reside permanently in the United Kingdom.

(5) The relevant Central Authority must inform the adoption agency and the prospective adopter when the agreement under Article 17(c)⁽¹²⁾ of the Convention has been made.

(6) If, at any stage before the agreement under Article 17(c) of the Convention is made, the CA of the State of origin notifies the relevant Central Authority that it has decided the proposed placement should not proceed, the relevant Central Authority must inform the adoption agency of the CA of the State of origin's decision and the agency must then inform the prospective adopter and return the documents referred to in paragraph (2) to that Authority who must then return them to the CA of the State of origin.

(7) If, at any stage before the child is placed with him, the prospective adopter notifies the adoption agency that he does not wish to proceed with the adoption of the child, that agency must inform the relevant Central Authority and return the documents to that Authority who must in turn notify the CA of the State of origin of the prospective adopter's decision and return the documents to the CA of the State of origin.

(8) Following any agreement under Article 17(c) of the Convention and the placement of the child by the adoption agency with the prospective adopter, the prospective adopter must accompany the child on entering the United Kingdom unless, in the case of a married couple, the agency and the CA of the State of origin have agreed that it is necessary for only one of them to do so.

(9) For the purposes of this regulation "the Article 16 Information" means—

- (a) the report referred to in Article 16(1) of the Convention including information about the child's identity, adoptability, background, social environment, family history, medical history including that of the child's family, and any special needs of the child;
- (b) proof of confirmation that the consents of the persons, institutions and authorities whose consents are necessary for adoption have been obtained in accordance with Article 4 of the Convention; and
- (c) the reasons for the CA of the State of origin's determination on the placement.

(11) 1981 c. 61. Section 1 is amended by section 7 of the 1999 Act.

(12) Article 17 sets out the conditions which must be satisfied before a decision may be made by the State of origin that a child may be placed with prospective adopters. The condition in Article 17(c) is that the Central Authority of the State of origin and the receiving State have agreed that the adoption may proceed.

Duty of adoption agency before the arrival of the child in England or Wales

13. Where the adoption agency is informed by the relevant Central Authority that the agreement under Article 17(c) of the Convention has been made and the adoption may proceed, that agency must—

- (a) send a written report of the child’s health history and current state of health, so far as it is known, to the prospective adopter’s registered medical practitioner, if any, together with particulars of the placement;
- (b) in a case where the adoption agency is not the local authority within whose area the prospective adopter has his home, notify that authority of the particulars of the placement; and
- (c) notify the local education authority within whose area the prospective adopter has his home in writing of the particulars of the placement if the child is of compulsory school age within the meaning of section 8 of the Education Act 1996⁽¹³⁾ or the adoption agency’s medical adviser⁽¹⁴⁾ considers the child to have special needs or to be disabled.

Requirements following arrival of the child in the United Kingdom but no Convention adoption is made in the State of origin

14. Regulations 15 to 19 apply where, following agreement between the relevant Central Authority and the CA of the State of origin under Article 17(c) of the Convention that the adoption may proceed, no Convention adoption is made, or applied for, in the State of origin but the child is placed with the prospective adopter in the State of origin and he then returns to England or Wales with the child.

Duty of prospective adopter to notify local authority

15. A prospective adopter with whom the child is placed must within the period of fourteen days beginning with the date on which he brings the child into the United Kingdom give notice to the local authority within whose area he has his home (“the relevant local authority”) of—

- (a) his intention to apply for an adoption order to be made as a Convention adoption order in accordance with section 22 of the 1976 Act (notification to local authority of adoption application); or
- (b) his intention not to give the child a home.

Duty of prospective adopter where the child is placed with them

16.—(1) The prospective adopter with whom the child is placed is not required to allow the child to visit or stay with any person, or otherwise to allow contact between the child and any person, except under a contact order.

(2) Subject to paragraphs (3) and (4), the prospective adopter may not cause or permit—

- (a) the child to be known by a new surname; or
- (b) the child to be removed from the United Kingdom,

unless the court gives leave or the relevant local authority agree.

(3) Paragraph (2)(a) does not apply if the competent authority of the State of origin has agreed the child may be known by a new surname.

⁽¹³⁾ 1996 c. 56.

⁽¹⁴⁾ See regulation 6(4) of the Adoption Agencies Regulations.

(4) Paragraph (2)(b) does not apply if the removal of the child is for a period of less than one month by the prospective adopter.

Prospective adopter unable to proceed with application to adopt

17. Where the child is placed with the prospective adopter or regulation 20 applies and the prospective adopter gives notice to the relevant local authority that he does not wish to proceed with the adoption and no longer wishes to give the child a home, that authority must—

- (a) receive the child from him before the end of the period of 7 days beginning with the giving notice; and
- (b) notify the relevant Central Authority of his decision not to proceed with the adoption.

Removal of the child by the relevant authority

18.—(1) Subject to paragraph (4), where the child is placed with the prospective adopter or regulation 20 applies and the relevant local authority are of the opinion that—

- (a) the continued placement of the child with the prospective adopter is not in the child's best interests; and
- (b) the child should not remain with the prospective adopter,

that authority must give notice to the prospective adopter of their opinion.

(2) The prospective adopter must, not later than the end of the period of 7 days beginning with the giving of notice, return the child to the authority.

(3) Where the relevant local authority give notice under paragraph (1), they must also give notice to the relevant Central Authority that they have requested the return of the child.

(4) Where a notice under paragraph (1) is given, but—

- (a) before the notice was given an application for a Convention adoption order was made; and
- (b) the application has not been disposed of,

the prospective adopter is not required by virtue of the notice to return the child to the authority unless the court so orders.

(5) This regulation does not affect the exercise by any local authority or other person of any power conferred by any enactment or the exercise of any power of arrest.

Breakdown of placement

19.—(1) This regulation applies where—

- (a) the prospective adopter notifies the relevant local authority under regulation 17 that he does not wish to proceed with the adoption;
- (b) the relevant local authority have removed the child from the home of the prospective adopter in accordance with regulation 18; or
- (c) an application for a Convention adoption order is refused, or a Convention adoption or a Convention adoption order is annulled pursuant to section 53(1) of the 1976 Act⁽¹⁵⁾.

(2) Where the relevant local authority are satisfied that it would be in the child's best interests to be placed for adoption with another prospective adopter habitually resident in the United Kingdom they must seek to identify a suitable adoptive parent for the child.

⁽¹⁵⁾ Section 53(1) of the 1976 Act was amended by section 6 of the 1999 Act.

(3) Where the relevant local authority have identified another prospective adopter who is eligible to adopt and has been assessed in accordance with these Regulations and approved as suitable to be an adoptive parent in accordance with regulations 3 to 10—

- (a) that authority must notify the relevant Central Authority in writing that—
 - (i) another prospective adopter has been identified; and
 - (ii) the requirements, procedures and notifications as provided for in regulations 3 and 10 have been complied with; and
- (b) the requirements specified in regulation 11(1) shall apply in respect of that prospective adopter.

(4) Where the relevant Central Authority has been notified in accordance with paragraph (3)—

- (a) regulation 11(2) to (4) shall apply in respect of that other prospective adopter;
- (b) it shall inform the CA of the State of origin of the proposed placement; and
- (c) it shall agree that placement with the CA of the State of origin in accordance with the provisions in this Part of these Regulations.

(5) Where the relevant local authority are not satisfied it would be in the child's best interests to be placed for adoption with another prospective adopter in England or Wales, it must liaise with the relevant Central Authority to arrange for the return of the child to his State of origin.

(6) Before coming to any decision under this regulation, the relevant local authority must have regard to the wishes and feelings of the child, having regard to his age and understanding, and, where appropriate, obtain his consent in relation to measures to be taken under this regulation.

Convention adoptions subject to a probationary period

20.—(1) This regulation applies where—

- (a) the child has been placed with the prospective adopters by the competent authority of the State of origin and a Convention adoption has been applied for by the prospective adopter in the State of origin but the child's placement with the prospective adopter is subject to a probationary period before the Convention adoption is made; and
- (b) the prospective adopter returns to England or Wales with the child before that probationary period is completed and the Convention adoption is made in the State of origin.

(2) The relevant local authority must, if requested by the competent authority of the State of origin, submit a report about the placement to that authority and such a report must be prepared within such timescale and contain such information as the competent authority may reasonably require.

Prescribed requirements for the purposes of making a Convention adoption order

21.—(1) For the purposes of section 17 of the 1976 Act(**16**) (requirements in respect of adoption order made as a Convention adoption order), where the United Kingdom is the receiving State the prescribed requirements are—

- (a) both spouses (in the case of an application by a married couple) or the applicant (in the case of an application by one person) have been habitually resident in any part of the British Islands for a period of not less than 1 year ending with the date of the application;
- (b) the child to be adopted has not attained the age of 18 years on the date of the application;
- (c) the child to be adopted was, on the date on which the agreement under Article 17(c) was made, habitually resident in a Convention country outside the British Islands; and

(16) Section 17 of the 1976 Act is amended by section 3 of the 1999 Act.

- (d) in a case where the applicant (in the case of an application by one person) or one of the spouses (in the case of an application by a married couple) is not a British citizen by virtue of the British Nationality Act 1981, the Home Office has confirmed that the child is authorised to enter and reside permanently in the United Kingdom.

Procedural requirements following a Convention adoption order or Convention adoption

22.—(1) Where a Convention adoption order is made by a court in England or Wales, the court must send a copy of that order to the relevant Central Authority.

(2) On receipt of an order under paragraph (1), the relevant Central Authority must issue a certificate in the form set out in Schedule 2 certifying that the adoption has been made in accordance with the Convention.

(3) A copy of the certificate issued under paragraph (2) must be sent to—

- (a) the CA of the State of origin;
- (b) the adoptive parents; and
- (c) the adoption agency and, if different, the relevant local authority.

(4) Where the relevant Central Authority receive a certificate under Article 23(17) of the Convention in respect of a Convention adoption made in that Convention country, the relevant Central Authority must send a copy of that certificate to—

- (a) the adoptive parents; and
- (b) the adoption agency.

Refusal of a court in England or Wales to make a Convention adoption order

23. Where an application for a Convention adoption order is refused by the court or is withdrawn, the prospective adopter must return the child to the relevant local authority within the period determined by the court.

Annulment of a Convention adoption order or a Convention adoption

24. Where a Convention adoption order or a Convention adoption is annulled under section 53(1) of the 1976 Act the court must send a copy of the order to—

- (a) the relevant Central Authority for onward transmission to the CA of the State of origin;
- (b) the adoptive parents; and
- (c) the adoption agency and, if different, the relevant local authority.

PART 3

Requirements and procedure in England and Wales where the United Kingdom is the State of origin

Duty of adoption agency in respect of assessment of a child

25.—(1) This regulation applies where—

- (a) a local authority (referred to in this Part as “the LA”)—

(17) Article 23 provides that an adoption certificate certified by the competent authority of the State as having been made in accordance with the Convention shall be recognised by other contracting States. The certificate must specify when and by whom the agreement that the adoption could proceed was given.

- (i) has decided that adoption is in the best interests of a child under regulation 11(1) of the Adoption Agencies Regulations (“the first decision”);
 - (ii) has considered the possibilities for placement of that child within the British Islands; and
 - (iii) considers that adoption by a person habitually resident in a Convention country outside the British Islands may be in the child’s best interests; and
- (b) the child is free for adoption by virtue of an order made under section 18 of the 1976 Act, section 18 of the Adoption (Scotland) Act 1978(18) or Article 17(1) or 18(1) of the Adoption (Northern Ireland) Order 1987(19).
- (2) The LA must refer the case of the child to the adoption panel together with—
- (a) the documents referred to in regulation 7(2)(e) of the Adoption Agencies Regulations originally sent to the adoption panel; and
 - (b) a report from the child’s social worker—
 - (i) as to why he considers that adoption by a person habitually resident in a Convention country outside the British Islands may be in the child’s best interests, and
 - (ii) if appropriate, having regard to the child’s age and understanding, on the child’s views and wishes in relation to adoption.

Function of adoption panel

26.—(1) The adoption panel must consider the case of the child and make a recommendation to the LA as to whether adoption by a person habitually resident in a Convention country outside the British Islands is in the best interests of the child.

(2) In considering what recommendation to make, the adoption panel must have regard to the duties imposed upon the LA by sections 6 and 7 of the 1976 Act (duty to promote the welfare of the child and religious upbringing of adopted child) and must—

- (a) consider and take into account all the information and reports passed to it under regulation 25(2);
- (b) request the LA to obtain any other relevant information which the adoption panel considers necessary; and
- (c) obtain legal advice in relation to the case as may be necessary.

Decision and notification

27.—(1) The LA must make a decision on the case referred to the adoption panel only after taking into account the recommendation of the adoption panel.

(2) No member of an adoption panel shall take part in any decision made by the LA under paragraph (1).

(3) The LA must notify the relevant Central Authority—

- (a) of the name and age of the child;
- (b) of the reasons why they consider that the child may be suitable for adoption by a person habitually resident in a Convention country outside the British Islands;

(18) 1978 c. 28.

(19) S.I. 1987/2203 (N.I. 22).

- (c) of the date the freeing order under section 18 of the 1976 Act, section 18 of the Adoption (Scotland) Act 1978 or Article 17(1) or 18(1) of the Adoption (Northern Ireland) Order 1987 was made; and
- (d) of any other information that Authority may require.

(4) The relevant Central Authority is to maintain a list of children who are notified to that Authority under paragraph (3) and shall make the contents of that list available for consultation by other Central Authorities within the British Islands.

(5) Where a LA—

- (a) places for adoption a child whose details have been notified to the relevant Central Authority under paragraph (3); or
- (b) determines that adoption by a person habitually resident in a Convention country outside the British Islands is no longer in the best interests of such a child,

they must notify the relevant Central Authority accordingly and that Authority must remove the details relating to that child from the Convention list.

(6) In this regulation and regulation 28 “Convention list” means—

- (a) in relation to a relevant Central Authority, a list of children notified to that Authority in accordance with paragraph (3); or
- (b) in relation to any other Central Authority within the British Islands, a list of children notified to that Authority in accordance with provisions which correspond to paragraph (3).

Receipt of the Article 15 Report from the CA of the receiving State

28.—(1) This regulation applies where—

- (a) the relevant Central Authority receives a report from the CA of the receiving State which has been prepared for the purposes of Article 15 of the Convention⁽²⁰⁾ (“the Article 15 Report”);
- (b) the Article 15 Report relates to a prospective adopter who is habitually resident in that receiving State (“a Convention prospective adopter”); and
- (c) the Convention prospective adopter wishes to adopt a child who is habitually resident in England or Wales.

(2) If the relevant Central Authority is satisfied the Convention prospective adopter meets the following requirements—

- (a) in respect of age and marital status as provided for in sections 14 and 15 of the 1976 Act; and
- (b) in the case of a married couple, both Convention prospective adopters are, or in the case of a single Convention prospective adopter, that prospective adopter is habitually resident in a Convention country outside the British Islands,

the Authority must consult the Convention list and may, if the Authority considers it appropriate, consult any Convention list maintained by another Central Authority within the British Islands.

(3) The relevant Central Authority may pass a copy of the Article 15 Report to any other Central Authority within the British Islands for the purpose of enabling that Authority to consult its Convention list.

⁽²⁰⁾ Article 15 provides for the CA of the receiving State if satisfied that the applicants are eligible and suited to adopt, to prepare a report including information about their identity, eligibility and suitability to adopt, background, family and medical history, social environment, reasons for adoption, ability to undertake an intercountry adoption, as well as the characteristics of the child for whom they would be qualified to care.

(4) Where the relevant Central Authority identifies a child on the Convention list who may be suitable to be adopted by the Convention prospective adopter, that Authority must send the Article 15 Report to the LA which referred the child's details to the Authority.

(5) The LA must consider the Article 15 Report and where it considers that it may be appropriate to place the child for adoption with the Convention prospective adopter it must refer the proposed placement for adoption to the adoption panel together with—

- (a) the Article 15 Report;
- (b) the documents and report referred to in regulation 25(2);
- (c) its observations on the proposed placement; and
- (d) any other relevant information about the child.

Duty of adoption panel in respect of proposed placement

29.—(1) The adoption panel must consider the proposed placement referred to it by the LA under regulation 25 and make a recommendation to the LA, as to whether—

- (a) the Convention prospective adopter is a suitable adoptive parent for the child; and
- (b) the proposed placement is in the best interests of the child.

(2) In considering what recommendation to make under paragraph (1), the adoption panel—

- (a) must have regard to the child's upbringing and his ethnic, religious and cultural background;
- (b) must have regard to the duties imposed upon the LA by sections 6 and 7 of the 1976 Act (duty to promote welfare of child and religious upbringing of adopted child);
- (c) must have regard to the documents and the Article 15 Report referred to it under regulation 28(4);
- (d) may request the LA to obtain any other relevant information which the adoption panel considers necessary; and
- (e) may obtain legal advice as it considers necessary in relation to the case.

LA decision in respect of placement

30.—(1) The LA must make a decision about the proposed placement only after having taken into account the recommendations of the adoption panel.

(2) No member of an adoption panel shall take part in any decision made by the LA under paragraph (1).

Preparation of the Article 16 information for the CA of the receiving State

31.—(1) Where the LA decides under regulation 30 that the proposed placement is in the best interests of the child and the adoption may proceed, it must prepare a report for the purposes of Article 16(1) of the Convention which must include—

- (a) information about the child's identity, suitability for adoption, background, social environment, family history, medical history including that of the child's family, and any special needs of the child; and
- (b) the reasons for their decision.

(2) The LA must send the report referred to in paragraph (1) to the relevant Central Authority together with—

- (a) evidence that a freeing order has been made in respect of the child;

- (b) written observations relating to the child’s upbringing and to his or her ethnic, religious and cultural background; and
 - (c) the report, if any, referred to in regulation 25(2)(b)(ii).
- (3) The relevant Central Authority must send the report and information referred to it under paragraph (2) to the CA of the receiving State.
- (4) The relevant Central Authority may notify the CA of the receiving State that it is prepared to agree that the adoption may proceed provided that CA has confirmed that—
- (a) the Convention prospective adopter has agreed to adopt the child and has received such counselling as may be necessary;
 - (b) the Convention prospective adopter has confirmed that he will accompany the child to the receiving State, unless where the Convention prospective adopter is a married couple, the LA and the CA of the receiving State have agreed that it is necessary for only one of them to do so;
 - (c) it is content for the adoption to proceed; and
 - (d) the child is or will be authorised to enter and reside permanently in the Convention country if a Convention adoption is made in that Convention country or a Convention adoption order is made in the United Kingdom.
- (5) Subject to paragraph (7), the relevant Central Authority may not make an agreement under Article 17(c) of the Convention with the CA of the receiving State unless the LA have confirmed to that Authority that—
- (a) it has met the Convention prospective adopter;
 - (b) the Convention prospective adopter has visited the child; and
 - (c) the Convention prospective adopter is content for the adoption to proceed.
- (6) A LA may not place a child for adoption with a Convention prospective adopter unless the agreement under Article 17(c) of the Convention has been made and the relevant Central Authority must advise the LA when that agreement has been made.
- (7) In paragraph (5), the reference to “Convention prospective adopter” means in the case where the Convention prospective adopters are a married couple, both of them.

Prescribed requirements for the purposes of making a Convention adoption order

- 32.** For the purposes of section 17 of the 1976 Act(21) (requirements in respect of an adoption order made as a Convention adoption order) the prescribed requirements are in the case where the United Kingdom is the State of origin—
- (a) both spouses (in the case of an application by a married couple) are, or the applicant (in the case of an application by one person) is, habitually resident in a Convention country outside the British Islands on the date of the application;
 - (b) the child to be adopted is free for adoption by virtue of an order made under section 18 of the 1976 Act, section 18 of the Adoption (Scotland) Act 1978, or Article 17(1) or 18(1) of the Adoption (Northern Ireland) Order 1987;
 - (c) the child to be adopted is habitually resident in any part of the British Islands on the date of the application; and
 - (d) the child to be adopted has not attained the age of 18 years on the date of the application.

(21) 1976 c. 36. Section 17 is amended by section 3 of the Adoption (Intercountry Aspects) Act 1999.

Procedural requirements following a Convention adoption order or Convention adoption

33.—(1) Where a Convention adoption order is made by a court in England or Wales, the court must send a copy of that order to the relevant Central Authority.

(2) On receipt of an order under paragraph (1), the relevant Central Authority must issue a certificate in the form set out in Schedule 2 certifying that the Convention adoption order has been made in accordance with the Convention.

(3) A copy of the certificate must be sent to the—

- (a) CA of the receiving State; and
- (b) LA.

(4) Where the relevant Central Authority receives a certification of the adoption having been made in accordance with the Convention from the competent authority of the receiving State, the relevant Central Authority must send a copy of that certification to the LA.

PART 4

Miscellaneous

Application, with or without modifications, of provisions of the 1976 Act

34.—(1) The provisions of the 1976 Act set out in column 1 of Schedule 3 to these Regulations shall apply with the modifications set out in column 2 of that Schedule in relation to adoptions under the Convention.

(2) Paragraph (1) does not preclude the application of provisions of the 1976 Act, which do not require modifications, to adoptions under the Convention.

Application, with modifications, of provisions of the Adoption Agencies Regulations

35. The Adoption Agencies Regulations shall apply together with the modifications set out in Schedule 4 to these Regulations in relation to adoptions under the Convention.

Offences

36. Any person who contravenes or fails to comply with—

- (a) regulation 15 (notification to local authority);
- (b) regulation 18(2) (return of child to relevant local authority);
- (c) regulation 18(4) (return of child to relevant authority as ordered by the court); or
- (d) regulation 23 (return of child to relevant authority within period prescribed by court),

without reasonable excuse is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding three months, or a fine not exceeding level 5 on the standard scale, or both.

Transitional and consequential provisions

37.—(1) These Regulations shall not apply in relation to the case of any prospective adopter who wishes to adopt a child from a Convention country outside the British Islands which has been referred by the adoption agency (dealing with the case) to the adoption panel before the date on which these Regulations come into force.

(2) No application may be made for a Convention adoption order under section 17 of the 1976 Act unless the arrangements for the adoption of the child have been made in accordance with these Regulations.

Signed by the authority of the Secretary of State

26th January 2003

Jacqui Smith
Minister of State,
Department of Health

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

SCHEDULE 1

Regulation 11

Certificate of eligibility and approval

To the Central Authority of the State of origin

Re ...[name of applicant]

In accordance with Article 5 of the Convention, I hereby certify on behalf of the Central Authority for [England] [Wales] that ... [name of applicant] has been counselled, is eligible to adopt and has been assessed and approved as suitable to adopt a child from ... [State of origin] by ... [a local authority in England or Wales or an accredited body for the purpose of the Convention].

The attached report has been prepared in accordance with Article 15 of the Convention for presentation to the competent authority in ... [State of origin].

This certificate of eligibility and approval and the report under Article 15 of the Convention are provided on the condition that a Convention adoption or Convention adoption order will not be made until the agreement under Article 17(c) of the Convention has been made.

I confirm on behalf of the Central Authority that if, following the agreement under Article 17(c) of the Convention that—

- [(i) in the case, where the requirements specified in section 1(5A) of the British Nationality Act 1981 are met that the child ... [name] will be authorised to enter and reside permanently in the United Kingdom]

OR

- [(ii) in any other case, if entry clearance and leave to enter and remain, as may be necessary, is granted and not revoked or curtailed and a Convention adoption order or Convention adoption is made, the child ... [name] will be authorised to enter and reside permanently in the United Kingdom.]

Signed

On behalf of [the Secretary of State
Central Authority for England]
[the National Assembly for Wales
Central Authority for Wales]

SCHEDULE 2

Regulations 22 and 33

Certificate that the Convention adoption order has been made in accordance with the Convention

1. The Central Authority as the competent authority for [England] [Wales] being the country in which the Convention adoption order was made hereby certifies, in accordance with Article 23(1) of the Convention, that the child:

- (a) name: [name on birth certificate, also known as/now known as]
sex:
date and place of birth:
habitual residence at the time of adoption:
State of origin:

- (b) was adopted on:
by order made by: court in [England] [Wales].

- (c) by the following person(s):
 - (i) — family name and first name(s):
— sex:
— date and place of birth:
— habitual residence at the time of the adoption:
.....
 - (ii) — family name and first name(s):
— sex:
— date and place of birth:
— habitual residence at the time of the adoption:
.....

2. The competent authority for [England] [Wales] in pursuance of Article 23(1) of the Convention hereby certifies that the adoption was made in accordance with the Convention and that the agreement under Article 17(c) was given by:

- (a) — Name and address of the Central Authority in the State of origin:
.....
Date of the agreement:

- (b) — Name and address of the Central Authority in the receiving State:
.....
Date of the agreement: ¹⁹.....

Signed Dated

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SCHEDULE 3

Regulation 34(1)

Application, with modifications, of the provisions of the 1976 Act

Column 1 Provisions of the 1976 Act	Column 2 Modifications
Section 12 (adoption orders)	As if at the beginning of subsections (5) and (7) there were inserted the words “Subject to paragraph (8),”.
	As if there were inserted at the end “(8) A Convention adoption order may not be made in relation to a person who has attained the age of 19 years. ”.
Section 16 (parental agreement)	As if for subsection (1) there were substituted “A Convention adoption order shall not be made unless an agreement under Article 17(c) of the Convention has been made in respect of the child” and subsections (2) to (5) were omitted.
Section 22 (notification to local authority of adoption application)	As if the words in subsection (1) “not placed with the applicant by an adoption agency” there were substituted “entrusted to the applicants by a competent authority in accordance with Article 17 of the Convention”.
Section 27 (restrictions on removal where adoption agreed)	As if for subsection (1) there were substituted “Where an application for a Convention adoption order is pending the parent or guardian is not entitled to remove the child from the home of the applicant except with the leave of the court.”, subsections (2) and (2A) were omitted, and in subsection (3) “ or (2)” were omitted.
Sections 30 and 31 (application of section 30 where child not placed for adoption)	As if sections 30 and 31 were omitted.

SCHEDULE 4

Regulation 35

Application, with modifications, of the provisions of the Adoption Agencies Regulations

Column 1 Provision of the Adoption Agencies Regulations	Column 2 Modifications
Regulation 7	In relation to a case where the UK is the receiving State as if regulation 7 were omitted.
Regulations 8 to 12	As if regulations 8 to 12 were omitted.
Regulation 14	As if in paragraph (2) the words—

Column 1 Provision of the Adoption Agencies Regulations	Column 2 Modifications
	(i) “regulations 7(2)(a), 8(2)(a) or 9(3)” were substituted by the words “ regulation 7(2) (a) or under the Intercountry Adoption (Hague Convention) Regulations 2003” and; (ii) “these regulations” were substituted by the words “those regulations ”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement the 1993 Hague Convention on the Protection of Children and Co-operation in respect of Intercountry Adoption that was concluded at the Hague on 29 May 1993.

Part 2 makes provision in respect of requirements, procedure, recognition and effect of adoption in England and Wales where the United Kingdom is the receiving State. Part 2 applies where a child is habitually resident in another Contracting State and the prospective adopters are habitually resident in the British Islands.

Regulations 3 to 7 make provision regarding the application for determination of eligibility, and the assessment of suitability, eligibility and other requirements such as counselling and police checks.

Regulations 8 to 11 provide for the assessment of suitability of the prospective adopter, the procedure to be followed and the notification of decision. Regulation 12 sets out the procedure following the receipt of the Article 16 Information from the Central Authority of the State of origin.

Regulation 13 imposes duties on the adoption agency in respect of the period before the arrival of the child in England and Wales. Regulations 14 to 20 make provision in respect of the case where a child arrives in the United Kingdom but no Convention adoption has been made. Regulation 21 prescribes the requirements for the purposes of making a Convention adoption order. Regulation 22 makes provision regarding the procedural requirements following a Convention adoption order or Convention adoption. Regulations 23 and 24 respectively make provision in respect of where a court refuses to make a Convention adoption order and the annulment of a Convention adoption order or a Convention adoption.

Part 3 makes provision in respect of requirements and procedure in England and Wales where the United Kingdom is the State of origin. Part 3 applies where a child, habitually resident in England and Wales is to be adopted by prospective adopters who are habitually resident in another Contracting State. Regulation 25 imposes duties on an adoption agency in respect of the assessment of a child. Regulations 26 to 30 set out the functions of an adoption panel, provide for the making, and notification, of decisions, the procedure to be followed once the Article 15 Report is received, duties of the adoption panel and the local authority decision in respect of the placement of the child. Regulation 31 sets out the requirements in respect of the Article 16 information and the procedure to be followed in preparing a report and gathering information. Regulations 32 and 33 respectively prescribe the requirements for the purposes of making a Convention adoption order and the procedural requirements following a Convention adoption order or Convention adoption.

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Part 4 makes miscellaneous provisions. Regulations 34 and 35 provide for the application and modification of the Adoption Act 1976 and the Adoption Agencies Regulations 1983 (S.I.1983/1964). Regulation 36 makes it an offence where a person contravenes or fails to comply with regulation 15 (notification to local authority), regulation 18(2) (return of child to local authority), regulation 18(4) (return of child to relevant authority as ordered by the court) or regulation 23 (refusal to return child to relevant authority within prescribed time as ordered by the court). Regulation 37 makes transitional and consequential provisions.

Copies of a regulatory impact assessment in relation to these Regulations may be obtained from Adoption and Permanence Team, Room 101 Wellington House, 133 - 155, Waterloo Road, London, SE1 8UG and at www.doh.gov.uk/adoption.