
STATUTORY INSTRUMENTS

2003 No. 118

The Intercountry Adoption (Hague Convention) Regulations 2003

PART 2

Requirements, procedure, recognition and effect of adoption in England and Wales 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 shall apply to an adoption agency for a determination of eligibility, and an assessment of his suitability, to adopt.

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

Eligibility requirements

4. An adoption agency may not consider any 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—
 - (i) attained the age of 21 years; and
 - (ii) been habitually resident in any part of the British Islands for a period of not less than 1 year ending with the date of the application; or
- (b) in the case of an application by one person, he—
 - (i) has attained the age of 21 years; and
 - (ii) has been habitually resident in any part of the British Islands for a period of not less than 1 year ending with the date of the application.

Requirement to provide counselling and information

5.—(1) 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 that paragraph have been carried out in respect of the prospective adopter by another adoption agency.

Requirement to carry out police checks

- 6.—(1) An adoption agency must take steps to obtain—
- (a) in respect of the prospective adopter, an enhanced criminal record certificate within the meaning of section 115 of the Police Act 1997⁽¹⁾ including the matters specified in subsection (6A) of that section; and
 - (b) in respect of any other member of his household aged 18 or over, an enhanced criminal record certificate under section 115 of that Act.
- (2) An adoption agency may not consider a person to be suitable to be an adoptive parent if he or any member of his household aged 18 or over—
- (a) has been convicted of an offence specified in Schedule 2 to the Adoption Agencies Regulations committed at the age of 18 or over; or
 - (b) has been cautioned by a constable in respect of such an offence which, at the time the caution was given, he admitted.

Requirement to notify

- 7.—(1) The adoption agency must notify a prospective adopter in writing as soon as possible after becoming aware that—
- (a) he is not eligible to adopt because he does not meet the requirements of regulation 4; or
 - (b) he is not suitable to be an adoptive parent by virtue of regulation 6.
- (2) In a case to which paragraph (1)(b) applies the notification must specify the conviction, or as the case may be, the caution in question.

Procedure in respect of carrying out an assessment

- 8.—(1) Where the adoption agency—
- (a) is satisfied that the prospective adopter is eligible to adopt in accordance with the provisions in regulation 4; and
 - (b) considers he may be suitable to be an adoptive parent following any information provided or made available as a consequence of the carrying out of the requirements imposed by regulation 5 or otherwise,
- it must set up a case record in respect of him and place on it any information obtained under that regulation or otherwise.
- (2) The adoption agency must obtain such particulars as are referred to in Part VI of Schedule 1 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 registered medical practitioner about the health of the prospective adopter which must deal with matters specified in Part VII of Schedule 1 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,

(1) 1997 c. 50.

and in a case where the agency is not the local authority in whose area the prospective adopter has his home, it must also obtain a written report about him from that authority.

- (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 agency's assessment of the prospective adopter's suitability to be an adoptive parent;
 - (c) include any other observations of the agency on the matters referred to in regulations 3 to 6 and 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 for 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 agency's report referred to in paragraph (4), inviting him to send any observations in writing to the agency on the report within 28 days, beginning with 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.

Function of adoption panel

9.—(1) Subject to paragraph (2), the function of an adoption panel is to consider the case of the prospective adopter referred to it by the adoption agency and make a recommendation to that 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 8(6);
 - (b) may request the adoption agency to obtain any other relevant information which the panel considers necessary; and
 - (c) may obtain legal advice as it considers necessary in relation to the case.

Adoption agency decision and notification

10.—(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 decide 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 consider 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 that 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 representations 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 representations, 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 receive further representations from the prospective adopter, it may refer the case together with all the relevant information to the 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 they do not consider the prospective adopter to be suitable to be an adoptive parent, and of the adoption panel's recommendations, if this is different from the adoption agency's decision.

Procedure following approval by adoption agency

11.—(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 (“the decision”) it must send to the relevant Central Authority—

- (a) written confirmation of the decision; and
- (b) the report prepared for the purpose of regulation 8(4).

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

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

- (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;
 - (iv) child will be authorised to enter and reside permanently in 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(2) is made;
- (b) a copy of the decision; and
- (c) a copy of the report prepared for the purpose of regulation 8(4).

(2) Section 72(1) of the 1976 Act as amended by section 8 of the 1999 Act defines “Convention adoption” and “Convention adoption order”.

(4) The relevant 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 the CA of the State of origin.

Procedure following receipt of the Article 16 Information from the CA of the State of origin

12.—(1) Where the relevant Central Authority receive from the CA of the State of origin, the Article 16 Information relating to the child whom the CA of the State of origin considers should be placed for adoption with the prospective adopter, the relevant Central Authority must send that Information to the adoption agency.

(2) The adoption agency must consider the Article 16 Information and—

- (a) send that Information to the prospective adopter;
- (b) meet with him to discuss the Article 16 Information and the proposed placement; and
- (c) if appropriate, offer a counselling service and further information as required.

(3) Where—

- (a) the procedure in paragraph (2) has been followed;
- (b) the prospective adopter (and where the prospective adopters are a married couple each of them) has visited the child in the State of origin; and
- (c) after that visit to the child, the prospective adopter confirmed in writing that he—
 - (i) has visited that child; and
 - (ii) wishes to proceed to adopt the child,

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

(4) Where the relevant Central Authority has received notification from the adoption agency under paragraph (3), the relevant Central Authority shall—

- (a) notify the CA of the State of origin that—
 - (i) the prospective adopter wishes to proceed to adopt the child;
 - (ii) it is prepared to agree with the CA of the State of origin that the adoption may proceed; and
- (b) confirm to the CA of the State of origin that—
 - (i) in the case where the requirements specified in section 1(5A) of the British Nationality Act 1981⁽³⁾ 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.

(5) The relevant Central Authority must inform the adoption agency and the prospective adopter when the agreement under Article 17(c)(4) of the Convention has been made.

(6) If, at any stage before the agreement under Article 17(c) of the Convention is made, the CA of the State of origin notifies the relevant Central Authority that it has decided the proposed placement

(3) 1981 c. 61. Section 1 is amended by section 7 of the 1999 Act.

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

should not proceed, the relevant Central Authority must inform the adoption agency of the CA of the State of origin's decision and the agency must then inform the prospective adopter and return the documents referred to in paragraph (2) to that Authority who must then return them to the CA of the State of origin.

(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, that agency must inform the relevant Central Authority and return the documents to that Authority who must in turn notify the CA of the State of origin of the prospective adopter's decision and return the documents to the CA of the State of origin.

(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 unless, in the case of a married couple, the agency and the CA of the State of origin have agreed that it is necessary for only one of them to do so.

(9) For the purposes of this regulation "the Article 16 Information" means—

- (a) the report referred to in Article 16(1) of the Convention including 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;
- (b) proof of confirmation that the consents of the persons, institutions and authorities whose consents are necessary for adoption have been obtained in accordance with Article 4 of the Convention; and
- (c) the reasons for the CA of the State of origin's determination on the placement.

Duty of adoption agency before the arrival of the child in England or Wales

13. Where the adoption agency is informed by the relevant Central Authority that the agreement under Article 17(c) of the Convention has been made and the adoption may proceed, that 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 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 his home, notify that authority of the particulars of the placement; and
- (c) notify the local education authority 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 section 8 of the Education Act 1996⁽⁵⁾ or the adoption agency's medical adviser⁽⁶⁾ considers the child to have special needs or to be disabled.

Requirements following arrival of the child in the United Kingdom but no Convention adoption is made in the State of origin

14. Regulations 15 to 19 apply where, following agreement between the relevant Central Authority and the CA of the State of origin 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 England or Wales with the child.

(5) 1996 c. 56.

(6) See regulation 6(4) of the Adoption Agencies Regulations.

Duty of prospective adopter to notify local authority

15. A prospective adopter with whom the child is placed 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 local authority within whose area he has his home (“the relevant local authority”) of—

- (a) his intention to apply for an adoption order to be made as a Convention adoption order in accordance with section 22 of the 1976 Act (notification to local authority of adoption application); or
- (b) his intention not to give the child a home.

Duty of prospective adopter where the child is placed with them

16.—(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 local authority agree.

(3) Paragraph (2)(a) does not apply if the competent authority of the State of origin has agreed 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.

Prospective adopter unable to proceed with application to adopt

17. Where the child is placed with the prospective adopter or regulation 20 applies and the prospective adopter gives notice to the relevant local authority that he does not wish to proceed with the adoption and no longer wishes to give the child a home, that authority must—

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

Removal of the child by the relevant authority

18.—(1) Subject to paragraph (4), where the child is placed with the prospective adopter or regulation 20 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 authority must give notice to the prospective adopter of their opinion.

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

(3) Where the relevant local authority give notice under paragraph (1), they must also give notice to the relevant Central Authority that they have requested the return 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) the application has not been disposed of,

the prospective adopter is not required by virtue of the notice to return the child to the 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

19.—(1) This regulation applies where—

- (a) the prospective adopter notifies the relevant local authority under regulation 17 that he does not wish to proceed with the adoption;
- (b) the relevant local authority have removed the child from the home of the prospective adopter in accordance with regulation 18; 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 1976 Act⁽⁷⁾.

(2) Where the relevant local authority are 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 local authority have 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 10—

- (a) that authority must notify the relevant Central Authority in writing that—
 - (i) another prospective adopter has been identified; and
 - (ii) the requirements, procedures and notifications as provided for in regulations 3 and 10 have been complied with; and
- (b) the requirements specified in regulation 11(1) shall apply in respect of that prospective adopter.

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

- (a) regulation 11(2) to (4) shall apply in respect of that other prospective adopter;
- (b) it shall inform the CA of the State of origin of the proposed placement; and
- (c) it shall agree that placement with the CA of the State of origin in accordance with the provisions in this Part of these Regulations.

(5) Where the relevant local authority are not satisfied it would be in the child's best interests to be placed for adoption with another prospective adopter in England or Wales, it must liaise with the relevant 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 local authority 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 adoptions subject to a probationary period

20.—(1) This regulation applies where—

- (a) the child has been placed with the prospective adopters 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

(7) Section 53(1) of the 1976 Act was amended by section 6 of the 1999 Act.

(b) the prospective adopter returns to England or Wales with the child before that probationary period is completed and the Convention adoption is made in the State of origin.

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

Prescribed requirements for the purposes of making a Convention adoption order

21.—(1) For the purposes of section 17 of the 1976 Act⁽⁸⁾ (requirements in respect of adoption order made as a Convention adoption order), where the United Kingdom is the receiving State the prescribed requirements are—

- (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 any 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 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 an application by a married couple) is not a British citizen by virtue of the British Nationality Act 1981, 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

22.—(1) Where a Convention adoption order is made by a court in England or Wales, the court must send a copy of that order to the relevant Central Authority.

(2) On receipt of an order under paragraph (1), the relevant 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) the CA of the State of origin;
- (b) the adoptive parents; and
- (c) the adoption agency and, if different, the relevant local authority.

(4) Where the relevant Central Authority receive a certificate under Article 23⁽⁹⁾ of the Convention in respect of a Convention adoption made in that Convention country, the relevant Central Authority must send a copy of that certificate to—

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

Refusal of a court in England or Wales to make a Convention adoption order

23. Where an application for a Convention adoption order is refused by the court or is withdrawn, the prospective adopter must return the child to the relevant local authority within the period determined by the court.

⁽⁸⁾ Section 17 of the 1976 Act is amended by section 3 of the 1999 Act.

⁽⁹⁾ 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 must specify when and by whom the agreement that the adoption could proceed was given.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Annulment of a Convention adoption order or a Convention adoption

24. Where a Convention adoption order or a Convention adoption is annulled under section 53(1) of the 1976 Act the court must send a copy of the order to—

- (a) the relevant Central Authority for onward transmission to the CA of the State of origin;
- (b) the adoptive parents; and
- (c) the adoption agency and, if different, the relevant local authority.