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SCOTTISH STATUTORY INSTRUMENTS

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**2003 No. 19**

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

**PART 4**

*Miscellaneous*

**Requirements prescribed for the purposes of section 17 of the 1978 Act**

**30.**—(1) The requirements which must be complied with for the purposes of section 17 of the 1978 Act are those prescribed in paragraphs (2) and (3).

- (2) Where the United Kingdom is the receiving State the requirements are that—
- (a) both spouses (in the case of an application by a married couple) or the applicant (in the case of an application by one person) have been habitually resident in part of the British Islands for a period of not less than 1 year ending with the date of the application;
  - (b) the child to be adopted—
    - (i) has not attained the age of 18 years on the date of the application for a Convention adoption order;
    - (ii) 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
    - (iii) has, if over the age of twelve years, consented to the making of the Convention adoption order except where the court is satisfied that the child is incapable of giving consent to the making of the order; and
  - (c) in a case where the applicant (in the case of an application by one person) or one of the spouses (in the case of an application by a married couple) is not a British citizen by virtue of section 1 of the British Nationality Act 1981<sup>(1)</sup>, the Home Office has confirmed that the child is authorised to enter and reside permanently in the United Kingdom.
- (3) Where the United Kingdom is the State of origin the requirements are that—
- (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; and
  - (b) the child to be adopted—
    - (i) has not attained the age of 18 years on the date of the application for a Convention adoption order;
    - (ii) is free for adoption by virtue of an order made under section 18 of the 1978 Act, section 18 of the Adoption Act 1976, or Article 17(1) or 18(1) of the Adoption (Northern Ireland) Order 1987; and
    - (iii) is habitually resident in part of the British Islands on the date of the application.

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(1) 1981 c. 61.

### **Application, with modifications, of provisions of the 1978 Act**

31. The provisions of the 1978 Act set out in column 1 of Schedule 3 to these Regulations shall have effect with the modifications set out in column 2 of that Schedule in relation to Convention adoption orders and Convention adoptions.

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

32. The provisions of the Adoption Agencies Regulations set out in column 1 of Schedule 4 to these Regulations shall have effect with the modifications set out in column 2 of that Schedule in relation to Convention adoption orders and Convention adoptions.

### **Application with modifications of the provisions of the 2001 Regulations**

33. The provisions of the 2001 Regulations set out in Column 1 of Schedule 6 to these Regulations shall have effect with the modifications set out in Column 2 of that Schedule in relation to Convention adoptions or to Convention adoption orders.

### **Offences**

34. Any person who contravenes or fails to comply with—
- (a) regulation 13 (notification to local authority);
  - (b) regulation 16(2) (surrender of child to local authority);
  - (c) regulation 16(4) (surrender of child as ordered by the Court);
  - (d) regulation 20(1) (refusal of Court to make a Convention adoption order);
  - (e) regulation 20(2) (surrender of child after notification of withdrawal); or
  - (f) regulation 20(3) (surrender of child after deemed withdrawal)

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

### **Transitional 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 not been referred, before the date that these Regulations come into force, by the adoption agency (dealing with the case) to the adoption panel.

(2) No application may be made for a Convention adoption order under section 17 of the 1978 Act unless the arrangements for the adoption of the child have been made in accordance with these Regulations.