
STATUTORY INSTRUMENTS

2005 No. 392

The Adoptions with a Foreign Element Regulations 2005

PART 2

BRINGING CHILDREN INTO AND OUT OF THE UNITED KINGDOM

CHAPTER 1

BRINGING CHILDREN INTO THE UNITED KINGDOM

Requirements applicable in respect of bringing or causing a child to be brought into the United Kingdom

3. A person intending to bring, or to cause another to bring, a child into the United Kingdom in circumstances where section 83(1) of the Act applies must—

- (a) apply in writing to an adoption agency for an assessment of his suitability to adopt a child; and
- (b) give the adoption agency any information it may require for the purpose of the assessment⁽¹⁾.

Conditions applicable in respect of a child brought into the United Kingdom

4.—(1) This regulation prescribes the conditions for the purposes of section 83(5) of the Act in respect of a child brought into the United Kingdom in circumstances where section 83 applies⁽²⁾.

(2) Prior to the child's entry into the United Kingdom, the prospective adopter must—

- (a) receive in writing, notification from the Secretary of State that she has issued a certificate confirming to the relevant foreign authority—
 - (i) that the person has been assessed and approved as eligible and suitable to be an adoptive parent in accordance with Part 4 of the Agencies Regulations or corresponding Welsh provision; and
 - (ii) that if entry clearance and leave to enter and remain, as may be necessary, is granted and not revoked or curtailed, and an adoption order is made or an overseas adoption⁽³⁾ is effected, the child will be authorised to enter and reside permanently in the United Kingdom;
- (b) before visiting the child in the State of origin—
 - (i) notify the adoption agency of the details of the child to be adopted;
 - (ii) provide the adoption agency with any information and reports received from the relevant foreign authority; and

(1) Part 4 of the Agencies Regulations and corresponding Welsh provisions impose duties on adoption agencies in respect of a prospective adopter.

(2) Regulation 34 of the Agencies Regulations and corresponding Welsh provision impose additional functions on the adoption agency in relation to a case where section 83 applies.

(3) The term "overseas adoption" is given a meaning by virtue of section 87(1) of the 2002 Act.

- (iii) meet with the adoption agency to discuss the proposed adoption and information received from the relevant foreign authority;
 - (c) visit the child in the State of origin (and where the prospective adopters are a couple each of them); and
 - (d) after that visit—
 - (i) confirm in writing to the adoption agency that he has done so and wishes to proceed with the adoption;
 - (ii) provide the adoption agency with any additional reports and information received on or after that visit; and
 - (iii) notify the adoption agency of his expected date of entry into the United Kingdom with the child.
- (3) The prospective adopter must accompany the child on entering the United Kingdom unless, in the case of a couple, the adoption agency and the relevant foreign authority have agreed that it is necessary for only one of them to do so.
- (4) Except where an overseas adoption is or is to be effected, the prospective adopter must within the period of 14 days beginning with the date on which the child is brought into the United Kingdom give notice to the relevant local authority—
- (a) of the child’s arrival in the United Kingdom; and
 - (b) of his intention—
 - (i) to apply for an adoption order in accordance with section 44(2) of the Act; or
 - (ii) not to give the child a home.
- (5) In a case where a prospective adopter has given notice in accordance with paragraph (4) and subsequently moves his home into the area of another local authority, he must within 14 days of that move confirm in writing to that authority, the child’s entry into the United Kingdom and that notice of his intention—
- (a) to apply for an adoption order in accordance with section 44(2) of the Act has been given to another local authority; or
 - (b) not to give the child a home,
- has been given.

Functions imposed on the local authority

- 5.—(1) Where notice of intention to adopt has been given to the local authority, that authority must—
- (a) if it has not already done so, set up a case record in respect of the child and place on it any information received from the—
 - (i) relevant foreign authority;
 - (ii) adoption agency, if it is not the local authority;
 - (iii) prospective adopter;
 - (iv) entry clearance officer; and
 - (v) Secretary of State, or as the case may be, the Assembly;
 - (b) send the prospective adopter’s general practitioner written notification of the arrival in England or Wales of the child and send with that notification a written report of the child’s health history and current state of health, so far as is known;

- (c) send to the Primary Care Trust or Local Health Board (Wales), in whose area the prospective adopter has his home, written notification of the arrival in England or Wales of the child;
 - (d) where the child is of compulsory school age, send to the local education authority, in whose area the prospective adopter has his home, written notification of the arrival of the child in England or Wales and information, if known, about the child's educational history and whether he is likely to be assessed for special educational needs under the Education Act 1996(4);
 - (e) ensure that the child and the prospective adopter are visited within one week of receipt of the notice of intention to adopt and thereafter not less than once a week until the review referred to in sub-paragraph (f) and thereafter at such frequency as the authority may decide;
 - (f) carry out a review of the child's case not more than 4 weeks after receipt of the notice of intention to adopt and—
 - (i) visit and, if necessary, review not more than 3 months after that initial review; and
 - (ii) thereafter not more than 6 months after the date of the previous visit,unless the child no longer has his home with the prospective adopter or an adoption order is made;
 - (g) when carrying out a review consider—
 - (i) the child's needs, welfare and development, and whether any changes need to be made to meet his needs or assist his development;
 - (ii) the arrangements for the provision of adoption support services and whether there should be any re-assessment of the need for those services; and
 - (iii) the need for further visits and reviews; and
 - (h) ensure that—
 - (i) advice is given as to the child's needs, welfare and development;
 - (ii) written reports are made of all visits and reviews of the case and placed on the child's case record; and
 - (iii) on such visits, where appropriate, advice is given as to the availability of adoption support services.
- (2) Part 7 of the Agencies Regulations or corresponding Welsh provision (case records) shall apply to the case record set up in respect of the child as a consequence of this regulation as if that record had been set up under the Agencies Regulations or corresponding Welsh provision.
- (3) In a case where the prospective adopter fails to make an application under section 50 or 51 of the Act within two years of the receipt by a local authority of the notice of intention to adopt the local authority must review the case.
- (4) For the purposes of the review referred to in paragraph (3), the local authority must consider—
- (a) the child's needs, welfare and development, and whether any changes need to be made to meet his needs or assist his development;
 - (b) the arrangements, if any, in relation to the exercise of parental responsibility for the child;
 - (c) the terms upon which leave to enter the United Kingdom is granted and the immigration status of the child;
 - (d) the arrangements for the provision of adoption support services for the adoptive family and whether there should be any re-assessment of the need for those services; and

- (e) in conjunction with the appropriate agencies, the arrangements for meeting the child's health care and educational needs.

(5) In a case where the local authority to which notice of intention to adopt is given ("the original authority") is notified by the prospective adopter that he intends to move or has moved his home into the area of another local authority, the original authority must notify the local authority into whose area the prospective adopter intends to move or has moved, within 14 days of receiving information in respect of that move, of—

- (a) the name, sex, date and place of birth of child;
- (b) the prospective adopter's name, sex and date of birth;
- (c) the date on which the child entered the United Kingdom;
- (d) where the original authority received notification of intention to adopt, the date of receipt of such notification whether an application for an adoption order has been made and the stage of those proceedings; and
- (e) any other relevant information.

Application of Chapter 3 of the Act

6. In the case of a child brought into the United Kingdom for adoption in circumstances where section 83 of the Act applies—

- (a) the modifications in regulations 7 to 9 apply;
- (b) section 36(2) and (5) (restrictions on removal) and section 39(3)(a) (partners of parents) of the Act shall not apply.

Change of name and removal from the United Kingdom

7. Section 28(2) of the Act (further consequences of placement) shall apply as if from the words "is placed" to "then", there is substituted "enters the United Kingdom in the circumstances where section 83(1)(a) of this Act applies".

Return of the child

8.—(1) Section 35 of the Act (return of child) shall apply with the following modifications.

(2) Subsections (1), (2) and (3) shall apply as if in each place where—

- (a) the words "is placed for adoption by an adoption agency" occur there were substituted "enters the United Kingdom in circumstances where section 83(1) applies";
- (b) the words "the agency" occur there were substituted the words "the local authority"; and
- (c) the words "any parent or guardian of the child" occur there were substituted "the Secretary of State or, as the case may be, the Assembly".

(3) Subsection (5) shall apply as if for the words "an adoption agency" or "the agency" there were substituted the words "the local authority".

Child to live with adopters before application

9.—(1) In a case where the requirements imposed by section 83(4) of the Act have been complied with and the conditions required by section 83(5) of the Act have been met, section 42 shall apply as if—

- (a) subsection (3) is omitted; and

- (b) in subsection (5) the words from “three years” to “preceding” there were substituted “six months”.
- (2) In a case where the requirements imposed by section 83(4) of the Act have not been complied with or the conditions required by section 83(5) have not been met, section 42 shall apply as if—
 - (a) subsection (3) is omitted; and
 - (b) in subsection (5) the words from “three years” to “preceding” there were substituted “twelve months”.

CHAPTER 2

TAKING CHILDREN OUT OF THE UNITED KINGDOM

Requirements applicable in respect of giving parental responsibility prior to adoption abroad

10. The prescribed requirements for the purposes of section 84(3) of the Act (requirements to be satisfied prior to the making of an order) are that—

- (a) in the case of a child placed by an adoption agency, that agency has—
 - (i) confirmed to the court that it has complied with the requirements imposed in accordance with Part 3 of the Agencies Regulations or corresponding Welsh provision;
 - (ii) submitted to the court—
 - (aa) the reports and information referred to in regulation 17(2) and (3) of the Agencies Regulations or corresponding Welsh provision;
 - (bb) the recommendations made by the adoption panel in accordance with regulations 18 (placing child for adoption) and 33 (proposed placement) of the Agencies Regulations or corresponding Welsh provision;
 - (cc) the adoption placement report prepared in accordance with regulation 31(2) (d) of the Agencies Regulations or corresponding Welsh provision;
 - (dd) the reports of and information obtained in respect of the visits and reviews referred to in regulation 36 of the Agencies Regulations or corresponding Welsh provision; and
 - (ee) the report referred to in section 43 of the Act as modified by regulation 11;
- (b) in the case of a child placed by an adoption agency the relevant foreign authority has—
 - (i) confirmed in writing to that agency that the prospective adopter has been counselled and the legal implications of adoption have been explained to him;
 - (ii) prepared a report on the suitability of the prospective adopter to be an adoptive parent;
 - (iii) determined and confirmed in writing to that agency that he is eligible and suitable to adopt in the country or territory in which the adoption is to be effected; and
 - (iv) confirmed in writing to that agency that the child is or will be authorised to enter and reside permanently in that foreign country or territory; and
- (c) in the case of a child placed by an adoption agency the prospective adopter has confirmed in writing to the adoption agency that he will accompany the child on taking him out of the United Kingdom and entering the country or territory where the adoption is to be effected, or in the case of a couple, the agency and relevant foreign authority have confirmed that it is necessary for only one of them to do so.

Application of the Act in respect of orders under section 84

11.—(1) The following provisions of the Act which refer to adoption orders shall apply to orders under section 84 as if in each place where the words “adoption order” appear there were substituted “order under section 84”—

- (a) section 1(7)(a) (coming to a decision relating to adoption of a child);
- (b) section 18(4) (placement for adoption by agencies);
- (c) section 21(4)(b) (placement orders);
- (d) section 22(5)(a) and (b) (application for placement orders);
- (e) section 24(4) (revoking placement orders);
- (f) section 28(1) (further consequences of placement);
- (g) section 29(4)(a) and (5)(a) (further consequences of placement orders);
- (h) section 32(5) (recovery by parent etc. where child placed and consent withdrawn);
- (i) section 42(7) (sufficient opportunity for adoption agency to see the child);
- (j) section 43 (reports where child placed by agency);
- (k) section 44(2) (notice of intention to adopt);
- (l) section 47(1) to (5), (8) and (9) (conditions for making orders);
- (m) section 48(1) (restrictions on making applications);
- (n) section 50(1) and (2) (adoption by a couple);
- (o) section 51(1) to (4) (adoption by one person);
- (p) section 52(1) to (4) (parental etc. consent);
- (q) section 53(5) (contribution towards maintenance); and
- (r) section 141(3) and (4)(c) (rules of procedure).

(2) Section 35(5) of the Act (return of child in other cases) shall apply to orders under section 84 of that Act as if in paragraph (b) of that subsection—

- (a) for the first reference to “adoption order” there were substituted “order under section 84(1)”; and
- (b) the words in brackets were omitted.