
STATUTORY INSTRUMENTS

2003 No. 118

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

PART 3

*Requirements and procedure in England and Wales
where the United Kingdom is the State of origin*

Duty of adoption agency in respect of assessment of a child

25.—(1) This regulation applies where—

- (a) a local authority (referred to in this Part as “the LA”)—
 - (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
 - (b) the child is free for adoption by virtue of an order made under section 18 of the 1976 Act, section 18 of the Adoption (Scotland) Act 1978(1) or Article 17(1) or 18(1) of the Adoption (Northern Ireland) Order 1987(2).
- (2) The LA 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 interests, and
 - (ii) if appropriate, having regard to the child’s age and understanding, on the child’s views and wishes in relation to adoption.

Function of adoption panel

26.—(1) The adoption panel must consider the case of the child and make a recommendation to the LA 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 must have regard to the duties imposed upon the LA by sections 6 and 7 of the 1976 Act (duty to promote the welfare of the child and religious upbringing of adopted child) and must—

(1) 1978 c. 28.

(2) S.I.1987/2203 (N.I. 22).

- (a) consider and take into account all the information and reports passed to it under regulation 25(2);
- (b) request the LA to obtain any other relevant information which the adoption panel considers necessary; and
- (c) obtain legal advice in relation to the case as may be necessary.

Decision and notification

27.—(1) The LA must make a decision on the case referred to the adoption panel 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 LA under paragraph (1).

(3) The LA must notify the relevant Central Authority—

- (a) of the name and age of the child;
- (b) of 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) of the date the freeing order under section 18 of the 1976 Act, section 18 of the Adoption (Scotland) Act 1978 or Article 17(1) or 18(1) of the Adoption (Northern Ireland) Order 1987 was made; and
- (d) of any other information that Authority may require.

(4) The relevant Central Authority is to maintain a list of children who are notified to that Authority 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 LA—

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

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

(6) In this regulation and regulation 28 “Convention list” means—

- (a) in relation to a relevant 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 the Article 15 Report from the CA of the receiving State

28.—(1) This regulation applies where—

- (a) the relevant Central Authority receives a report from the CA of the receiving State which has been prepared for the purposes of Article 15 of the Convention⁽³⁾ (“the Article 15 Report”);

(3) Article 15 provides for the CA of the receiving State if satisfied that the applicants are eligible and suited 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.

- (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 England or Wales.

(2) If the relevant Central Authority is satisfied the Convention prospective adopter meets the following requirements—

- (a) in respect of age and marital status as provided for in sections 14 and 15 of the 1976 Act; and
- (b) in the case of a married couple, both Convention prospective adopters are, or in the case of a single Convention prospective adopter, that prospective adopter is habitually resident in a Convention country outside the British Islands,

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

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

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

(5) The LA 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 25(2);
- (c) its observations on the proposed placement; and
- (d) any other relevant information about the child.

Duty of adoption panel in respect of proposed placement

29.—(1) The adoption panel must consider the proposed placement referred to it by the LA under regulation 25 and make a recommendation to the LA, 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) must have regard to the child’s upbringing and his ethnic, religious and cultural background;
- (b) must have regard to the duties imposed upon the LA by sections 6 and 7 of the 1976 Act (duty to promote welfare of child and religious upbringing of adopted child);
- (c) must have regard to the documents and the Article 15 Report referred to it under regulation 28(4);
- (d) may request the LA to obtain any other relevant information which the adoption panel considers necessary; and
- (e) may obtain legal advice as it considers necessary in relation to the case.

LA decision in respect of placement

30.—(1) The LA 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 LA under paragraph (1).

Preparation of the Article 16 information for the CA of the receiving State

31.—(1) Where the LA decides under regulation 30 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 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 their decision.

(2) The LA must send the report referred to in paragraph (1) to the relevant Central Authority together with—

- (a) evidence that a freeing order has been made in respect of the child;
- (b) written observations relating to the child’s upbringing and to his or her ethnic, religious and cultural background; and
- (c) the report, if any, referred to in regulation 25(2)(b)(ii).

(3) The relevant Central Authority must send the report and information referred to it under paragraph (2) to the CA of the receiving State.

(4) The relevant Central Authority may notify the CA of the receiving State that it is prepared to agree that the adoption may proceed provided that CA 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, unless where the Convention prospective adopter is a married couple, the LA and the CA of the receiving State have agreed that it is necessary for only one of them to do so;
- (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 relevant Central Authority may not make an agreement under Article 17(c) of the Convention with the CA of the receiving State unless the LA have confirmed to that Authority that—

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

(6) A LA 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 relevant Central Authority must advise the LA when that agreement has been made.

(7) In paragraph (5), the reference to “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

32. For the purposes of section 17 of the 1976 Act⁽⁴⁾ (requirements in respect of an adoption order made as a Convention adoption order) 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) are, or the applicant (in the case of an application by one person) is, 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 section 18 of the 1976 Act, section 18 of the Adoption (Scotland) Act 1978, or Article 17(1) or 18(1) of the Adoption (Northern Ireland) Order 1987;
- (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

33.—(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 Convention adoption order has been made in accordance with the Convention.

- (3) A copy of the certificate must be sent to the—
- (a) CA of the receiving State; and
 - (b) LA.

(4) Where the relevant Central Authority receives a certification of the adoption having been made in accordance with the Convention from the competent authority of the receiving State, the relevant Central Authority must send a copy of that certification to the LA.

(4) 1976 c. 36. Section 17 is amended by section 3 of the Adoption (Intercountry Aspects) Act 1999.