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SCOTTISH STATUTORY INSTRUMENTS

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**2003 No. 19**

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

**PART 2**

*Procedure in Scotland where the United Kingdom is the receiving State*

**Application for assessment of suitability to be an adoptive parent**

**3.—**(1) A person habitually resident in the British Islands who wishes to adopt a child habitually resident in a Convention country<sup>(1)</sup> outside the British Islands shall apply to an adoption agency for assessment of that person's suitability to be an adoptive parent.

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

**Requirement to provide information**

**4.—**(1) Where an application for assessment is made in accordance with regulation 3, the adoption agency shall—

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

(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.

**Eligibility requirements**

**5.** An adoption agency shall not consider a person eligible to adopt unless—

- (a) in the case of an application for assessment under regulation 3 by a married couple, they have both attained the age of 21 years and the requirement prescribed in regulation 30(2) (a) is complied with; or
- (b) in the case of an application for assessment under regulation 3 by any other person, that person has attained the age of 21 years and the requirement prescribed in regulation 30(2) (a) is complied with.

**Duty of the adoption agency – case record, police checks and assessment**

**6.—**(1) Where, following the procedures referred to in regulation 4, and subject to regulation 5 and paragraph (3) of this regulation, the adoption agency—

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(1) Section 65(1) of the 1978 Act as amended by section 8 of the 1999 Act defines “Convention country” and “the Convention”.

- (a) is satisfied that the prospective adopter is eligible to adopt; and
- (b) considers that person's suitability as an adoptive parent should be assessed,

it shall—

- (i) set up a case record in respect of that person and place on it any information obtained under this regulation; and
- (ii) ensure that such counselling as may be necessary in connection with the proposed adoption is made available to the prospective adopter.

(2) An adoption agency shall take all reasonably practicable steps to obtain information about any previous criminal convictions (including convictions in England, Wales or Northern Ireland and any police cautions issued in England, Wales or Northern Ireland where the offence in question was admitted at the time the caution was given) in respect of criminal offences which relate to the prospective adopter and any other member of the prospective adopter's household aged 16 years or over.

(3) An adoption agency shall not consider a person to be suitable to be an adoptive parent if that person or any member of their household aged 16 years or over—

- (a) has been convicted of an offence specified in Schedule 5;
- (b) has received a police caution in England, Wales or Northern Ireland in respect of such an offence which, at the time the caution was given, that person admitted.

(4) The adoption agency shall notify a prospective adopter in writing as soon as possible after becoming aware that—

- (a) the prospective adopter is not eligible to adopt because that person does not meet the requirements of regulation 5; or
- (b) the prospective adopter is not suitable to be an adoptive parent by virtue of paragraph (3) of this regulation,

and in a case to which sub-paragraph (b) applies the notification shall specify the conviction, or as the case may be, the police caution in question where that conviction or police caution relates to the prospective adopter.

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

(6) In a case where the adoption agency is not the local authority in whose area the prospective adopter has their home, it shall obtain a written report about the prospective adopter from that authority.

(7) The adoption agency shall prepare a written report which shall—

- (a) state the Convention country from which the prospective adopter wishes to adopt a child, confirm that person 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 regulation 5 and this regulation; and
- (d) include any other information about the prospective adopter of the type specified in Article 15(1) of the Convention.

(8) The adoption agency shall notify the prospective adopter that the prospective adopter's application is to be referred to the adoption panel and at the same time, send that person a copy of the adoption agency's report referred to in paragraph (7) (excluding any information from third parties

given in confidence), inviting that person to send any observations in writing to the adoption agency on the report within 14 days, beginning with the date on which the notification was sent.

(9) At the end of the period of 14 days referred to in paragraph (8), (or earlier if any observations made by the prospective adopter are received before the 14 day period has expired), the adoption agency shall pass the report referred to in paragraph (7) 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 the adoption panel**

7.—(1) Subject to paragraph (2), the adoption panel shall consider the case of the prospective adopter referred to it by the adoption agency and shall 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) shall consider and take into account all information and reports passed to it in accordance with regulation 6(9);
- (b) shall give the prospective adopter the opportunity to meet with the adoption panel and discuss the information and reports obtained under regulation 6(9);
- (c) may request the agency to obtain any other relevant information which the panel considers necessary; and
- (d) may obtain legal advice as it considers necessary in relation to the case.

### **Adoption agency decision, notification and review procedure**

8.—(1) The adoption agency shall 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 and shall make that decision within 14 days after the date of the recommendation of the adoption panel.

(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 shall notify the prospective adopter in writing of its decision within 7 days after the date of the decision under paragraph (1).

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

- (a) notify the prospective adopter in writing that it proposes not to approve that person as suitable to be an adoptive parent within 7 days after the date of a decision under paragraph (1) (the “decision”);
- (b) send with that notification its reasons together with a copy of the recommendations of the adoption panel, if different;
- (c) notify the prospective adopter in writing that the prospective adopter may require the decision to be reviewed within 28 days after the date of notification; and
- (d) invite the prospective adopter to submit any representations regarding the decision that person wishes to make within 28 days after the date of notification.

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

(6) If within the period of 28 days referred to in paragraph (4), the adoption agency receives further representations from the prospective adopter and the prospective adopter indicates that the decision should be reviewed, it shall refer the case together with all the relevant information (including the further representations) to the adoption panel for further consideration.

(7) The adoption panel shall 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 shall make a decision (the “reviewed decision”) on the case within 14 days after the date of any fresh recommendation of the adoption panel under paragraph (7) and shall make the reviewed decision only after taking into account any fresh recommendation of the adoption panel made under paragraph (7).

(9) Within 7 days after making the reviewed decision under paragraph (8), the adoption agency shall notify the prospective adopter in writing of its reviewed 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 recommendation, if this is different from the adoption agency’s reviewed decision.

#### **Procedure following approval by the adoption agency**

9.—(1) Where the adoption agency is satisfied that the prospective adopter is eligible to adopt a child under the law of Scotland and has approved the prospective adopter as suitable to be an adoptive parent (“its decision”) it shall send to the Central Authority within 7 days after the date of making its decision—

- (a) written confirmation of its decision; and
- (b) a copy of the report prepared for the purpose of regulation 6(7).

(2) The Central Authority may seek further information from the adoption agency, if the 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 shall send to SOCA—

- (a) a certificate in the form set out in Schedule 1 confirming that—
  - (i) the prospective adopter is eligible to adopt;
  - (ii) the prospective adopter has been assessed in accordance with these Regulations;
  - (iii) the prospective adopter has been approved as suitable to be an adoptive parent; and
  - (iv) the child will be authorised to 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) the documents referred to in paragraph (1)(a) and (b) of this regulation.

(4) The Central Authority shall notify the adoption agency and the prospective adopter in writing that the certificate and the documents have been sent to SOCA.

#### **Article 16 report from SOCA and Article 17 Agreement**

10.—(1) Where the Central Authority receive from SOCA the report and additional information specified in Article 16 of the Convention relating to the child whom SOCA considers should be

placed for adoption with the prospective adopter, the Central Authority shall send that report and the additional information (“the documents”) to the adoption agency.

- (2) The adoption agency shall consider the documents and shall—
  - (a) send the report about the child to the prospective adopter; and
  - (b) meet with the prospective adopter to—
    - (i) discuss the report and the proposed placement; and
    - (ii) offer such counselling as may be necessary in connection with the proposed adoption.

(3) The prospective adopter (or where the prospective adopter is a married couple and there are exceptional circumstances, one of them) shall visit the child in the State of origin before the prospective adopter may give notice to the adoption agency that the prospective adopter wishes to proceed with the proposed adoption.

(4) Following any agreement under Article 17(c) of the Convention and the placement of the child with the prospective adopter by SOCA, the prospective adopter or, in exceptional circumstances, a nominee of the prospective adopter who has been approved by the adoption agency shall accompany the child on entering the United Kingdom.

- (5) Where—
    - (a) the procedure set out in paragraph (2) has been followed; and
    - (b) the prospective adopter has informed the adoption agency in writing that—
      - (i) the prospective adopter (or where the prospective adopter is a married couple and there are exceptional circumstances, one of them) has visited the child in the State of origin; and
      - (ii) the prospective adopter wishes to proceed to adopt the child,
- the adoption agency shall notify the Central Authority accordingly and at the same time confirm that it is satisfied that there are no impediments to the adoption proceeding.

(6) Where the Central Authority has received notification from the adoption agency under paragraph (5), the Central Authority shall—

- (a) notify SOCA that
  - (i) the prospective adopter wishes to proceed to adopt the child;
  - (ii) the Central Authority 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 1981(2) 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.

(7) The Central Authority shall inform the adoption agency and the prospective adopter when the agreement under Article 17(c)(3) of the Convention has been made.

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(2) 1981 c. 61.

(3) 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 contained in Article 17(c) is that the Central Authority of the State of origin and the receiving State has agreed that the adoption may proceed.

(8) 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 the proposed placement should not proceed, then—

- (a) the Central Authority shall inform the adoption agency of SOCA's decision;
- (b) the adoption agency shall then inform the prospective adopter of that decision and return the documents to the Central Authority; and
- (c) the Central Authority shall then return the documents to SOCA.

(9) If, at any stage before the child is placed with the prospective adopter, the prospective adopter notifies the adoption agency that the prospective adopter does not wish to proceed with the adoption of the child, the adoption agency shall inform the Central Authority and return the documents to that Central Authority who shall in turn notify SOCA of the prospective adopter's decision and return the documents to SOCA.

### **Duty of adoption agency before child's arrival in Scotland**

**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 shall—

- (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 their home, notify that authority of the particulars of the placement; and
- (c) notify the local education authority within whose area the prospective adopter has their home in writing of the particulars of the placement if the child is of compulsory school age within the meaning of section 31 of the Education Act (Scotland) 1980<sup>(4)</sup> or if the adoption agency's medical adviser<sup>(5)</sup> considers the child either—
  - (i) to have a problem of medical significance;
  - (ii) to have special educational needs; or
  - (iii) to be disabled.

### **Child placed with prospective adopter 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 by SOCA and the prospective adopter (or the nominee appointed in terms of regulation 10(4)) then returns to Scotland with the child.

### **Duty of prospective adopter to notify local authority**

**13.** A prospective adopter to whom regulation 12 applies shall, within the period of fourteen days beginning with the date on which that person (or the nominee) brings the child into the United Kingdom, give notice to the local authority within whose area that person has their home ("the relevant local authority") of—

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(4) 1980 c. 44.

(5) See regulation 6(1) of the Adoption Agencies Regulations.

- (a) that person's intention to apply for an adoption order to be made as a Convention adoption order in accordance with section 22 of the 1978 Act; or
- (b) that person's intention not to proceed with the adoption.

#### **Duty of prospective adopters where child is placed with them**

14.—(1) The prospective adopter with whom the child is placed shall not be obliged to allow the child to visit or stay with any person, or otherwise to allow contact between the child and any person, except under and in terms of a contact order.

(2) Subject to paragraphs (3) and (4), the prospective adopter shall 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 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 prevent the removal of the child for a period of less than one month by the prospective adopter.

#### **Return of the child by the prospective adopter**

15. Where the child is placed with the prospective adopter or regulation 18 applies and the prospective adopter gives notice to the relevant local authority that the prospective adopter does not wish to proceed with the adoption and no longer wishes to give the child a home, that authority shall—

- (a) receive the child from the prospective adopter before the end of the period of 7 days beginning with the giving of such notice; and
- (b) notify the Central Authority of the prospective adopter's decision not to proceed with the adoption.

#### **Removal of the child by the relevant local authority**

16.—(1) Subject to paragraph (4), where the child is placed with the prospective adopter or regulation 18 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 local authority shall give notice to the prospective adopter of their opinion.

(2) The prospective adopter shall, not later than the end of the period of 7 days beginning with the giving of notice under paragraph (1), surrender the child to the relevant local authority.

(3) Where the relevant local authority gives notice under paragraph (1), it shall also give notice to the Central Authority that it has requested the surrender 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) that application has not been disposed of,

the prospective adopter shall not be obliged by virtue of the notice to return the child to the relevant local 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**

17.—(1) This regulation applies where—

- (a) the prospective adopter notifies the relevant local authority under regulation 15 that the prospective adopter does not wish to proceed with the adoption;
- (b) the relevant local authority has removed the child from the home of the prospective adopter whether in accordance with regulation 16 or under any other power competent to it; 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 1978 Act<sup>(6)</sup>.

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

(3) Where the relevant local authority 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 it shall seek to identify a suitable adoptive parent for the child.

(4) Where the relevant local authority has identified another prospective adopter who is eligible to adopt and has been assessed in accordance with these Regulations (or their equivalent applying elsewhere in the British Islands) and approved as suitable to be an adoptive parent in accordance with regulations 3 to 8, that authority shall inform the Central Authority and the requirements specified in regulation 9(1) shall apply so that it may, in turn, inform SOCA of the proposed placement and agree that placement with SOCA in accordance with the procedures set out in Part 2 of these Regulations.

(5) Where the Central Authority has received notice in terms of paragraph (4), it shall—

- (a) notify SOCA of the proposed placement; and
- (b) seek to agree that placement with SOCA in accordance with the provisions in this Part of these Regulations.

(6) Where the relevant local authority is not satisfied that it would be in the child's best interests to be placed for adoption with another prospective adopter in the United Kingdom, it shall liaise with the Central Authority to arrange for the return of the child to that child's State or origin.

### **Convention adoptions subject to a probationary period**

18.—(1) This regulation applies where—

- (a) the child has been placed with the prospective adopters by the competent authority of the State of origin;
- (b) 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
- (c) either the prospective adopter returns to Scotland with the child or the child travels to Scotland with a nominee appointed in terms of regulation 10(4), before that probationary period is completed and before the Convention adoption is made in the State of origin.

(2) The relevant local authority shall, 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 shall contain such information as the competent authority may reasonably require.

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<sup>(6)</sup> Section 53(1) of the 1978 Act was amended by section 6 of the 1999 Act.



### **Procedural requirements following a Convention adoption order or Convention adoption**

**19.**—(1) Where a Convention adoption order is made by a court in Scotland, the court shall send a copy of that order to the Central Authority.

(2) On receipt of an order sent under paragraph (1), the Central Authority shall 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) shall be sent to—

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

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

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

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

**20.**—(1) Where an application for a Convention adoption order is refused by the court the prospective adopter shall surrender the child to the relevant local authority within the period determined by the court for that purpose.

(2) Subject to paragraph (3), where an application for a Convention adoption order is withdrawn and the prospective adopter notifies the adoption agency that the prospective adopter does not intend to submit a fresh application for a Convention adoption order, then the prospective adopter shall surrender the child to the relevant local authority within 7 days after such notification.

(3) Notwithstanding paragraph (2), where an application for a Convention adoption order is withdrawn and a fresh application for a Convention adoption order has not been submitted to the court within 28 days after the date of such withdrawal or such longer period as the relevant local authority may agree in writing, the prospective adopter shall surrender the child to the relevant local authority within 7 days of the expiry of that period.

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

**21.** Where a Convention adoption order or a Convention adoption is annulled under section 53(1) of the 1978 Act the court shall 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 local authority.