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SCOTTISH STATUTORY INSTRUMENTS

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**2003 No. 19**

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

**PART 3**

*Procedure in Scotland where the United Kingdom is the State of origin*

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

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

- (a) a local authority—
  - (i) has decided that adoption is in the best interests of a child under regulation 11(1) of the Adoption Agencies Regulations;
  - (ii) has considered the possibilities for placement of that child within the British Islands; and
  - (iii) considers that adoption by a person habitually resident in a Convention country outside the British Islands may be in the child's best interests; and
- (b) the child is free for adoption by virtue of an order made under section 18 of the 1978 Act, section 18 of the Adoption Act 1976(1) or Article 17(1) or 18(1) of the Adoption (Northern Ireland) Order 1987(2).

(2) The local authority shall refer the case of the child to the adoption panel together with—

- (a) the documents referred to in regulation 8 of the Adoption Agencies Regulations originally sent to the adoption panel; and
- (b) a report from the child's social worker—
  - (i) explaining why that social worker considers that adoption by a person habitually resident in a Convention country outside the British Islands may be in the child's best interests; and
  - (ii) if appropriate, having regard to the child's age and understanding, setting out the child's views and wishes in relation to adoption.

**Function of the adoption panel in assessing the child**

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

(2) In considering what recommendation to make, the adoption panel shall have regard to the duties imposed upon the local authority by sections 6, 6A and 7 of the 1978 Act (duty to promote the welfare of the child and religious upbringing of adopted child) and shall—

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(1) 1976 c. 36.  
(2) S.I.1987/2204.

- (a) consider and take into account all of the information and the reports passed to it under regulation 22(2);
- (b) request the local authority 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.

### **Decision and notification**

24.—(1) The local authority shall make a decision on the matter referred to the adoption panel within 14 days after the date of recommendation by the adoption panel and shall do so 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 local authority under paragraph (1).

(3) The local authority shall, within 7 days of making its decision, 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 on which the freeing order under section 18 of the Adoption Act 1976, section 18 of the 1978 Act or Article 17 (1) or 18 (1) of the Adoption (Northern Ireland) Order 1987 was made; and
- (d) any other information that Authority may require.

(4) The Central Authority shall maintain a list of children who are notified to it under paragraph (3).

(5) The Central Authority shall make the contents of the Convention list available for inspection by the other central authorities within the British Islands on request.

(6) In the event that a local authority either completes an alternative placement for a child who is the subject of a notification in terms of paragraph (3) or otherwise 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, that local authority shall notify the Central Authority of that fact and the Central Authority shall amend the Convention list accordingly.

(7) Subject to paragraph (8), within 7 days of the decision under paragraph (1), the local authority shall notify in writing the parents of the child including, where the local authority considers this to be in the child's best interests, the father or mother of the child who is a parent in terms of section 15 (1) of the Children (Scotland) Act 1995 but who does not have parental responsibilities, or the guardian of the child if their whereabouts are known to the local authority, that the child has been approved in principle for adoption in a Convention country outside the British Islands.

(8) No notification shall be given in terms of paragraph (7) to a person who has made a declaration under section 18 (6) or 19 (4) of the 1978 Act (declaration as to no further involvement with the child) and has not withdrawn that declaration under section 19 of the 1978 Act.

(9) In this regulation and in regulation 25 “Convention list” means—

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

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

25.—(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;
- (b) the Article 15 report relates to a prospective adopter who is habitually resident in the receiving State and has applied for a determination as to suitability and eligibility to adopt in terms of Article 5 of the Convention (a “Convention prospective adopter”); and
- (c) the Convention prospective adopter wishes to adopt a child who is habitually resident in Scotland.

(2) If the Central Authority is satisfied that the Convention prospective adopter meets those requirements as to age and marital status which are required to be met if an adoption order were to be made in Scotland in favour of that person, the Central Authority shall consult the Convention list and, 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 the other Central authorities within the British Islands for the purpose of enabling those authorities to consult their Convention list.

(4) Where the Central Authority identifies a child who may be suitable to be adopted by the Convention prospective adopter, it shall send the Article 15 report to the local authority which referred the child’s details to the Central Authority.

(5) The local authority shall consider the report and where it considers that it may be appropriate to place the child for adoption with the Convention prospective adopter it shall refer the proposed placement for adoption to the adoption panel together with—

- (a) the Article 15 report;
- (b) the documents referred to in regulation 22(2);
- (c) its observations on the proposed placement; and
- (d) any other relevant information about the child.

### **Function of adoption panel in assessing proposed placement**

**26.**—(1) The adoption panel shall consider the proposed placement referred to it by the local authority under regulation 25(5) and make a recommendation to the local authority, as to whether—

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

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

- (a) shall have regard to the child’s upbringing and the child’s ethnic, religious and cultural background;
- (b) shall have regard to the duties imposed upon it by sections 6, 6A and 7 of the 1978 Act (duty to promote welfare of child and religious upbringing of adopted child);
- (c) shall have regard to the documents referred to it under regulation 25(5);
- (d) may ask the local authority 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.

(3) The local authority shall make a decision about the proposed placement within 14 days after the date of decision by the adoption panel and shall do so only after having taken into account the recommendations of the adoption panel.

(4) No member of an adoption panel shall take part in any decision made by the local authority under paragraph (3).

(5) Subject to paragraph (6), within 7 days of the decision under paragraph (3), the local authority shall notify in writing the parents of the child including, where the local authority considers this to be in the child's best interests, the father or mother of the child who is a parent in terms of section 15 (1) of the Children (Scotland) Act 1995 but who does not have parental responsibilities, or the guardian of the child if their whereabouts are known to the local authority, that the child has been placed for adoption in a Convention country outside the British Islands.

(6) No notification shall be given in terms of paragraph (5) to a person who has made a declaration under section 18 (6) or 19 (4) of the Act (declaration as to no further involvement with the child) and has not withdrawn that declaration under section 19 of the Act.

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

**27.**—(1) Where the local authority decides under regulation 26 that the proposed placement is in the best interests of the child and the adoption may proceed, it shall prepare a report for the purposes of Article 16 of the Convention (“the Article 16 report”) which shall 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 local authority shall, within 14 days of the date of the decision under paragraph 26(3), send the Article 16 report to the Central Authority together with the evidence that a freeing order has been made in respect of the child.

(3) The Central Authority shall send the Article 16 report and other information referred to it 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 either—
  - (i) the Convention prospective adopter will accompany the child to the receiving State; or
  - (ii) in exceptional circumstances, the child will be accompanied by a nominee of the Convention prospective adopter who has been approved by the local authority;
- (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) The Central Authority may not make an agreement under Article 17(c) of the Convention with the RSCA unless the local authority have confirmed that—

- (a) it has met the Convention prospective adopter;
- (b) the Convention prospective adopter (or, where the Convention Prospective adopter is a married couple and there are exceptional circumstances, one of them) has visited the child; and
- (c) it is content for the adoption to proceed.

(6) A local authority shall not place a child for adoption with a Convention prospective adopter unless the agreement under Article 17(c) of the Convention has been made and the relevant Central Authority shall advise the local authority when that agreement has been made.

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

**28.**—(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 under paragraph (1), the Central Authority shall 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 shall be sent to—

- (a) the RSCA; and
- (b) the local authority.

**Procedural requirements following receipt of Article 23 certificate**

**29.** Where the Central Authority receives a certificate in terms of Article 23 of the Convention from the RSCA, it shall send a copy of that certificate to—

- (a) the local authority; and
- (b) the Registrar General for Scotland.