

**2003 No. 16**

**ADOPTION**

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

*Made - - - - - 13th January 2003*

*Coming into operation 1st June 2003*

**ARRANGEMENT OF REGULATIONS**

**PART I  
GENERAL**

1. Citation and commencement
2. Interpretation

**PART II**

**REQUIREMENTS, PROCEDURE, RECOGNITION AND EFFECT OF ADOPTION IN  
NORTHERN IRELAND WHERE THE UNITED KINGDOM IS THE RECEIVING STATE**

3. Application for determination of eligibility, and assessment of suitability, to adopt
4. Eligibility requirements and requirement to notify
5. Requirement to provide counselling and information
6. Procedure in respect of carrying out an assessment
7. Adoption panel function
8. Adoption agency decision and notification
9. Procedure where the prospective adopter is approved by the adoption agency
10. Procedure following receipt of the Article 16 report from SOCA
11. Duty of adoption agency before the child's arrival in Northern Ireland
12. Requirements following the child's arrival in Northern Ireland but no Convention adoption is made in the State of origin
13. Duty of prospective adopter to notify HSS trust
14. Duty of prospective adopter where a child is placed with him
15. Prospective adopter unable to proceed with application to adopt
16. Surrender of the child to the relevant HSS trust
17. Breakdown of placement
18. Convention adoption subject to a probationary period

19. Prescribed requirements for the purposes of making a Convention adoption order
20. Procedural requirements following a Convention adoption order or Convention adoption – Article 23 of the Convention
21. Refusal of a court to make a Convention adoption order
22. Annulment of a Convention adoption order or a Convention adoption

### PART III

#### REQUIREMENTS AND PROCEDURE WHERE THE UNITED KINGDOM IS THE STATE OF ORIGIN

23. Duty of adoption agency in respect of assessment of a child
24. Adoption panel function
25. HSS trust decision and notification
26. Receipt of Article 15 report from RSCA
27. Duty of adoption panel in respect of a proposed placement
28. HSS trust decision in respect of a placement
29. Preparation of the Article 16 report for RSCA
30. Prescribed requirements for the purposes of making a Convention adoption order
31. Procedural requirements following a Convention adoption order or Convention adoption – Article 23 of the Convention

### PART IV

#### MISCELLANEOUS

32. Application, with modifications, of provisions of the 1987 Order
33. Application, with modifications, of provisions of the Adoption Agencies Regulations
34. Offences
35. Transitional provision

### SCHEDULES

- |            |  |
|------------|--|
| Schedule 1 | Certificate of eligibility and approval  |
| Schedule 2 | Certificate that the Convention adoption order has been made in accordance with the Convention |
| Schedule 3 | Application, with modifications, of provisions of the 1987 Order                               |
| Schedule 4 | Application, with modifications, of the provisions of the Adoption Agencies Regulations        |

The Department of Health, Social Services and Public Safety(**a**), in exercise of the powers conferred on it by section 1(1), (3) and (5) of the Adoption (Intercountry Aspects) Act (Northern Ireland) 2001(**b**) and Articles 10 and 16A(**c**) of the Adoption (Northern Ireland) Order 1987(**d**) and of all other powers enabling it in that behalf, hereby makes the following Regulations:

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(a) See S.I. 1999/283 (N.I. 1) Article 3(6)

(b) 2001 c. 11 (N.I.). Section 1 of the Adoption (Intercountry Aspects) Act (Northern Ireland) 2001 enables the Department 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

(c) Article 16A was inserted by Section 3 of 2001 c. 11 (N.I.)

(d) S.I. 1987/2203 (N.I. 22) – as amended by S.I. 1994/429 (N.I. 2), S.I. 1995/755 (N.I. 2) and 2001 c.11 (N.I.)

# PART I

## GENERAL

### Citation and commencement

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

### Interpretation

2. In these Regulations –

“the 1987 Order” means the Adoption (Northern Ireland) Order 1987;

“the Act” means the Adoption (Intercountry Aspects) Act (Northern Ireland) 2001;

“the Adoption Agencies Regulations” means the Adoption Agencies Regulations (Northern Ireland) 1989(a) subject to the modifications set out in Schedule 4;

“adoption agency” means an HSS trust or a registered adoption society which is an accredited body for the purposes of the Convention(b);

“adoption panel” means a panel established in accordance with Regulation 5 or 5A of the Adoption Agencies Regulations;

“British Islands” has the same meaning as in Article 58ZA of the 1987 Order;

“Central Authority”(c) means the Department of Health, Social Services and Public Safety;

“contact order” has the same meaning as in Article 8(1) of the Children (Northern Ireland) Order 1995(d);

“Education and Library Board” means a board established under Article 3 of the Education and Libraries (Northern Ireland) Order 1986(e);

“eligible to adopt”, except in regulation 6(4)(a), has the meaning given in regulation 4(1);

“entry clearance” has the same meaning as in the Immigration Act 1971(f);

“medical practitioner” has the same meaning as in the Health and Personal Social Services (Northern Ireland) Order 1972(g);

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

“receiving State” has the meaning given in Article 2(1) of the Convention;

“relevant HSS trust” in Part II has the same meaning given in regulation 13;

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

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

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

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(a) S.R. 1989 No. 253; relevant amending Regulations are S.R. 1994 No. 65

(b) See section 2(3) of the Act

(c) Under Section 2(1) of the 2001 Act, the functions under the Convention of the Central Authority are to be discharged in Northern Ireland by the Department of Health, Social Services and Public Safety

(d) S.I. 1995/755 (N.I. 2)

(e) S.I. 1986/594 (N.I. 3)

(f) 1971 c. 77

(g) SI 1972/1265 (N.I. 14)

**PART II**  
**REQUIREMENTS, PROCEDURE, RECOGNITION AND EFFECT**  
**OF ADOPTION IN NORTHERN IRELAND 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 under the Convention must apply to an adoption agency for a determination of eligibility and an assessment of his suitability to adopt.

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

**Eligibility requirements and requirement to notify**

**4.—(1)** An adoption agency may not consider a 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 attained the age of 21 years and the requirement prescribed in regulation 19(1)(a) is complied with; or
- (b) in the case of an application by one person, he has attained the age of 21 years and one of the conditions in article 15(1) of the 1987 Order is satisfied and the requirement prescribed in regulation 19(1)(a) is complied with.

(2) The adoption agency must notify a prospective adopter in writing as soon as possible after becoming aware that he is not eligible to adopt because he does not meet the requirements of paragraph (1).

**Requirement to provide counselling and information**

**5.—(1)** Subject to paragraph (2), 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 paragraph (1) have been carried out in respect of the prospective adopter by another adoption agency.

**Procedure in respect of carrying out an assessment**

**6.—(1)** Where, following the procedures referred to in paragraph (1) of regulation 5, and subject to paragraph (1) of regulation 4, the adoption agency is satisfied that the prospective adopter is eligible to adopt and considers he may be suitable to be an adoptive parent it must set up a case record in respect of him and place on it any information obtained under this regulation.

(2) The adoption agency must obtain such particulars as are referred to in Part VI of the Schedule 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 medical practitioner about the health of the prospective adopter which must deal with matters specified in Part VII of the Schedule 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 adoption agency is not the HSS trust in whose area the prospective adopter has his home, it must also obtain a written report about him from the relevant HSS trust.

- (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 adoption agency's assessment of the prospective adopter's suitability to be an adoptive parent;
  - (c) include any other observations of the adoption agency on the matters referred to in regulations 4 and 5 and in 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 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 adoption agency's report referred to in paragraph (4), inviting him to send any observations in writing to the adoption agency on the report within 28 days, beginning on 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.

#### **Adoption panel function**

7.—(1) Subject to paragraph (2), the adoption panel must consider the case of the prospective adopter referred to it by the adoption agency and make a recommendation to the adoption 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 6(6);
  - (b) may request the adoption agency to obtain any other relevant information which the adoption panel considers necessary; and
  - (c) may obtain legal advice as it considers necessary in relation to the case.

#### **Adoption agency decision and notification**

8.—(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 decides 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 considers 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 the 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 representation 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 representation, 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 receives further representation from the prospective adopter, it may refer the case together with all the relevant information to its 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 it does not consider the prospective adopter to be suitable to be an adoptive parent, and of the adoption panel's recommendations, if different from the adoption agency's decision.

#### **Procedure where the prospective adopter is approved by the adoption agency**

**9.**—(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 (“its decision”) it must send to the Central Authority –

- (a) written confirmation of its decision; and
- (b) the report prepared for the purpose of regulation 6(4).

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

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

- (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; and
  - (iv) child will be authorised to enter and reside permanently within 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 is made; and
- (b) a copy of the decision; and
- (c) a copy of the report prepared for the purpose of regulation 6(4).

(4) The 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 SOCA.

#### **Procedure following receipt of the Article 16 report from SOCA**

**10.**—(1) Where the Central Authority receives, from SOCA, the Article 16(a) report and other information specified in Article 16(2)(b) of the Convention (“the documents”), relating

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- (a) Article 16(1) provides for SOCA to prepare a report which includes 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; and other specified considerations relating to the child
  - (b) Article 16(2) provides for proof that the necessary consents have been obtained and the reasons for SOCA's determination on the placement

to the child whom SOCA considers should be placed for adoption with the prospective adopter, the Central Authority must send the Article 16 report and the documents to the adoption agency.

- (2) The adoption agency must consider the Article 16 report and the documents and –
  - (a) send the Article 16 report and the documents to the prospective adopter;
  - (b) meet with him to discuss the Article 16 report and the documents and the proposed placement; and
  - (c) offer a counselling service and further information as required.
- (3) Where –
  - (a) the procedure in paragraph (2) has been followed;
  - (b) the prospective adopter (where the prospective adopters are a married couple, each of them) has visited the child in the State of origin; and
  - (c) after the visit to the child, the prospective adopter has confirmed in writing that he –
    - (i) has visited the child; and
    - (ii) wishes to proceed to adopt the child,

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

(4) Where the Central Authority has received notification from the adoption agency under paragraph (3), the Central Authority must –

- (a) notify SOCA that –
  - (i) the prospective adopter wishes to proceed to adopt the child;
  - (ii) it is prepared to agree with SOCA that the adoption may proceed; and
- (b) confirm to SOCA that –
  - (i) in the case where the requirements specified in section 1(5A) of the British Nationality Act are met that the child will be authorised to enter and reside permanently within 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 Central Authority must inform the adoption agency and the prospective adopter when the agreement under Article 17(c)(a) of the Convention has been made.

(6) If, at any stage before the agreement under Article 17(c) of the Convention is made, SOCA notifies the Central Authority that it has decided that the proposed placement should not proceed, the Central Authority must inform the adoption agency of SOCA's decision and the adoption agency must then inform the prospective adopter and return the Article 16 report and the documents referred to in regulation 10(2)(a) to the Central Authority who must then return them to SOCA.

(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, the adoption agency must inform the Central Authority and return the Article 16 report and the documents to the Central Authority who must in turn notify SOCA of the prospective adopter's decision and return the Article 16 report and the documents to SOCA.

(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.

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(a) 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 at 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 child's arrival in Northern Ireland**

**11.** Where the adoption agency is informed by the Central Authority that the agreement under Article 17(c) of the Convention has been made and the adoption may proceed, the adoption 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:
  - (i) a paediatrician designated by the HSS trust for the purposes of these regulations; and
  - (ii) the prospective adopter's medical practitioner,

together with particulars of the placement;

- (b) in a case where the adoption agency is not the HSS trust within whose area the prospective adopter has his home, notify that HSS trust of the particulars of the placement; and
- (c) notify the Education and Library Board 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 Article 46 of the Education and Libraries (Northern Ireland) Order 1986<sup>(a)</sup> or if the adoption agency's medical adviser<sup>(b)</sup> considers the child to have special needs or to be disabled.

### **Requirements following the child's arrival in Northern Ireland but no Convention adoption is made in the State of origin**

**12.** Regulations 13 to 17 apply where, following agreement between the Central Authority and SOCA 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 Northern Ireland with the child.

### **Duty of prospective adopter to notify HSS trust**

**13.** A prospective adopter to whom regulation 12 applies 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 HSS trust within whose area he has his home ("the relevant HSS trust") of –

- (a) his intention to apply for an adoption order to be made as a Convention adoption order in accordance with Article 22 of the 1987 Order; or
- (b) his intention not to give the child a home.

### **Duty of prospective adopter where a child is placed with him**

**14.**—(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 HSS trust agrees.

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

(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.

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<sup>(a)</sup> S.I. 1986/594 (N.I. 3) – Article 46 was substituted by Article 156 of S.I. 1989/2406 (N.I. 20)

<sup>(b)</sup> See Regulation 6(4) of the Adoption Agencies Regulations



### **Prospective adopter unable to proceed with application to adopt**

**15.** Where the child is placed with the prospective adopter or regulation 18 applies and the prospective adopter gives notice to the relevant HSS trust that he does not wish to proceed with the adoption and no longer wishes to give the child a home, the relevant HSS trust must –

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

### **Surrender of the child to the relevant HSS trust**

**16.—(1)** Subject to paragraph (4), where the child is placed with the prospective adopter or regulation 18 applies and the relevant HSS trust is 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,

the relevant HSS trust must give notice to the prospective adopter of its opinion and require him to surrender the child to it.

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

(3) Where the relevant HSS trust gives notice under paragraph (1), it must also give notice to the Central Authority that it has required the prospective adopter to surrender the child to it.

- (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 surrender the child to the HSS trust unless the court so orders.

(5) This regulation does not affect the exercise by any HSS trust or other person of any power conferred by any statutory provision or the exercise of any power of arrest.

### **Breakdown of placement**

**17.—(1)** This regulation applies where –

- (a) the prospective adopter notifies the relevant HSS trust under regulation 15 that he does not wish to proceed with the adoption; or
- (b) the prospective adopter has surrendered the child to the relevant HSS trust in accordance with regulation 16; or
- (c) an application for a Convention adoption order is refused, or a Convention adoption or a Convention adoption order is annulled pursuant to Article 55A(a) of the 1987 Order.

(2) Where the relevant HSS trust is 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.

(3) Where the relevant HSS trust has 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 8 –

- (a) that HSS trust must notify the Central Authority in writing that –
  - (i) another prospective adopter has been identified;
  - (ii) the requirements, procedures and notifications as provided for in regulation 3 and regulation 8 have been complied with; and

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(a) Article 55A was inserted by section 5 of the 2001 Act

(b) the requirements specified in regulation 9(1) shall apply in respect of that prospective adopter.

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

(a) regulation 9(2) to (4) shall apply in respect of that other prospective adopter;

(b) it shall inform SOCA of the proposed placement; and

(c) it shall agree that placement with SOCA in accordance with the provisions in this Part.

(5) Where the relevant HSS trust is not satisfied that it would be in the child's best interests to be placed for adoption with another prospective adopter in Northern Ireland, it must liaise with the 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 HSS trust 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 adoption subject to a probationary period**

**18.**—(1) This regulation applies where –

(a) the child has been placed with the prospective adopter 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 Northern Ireland with the child before that probationary period is completed and before the Convention adoption is made in the State of origin.

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

### **Prescribed requirements for the purposes of making a Convention adoption order**

**19.**—(1) For the purposes of Article 16A of the 1987 Order (a) (requirements in respect of adoption order made as a Convention adoption order), the prescribed requirements are, in the case where the United Kingdom is the receiving State –

(a) both spouses (in the case of an application made by a married couple) or the applicant (in the case of an application made by one person) have been habitually resident in part of the British Islands for a period of not less than one 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

(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 a married couple) is not a British citizen by virtue of the British Nationality Act 1981 (b), 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 – Article 23 of the Convention**

**20.**—(1) Where a Convention adoption order is made, the court must send a copy of that adoption order to the Central Authority.

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(a) Article 16A of the 1987 Order was inserted by section 3 of the 2001 Act

(b) 1981 c. 61

(2) On receipt of an adoption order under paragraph (1), the 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) SOCA;
  - (b) the adoptive parents; and
  - (c) the adoption agency and, if different, the relevant HSS trust.

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

- (a) the adoptive parents; and
- (b) the adoption agency and, if different, the relevant HSS trust.

#### **Refusal of a court to make a Convention adoption order**

**21.**—(1) Where an application for a Convention adoption order is refused by the court or is withdrawn, the relevant HSS trust must decide on a plan for the child’s permanent care.

(2) Before coming to any decision under paragraph (1), the relevant HSS trust 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.

(3) If the court so orders, the prospective adopter must surrender the child to the relevant HSS trust within the period determined by the court for the purpose.

#### **Annulment of a Convention adoption order or a Convention adoption**

**22.** Where a Convention adoption order or a Convention adoption is annulled under Article 55A of the 1987 Order, the court must send a copy of the order to –

- (a) the Central Authority for onward transmission to SOCA;
- (b) the adoptive parents; and
- (c) the adoption agency and, if different, the relevant HSS trust.

## **PART III**

### **REQUIREMENTS AND PROCEDURE WHERE THE UNITED KINGDOM IS THE STATE OF ORIGIN**

#### **Duty of adoption agency in respect of assessment of a child**

**23.**—(1) This regulation applies where

- (a) a HSS trust –
  - (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

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(a) 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 shall certify when and by whom the agreement that the adoption could proceed was given

(b) the child is free for adoption by virtue of an order made under Article 17(1) or 18(1) of the 1987 Order, section 18 of the Adoption Act 1976<sup>(a)</sup> or section 18 of the Adoption (Scotland) Act 1978<sup>(b)</sup>.

(2) Subject to paragraph (3), the HSS trust 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 interest; and

(ii) if appropriate, having regard to the child's age and understanding, on the child's views and wishes in relation to adoption.

(3) A HSS trust may not refer the case of the child to the adoption panel under paragraph (2) unless:

(a) more than 12 months have elapsed since the first decision; or

(b) there are significant overriding factors which indicate that the child should be referred to the adoption panel under paragraph (1) prior to the expiration of the 12 month period.

### **Adoption panel function**

**24.**—(1) The adoption panel must consider the case of the child and make a recommendation to the HSS trust 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 panel must have regard to the duties imposed upon the HSS trust by Article 9 of the 1987 Order (duty to promote welfare of the child) and –

(a) must consider and take into account all the information and reports passed to it under regulation 23(2);

(b) request the HSS trust to obtain any other relevant information which the panel considers necessary; and

(c) obtain legal advice in relation to the case as may be necessary.

### **HSS trust decision and notification**

**25.**—(1) The HSS trust must make a decision on the matter referred to the adoption panel under regulation 23(2) 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 HSS trust under paragraph (1).

(3) The HSS trust must notify the Central Authority of –

(a) the name and age of the child;

(b) 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;

(c) the date the freeing order under Article 17(1) or 18(1) of the 1987 Order or section 18 of the 1976 Act or section 18 of the Adoption (Scotland) Act 1987 was made; and

(d) any other information the Central Authority may require.

(4) The Central Authority is to maintain a list of children of whom it is notified 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 HSS trust –

(a) places for adoption a child whose details have been notified to the Central Authority under paragraph (3), or

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(a) 1976 c. 36

(b) 1978 c. 28

- (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,

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

- (6) In this regulation and regulation 26, “Convention list” means –
  - (a) in relation to the Central Authority, a list of children notified to the Central 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 Central Authority in accordance with provisions which correspond to paragraph (3).

### **Receipt of Article 15 report from RSCA**

**26.**—(1) This regulation applies where –

- (a) the Central Authority receives a report (“the Article 15 report”) from the RSCA which has been prepared for the purposes of Article 15 of the Convention<sup>(a)</sup>;
- (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 Northern Ireland.

(2) If the Central Authority is satisfied that the Convention prospective adopter meets the requirements –

- (a) in respect of age and marital status as provided for in Articles 14 and 15 of the 1987 Order; and
- (b) prescribed in regulation 30(a),

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

(3) The 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 Central Authority to consult its Convention list.

(4) Where the Central Authority identifies a child on the Convention list who may be suitable to be adopted by the Convention prospective adopter, the Central Authority must send the Article 15 report to the HSS trust which referred the child’s details to the Central Authority.

(5) The HSS trust 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 23(2);
- (c) its observations on the proposed placement; and
- (d) any other relevant information about the child.

### **Duty of adoption panel in respect of a proposed placement**

**27.**—(1) The adoption panel must consider the proposed placement referred to it by the HSS trust under regulation 23(2) and make a recommendation to the HSS trust 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 –

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(a) Article 15 provides for the RSCA, if satisfied that the applicants are eligible and suitable 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

- (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 it by Article 9 of the 1987 Order (duty to promote welfare of child);
- (c) must have regard to the Article 15 report and the documents referred to it under regulation 26(5);
- (d) may request the HSS trust to obtain any other relevant information which the panel considers necessary; and
- (e) may obtain legal advice as it considers necessary in relation to the case.

### **HSS trust decision in respect of a placement**

**28.**—(1) The HSS trust 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 HSS trust under paragraph (1).

### **Preparation of the Article 16 report for RSCA**

**29.**—(1) Where the HSS trust decides under regulation 28 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 ("the Article 16 report") 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 its decision.

(2) The HSS trust must send the Article 16 report to the Central Authority together with –

- (a) evidence that an order freeing the child for adoption has been made in respect of the child;
- (b) written observations relating to the child's upbringing and to his ethnic, religious and cultural background; and
- (c) the report, if any, referred to in regulation 23(2)(b)(ii).

(3) The Central Authority must send the Article 16 report and other information referred to in paragraph (2) to the RSCA.

(4) The Central Authority may notify the RSCA that it is prepared to agree that the adoption may proceed provided that the RSCA 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;
- (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 Central Authority may not make an agreement under Article 17(c) of the Convention with the RSCA unless the HSS trust has confirmed to the Central Authority that –

- (a) it has met the Convention prospective adopter;
- (b) the Convention prospective adopter has visited the child;
- (c) the Convention prospective adopter is content for the adoption to proceed; and
- (d) the HSS trust is content for the adoption to proceed.

(6) A HSS trust 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 Central Authority has advised the HSS trust that the agreement has been made.

(7) In paragraph (5), “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**

**30.** For the purposes of Article 16A(a) of the 1987 Order (Convention adoption orders), 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) or the applicant (in the case of an application by one person) are 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 Article 17(1) or 18(1) of the 1987 Order, section 18 of the Adoption Act 1976(b) or section 18 of the Adoption (Scotland) Act 1987(c);
- (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.

#### **Procedural requirements following a Convention adoption order or Convention adoption – Article 23 of the Convention**

**31.**—(1) Where a Convention adoption order is made, the court must send a copy of that order to the Central Authority.

(2) On receipt of an order under paragraph (1), the 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 –
- (a) the RSCA;
  - (b) the adoptive parents; and
  - (c) the HSS trust.

(4) Where the Central Authority receives a certification of the adoption having been made in accordance with the Convention from the RSCA, the Central Authority must send a copy of that certification to the HSS trust.

## PART IV MISCELLANEOUS

#### **Application, with modifications, of provisions of the 1987 Order**

**32.**—(1) The provisions of the 1987 Order set out in column 1 of Schedule 3 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 1987 Order, which do not require modifications, to adoptions under the Convention.

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

**33.** The provisions of the Adoption Agencies Regulations set out in column 1 of Schedule 4 shall apply with the modifications set out in column 2 of that Schedule in relation to adoptions under the Convention.

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(a) Article 16A of the 1987 Order was inserted by section 3 of the 2001 Act  
(b) 1976 c. 36  
(c) 1978 c. 28

## **Offences**

**34.** Any person who contravenes or fails to comply with –

- (a) regulation 13 (duty of prospective adopter to notify HSS trust);
- (b) regulation 16(2) (surrender of child to HSS trust);
- (c) regulation 16(4) (surrender of child to HSS trust as ordered by the court); or
- (d) regulation 21(3) (surrender of child to HSS trust within period determined by the court),

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

## **Transitional provision**

**35.**—(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 these regulations come into operation.

(2) No application may be made for a Convention adoption order under Article 16A of the 1987 Order unless the arrangements for the adoption of the child have been made in accordance with these Regulations.

Sealed with the Official Seal of the Department of Health, Social Services and Public Safety on 13th January 2003.

(L.S.)

*L. Frew*

Senior Officer of the Department of Health, Social Services and Public Safety



SCHEDULE 1

Regulation 9

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 Northern Ireland 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 Health and Social Services Trust in Northern Ireland 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 .....

Dated .....

On behalf of the Department of Health,  
Social Services and Public Safety  
Central Authority for Northern Ireland

SCHEDULE 2

Regulations 20 and 31

CERTIFICATE THAT THE CONVENTION ADOPTION ORDER HAS BEEN MADE IN ACCORDANCE WITH THE CONVENTION

1. The Central Authority as the competent authority for Northern Ireland 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 Northern Ireland

(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: .....

.....

occupation: .....

(ii) family name and first name(s): .....

sex: .....

date and place of birth: .....

habitual residence at the time of the adoption: .....

.....

occupation: .....

2. The competent authority for Northern Ireland in pursuance of Article 23(1) of the Convention hereby certifies that the adoption was made in accordance with the Convention and that the agreements under Article 17(c) were 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: .....

Signed .....

Dated .....

### SCHEDULE 3

Regulation 32(1)

#### APPLICATION, WITH MODIFICATIONS, OF THE PROVISIONS OF THE 1987 ORDER

Column 1 <i>Provisions of the 1987 Order</i>	Column 2 <i>Modifications (if any)</i>
Article 12 (adoption orders)	As if at the beginning of paragraphs (5) and (7) there were inserted the words "Subject to paragraph (8),".  As if there were inserted at the end "(8) An adoption order may not be made in relation to a person who has attained the age of 19 years".
Article 16 (parental agreement)	As if for paragraph (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 paragraphs (2) to (5) were omitted.
Article 22 (notification to Board or HSS trust of adoption application, where child not placed by adoption agency)	As if the words in paragraph (1) "not placed with the applicant by an adoption agency" there were substituted "entrusted to the applicants by a competent authority within the meaning of Article 17 of the Convention".
Article 28 (restrictions on removal where adoption agreed)	As if for paragraph (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.", paragraphs (2) and (2A) were omitted, and in paragraph (3) "or (2)" were omitted.

Column 1 <i>Provisions of the 1987 Order</i>	Column 2 <i>Modifications (if any)</i>
Article 31 (return of children placed for adoption by adoption agencies)	As if Article 31 were omitted.
Article 32 (application of Article 31 where child not placed for adoption)	As if Article 32 were omitted.

SCHEDULE 4

Regulation 33

APPLICATION, WITH MODIFICATIONS, OF THE PROVISIONS OF THE ADOPTION  
AGENCIES REGULATIONS

Column 1 <i>Provisions of the Adoption Agencies Regulations</i>	Column 2 <i>Modifications (if any)</i>
Regulation 7	In relation to a case where the United Kingdom 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 – <ul style="list-style-type: none"> <li>(i) “regulations 7(2)(a), 8(2)(a) or 9(3)” were substituted by the words “regulations 7(2)(a) or under the Intercountry Adoption (Hague Convention) Regulations (Northern Ireland) 2003”; and</li> <li>(ii) “these regulations” were substituted by the words “those regulations”.</li> </ul>

## **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 concluded at the Hague on 29th May 1993.

Part I provides for commencement and interpretation (regulations 1 and 2).

Part II makes provision in respect of requirements, procedure, recognition, and effect of adoption in Northern Ireland where the United Kingdom is the receiving State. Part II 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 5 make provision regarding the application for determination of eligibility and assessment of suitability, eligibility and other requirements such as counselling.

Regulations 6 to 9 provide for the assessment of suitability of the prospective adopter, the procedure to be followed and the notification of decision. Regulation 10 sets out the procedure following receipt of the Article 16 report from the Central Authority of the State of origin.

Regulation 11 imposes duties on the adoption agency in respect of the period before the arrival of the child in Northern Ireland. Regulations 12 to 18 make provision in respect of the case where a child arrives in Northern Ireland but no Convention adoption order has been made. Regulation 19 prescribes the requirements for the purposes of making a Convention adoption order. Regulation 20 makes provision regarding the procedure to be followed following a Convention adoption order or Convention adoption. Regulations 21 and 22 respectively make provision in respect of where a court refuses to make a Convention adoption order or a Convention order.

Part III makes provision in respect of requirements and procedure where the United Kingdom is the State of origin. Part III applies where a child, habitually resident in Northern Ireland, is to be adopted by prospective adopters who are habitually resident in another Contracting State. Regulation 23 imposes duties on an adoption agency in respect of the assessment of a child. Regulations 24 to 28 set out the functions of an adoption panel, provide for making and notification of decisions, the procedure to be followed once the Article 15 report is received, duties of the adoption panel and the HSS trust decision in respect of the placement of the child. Regulation 29 sets out the requirements in respect of the Article 16 report and the procedure to be followed in the preparation and completion of that report. Regulations 30 and 31 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.

Part IV makes miscellaneous provisions. Regulations 32 and 33 provide for the modification of the Adoption (Northern Ireland) Order 1987 and the Adoption Agencies Regulations (Northern Ireland) 1989. Regulation 34 makes it an offence where a person contravenes or fails to comply with regulation 13 (duty of prospective adopter to notify HSS trust), regulation 16(2) (surrender of child to HSS trust), regulation 16(4) (surrender of child to HSS trust as ordered by the court) or regulation 21(3) (surrender of child to HSS trust within period prescribed by the court). Regulation 35 makes transitional and consequential provisions.

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