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STATUTORY RULES OF NORTHERN IRELAND

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**2003 No. 16**

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

**PART II**

**REQUIREMENTS, PROCEDURE, RECOGNITION AND  
EFFECT OF ADOPTION IN NORTHERN IRELAND 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 under the Convention must apply to an adoption agency for a determination of eligibility and an assessment of his suitability to adopt.

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

**Eligibility requirements and requirement to notify**

4.—(1) An adoption agency may not consider a 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 attained the age of 21 years and the requirement prescribed in regulation 19(1)(a) is complied with; or
- (b) in the case of an application by one person, he has attained the age of 21 years and one of the conditions in article 15(1) of the 1987 Order is satisfied and the requirement prescribed in regulation 19(1)(a) is complied with.

(2) The adoption agency must notify a prospective adopter in writing as soon as possible after becoming aware that he is not eligible to adopt because he does not meet the requirements of paragraph (1).

**Requirement to provide counselling and information**

5.—(1) Subject to paragraph (2), 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 paragraph (1) have been carried out in respect of the prospective adopter by another adoption agency.

### **Procedure in respect of carrying out an assessment**

6.—(1) Where, following the procedures referred to in paragraph (1) of regulation 5, and subject to paragraph (1) of regulation 4, the adoption agency is satisfied that the prospective adopter is eligible to adopt and considers he may be suitable to be an adoptive parent it must set up a case record in respect of him and place on it any information obtained under this regulation.

(2) The adoption agency must obtain such particulars as are referred to in Part VI of the Schedule 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 medical practitioner about the health of the prospective adopter which must deal with matters specified in Part VII of the Schedule 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,

and in a case where the adoption agency is not the HSS trust in whose area the prospective adopter has his home, it must also obtain a written report about him from the relevant HSS trust.

(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 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 regulations 4 and 5 and in 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 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 adoption agency's report referred to in paragraph (4), inviting him to send any observations in writing to the adoption agency on the report within 28 days, beginning on 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.

### **Adoption panel function**

7.—(1) Subject to paragraph (2), the adoption panel must consider the case of the prospective adopter referred to it by the adoption agency and 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) must consider and take into account all information and reports passed to it in accordance with regulation 6(6);

- (b) may request the adoption agency to obtain any other relevant information which the adoption panel considers necessary; and
- (c) may obtain legal advice as it considers necessary in relation to the case.

#### **Adoption agency decision and notification**

**8.**—(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 decides 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 considers 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 the 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 representation 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 representation, 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 receives further representation from the prospective adopter, it may refer the case together with all the relevant information to its 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 it does not consider the prospective adopter to be suitable to be an adoptive parent, and of the adoption panel's recommendations, if different from the adoption agency's decision.

#### **Procedure where the prospective adopter is approved by the adoption agency**

**9.**—(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 ("its decision") it must send to the Central Authority—

- (a) written confirmation of its decision; and
- (b) the report prepared for the purpose of regulation 6(4).

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

- (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; and
  - (iv) child will be authorised to enter and 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) a copy of the decision; and
- (c) a copy of the report prepared for the purpose of regulation 6(4).

(4) The 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 SOCA.

#### **Procedure following receipt of the Article 16 report from SOCA**

**10.**—(1) Where the Central Authority receives, from SOCA, the Article 16(1) report and other information specified in Article 16(2)(2) of the Convention (“the documents”), relating to the child whom SOCA considers should be placed for adoption with the prospective adopter, the Central Authority must send the Article 16 report and the documents to the adoption agency.

- (2) The adoption agency must consider the Article 16 report and the documents and—
  - (a) send the Article 16 report and the documents to the prospective adopter;
  - (b) meet with him to discuss the Article 16 report and the documents and the proposed placement; and
  - (c) offer a counselling service and further information as required.
- (3) Where—
  - (a) the procedure in paragraph (2) has been followed;
  - (b) the prospective adopter (where the prospective adopters are a married couple, each of them) has visited the child in the State of origin; and
  - (c) after the visit to the child, the prospective adopter has confirmed in writing that he—
    - (i) has visited the child; and
    - (ii) wishes to proceed to adopt the child,
 the adoption agency must notify the Central Authority that the requirements specified in sub-paragraphs (a) to (c) have been satisfied and, at the same time, must confirm that it is content that the adoption should proceed.

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

- (a) notify SOCA that—
  - (i) the prospective adopter wishes to proceed to adopt the child;

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- (1) Article 16(1) provides for SOCA to prepare a report which includes 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; and other specified considerations relating to the child
  - (2) Article 16(2) provides for proof that the necessary consents have been obtained and the reasons for SOCA’s determination on the placement

- (ii) it 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 are met that the child will be authorised to enter and reside permanently within 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 Central Authority must inform the adoption agency and the prospective adopter when the agreement under Article 17(c)(3) of the Convention has been made.
- (6) 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 that the proposed placement should not proceed, the Central Authority must inform the adoption agency of SOCA's decision and the adoption agency must then inform the prospective adopter and return the Article 16 report and the documents referred to in regulation 10(2)(a) to the Central Authority who must then return them to SOCA.
- (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, the adoption agency must inform the Central Authority and return the Article 16 report and the documents to the Central Authority who must in turn notify SOCA of the prospective adopter's decision and return the Article 16 report and the documents to SOCA.
- (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.

### **Duty of adoption agency before the child's arrival in Northern Ireland**

- 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 must–
- (a) send a written report of the child's health history and current state of health, so far as it is known, to:
    - (i) a paediatrician designated by the HSS trust for the purposes of these regulations; and
    - (ii) the prospective adopter's medical practitioner,together with particulars of the placement;
  - (b) in a case where the adoption agency is not the HSS trust within whose area the prospective adopter has his home, notify that HSS trust of the particulars of the placement; and
  - (c) notify the Education and Library Board 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 Article 46 of the Education and Libraries (Northern Ireland) Order 1986(4) or if the adoption agency's medical adviser(5) considers the child to have special needs or to be disabled.

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(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 at 17(c) is that the Central Authority of the State of origin and the receiving State have agreed that the adoption may proceed

(4) S.I.1986/594 (N.I. 3) – Article 46 was substituted by Article 156 of S.I. 1989/2406 (N.I. 20)

(5) See Regulation 6(4) of the Adoption Agencies Regulations

**Requirements following the child’s arrival in Northern Ireland 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 in the State of origin and he then returns to Northern Ireland with the child.

**Duty of prospective adopter to notify HSS trust**

13. A prospective adopter to whom regulation 12 applies 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 HSS trust within whose area he has his home (“the relevant HSS trust”) of–

- (a) his intention to apply for an adoption order to be made as a Convention adoption order in accordance with Article 22 of the 1987 Order; or
- (b) his intention not to give the child a home.

**Duty of prospective adopter where a child is placed with him**

14.—(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 HSS trust 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 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**

15. Where the child is placed with the prospective adopter or regulation 18 applies and the prospective adopter gives notice to the relevant HSS trust that he does not wish to proceed with the adoption and no longer wishes to give the child a home, the relevant HSS trust must–

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

**Surrender of the child to the relevant HSS trust**

16.—(1) Subject to paragraph (4), where the child is placed with the prospective adopter or regulation 18 applies and the relevant HSS trust is 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,

the relevant HSS trust must give notice to the prospective adopter of its opinion and require him to surrender the child to it.

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

(3) Where the relevant HSS trust gives notice under paragraph (1), it must also give notice to the Central Authority that it has required the prospective adopter to surrender the child to it.

(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 surrender the child to the HSS trust unless the court so orders.

(5) This regulation does not affect the exercise by any HSS trust or other person of any power conferred by any statutory provision or the exercise of any power of arrest.

### **Breakdown of placement**

17.—(1) This regulation applies where—

- (a) the prospective adopter notifies the relevant HSS trust under regulation 15 that he does not wish to proceed with the adoption; or
- (b) the prospective adopter has surrendered the child to the relevant HSS trust in accordance with regulation 16; or
- (c) an application for a Convention adoption order is refused, or a Convention adoption or a Convention adoption order is annulled pursuant to Article 55A(6) of the 1987 Order.

(2) Where the relevant HSS trust 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 they must seek to identify a suitable adoptive parent for the child.

(3) Where the relevant HSS trust has 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 8—

- (a) that HSS trust must notify the Central Authority in writing that—
  - (i) another prospective adopter has been identified;
  - (ii) the requirements, procedures and notifications as provided for in regulation 3 and regulation 8 have been complied with; and
- (b) the requirements specified in regulation 9(1) shall apply in respect of that prospective adopter.

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

- (a) regulation 9(2) to (4) shall apply in respect of that other prospective adopter;
- (b) it shall inform SOCA of the proposed placement; and
- (c) it shall agree that placement with SOCA in accordance with the provisions in this Part.

(5) Where the relevant HSS trust is not satisfied that it would be in the child's best interests to be placed for adoption with another prospective adopter in Northern Ireland, it must liaise with the 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 HSS trust 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 adoption subject to a probationary period**

18.—(1) This regulation applies where—

- (a) the child has been placed with the prospective adopter 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
- (b) the prospective adopter returns to Northern Ireland with the child before that probationary period is completed and before the Convention adoption is made in the State of origin.

(2) The relevant HSS trust must, if requested by the competent authority of the State of origin, submit a report about the placement to that competent authority and such a report must be prepared within such a timescale and must contain such information as the competent authority may reasonably require.

### **Prescribed requirements for the purposes of making a Convention adoption order**

19.—(1) For the purposes of Article 16A of the 1987 Order<sup>(7)</sup> (requirements in respect of adoption order made as a Convention adoption order), the prescribed requirements are, in the case where the United Kingdom is the receiving State—

- (a) both spouses (in the case of an application made by a married couple) or the applicant (in the case of an application made by one person) have been habitually resident in part of the British Islands for a period of not less than one 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 a married couple) is not a British citizen by virtue of the British Nationality Act 1981<sup>(8)</sup>, 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 – Article 23 of the Convention**

20.—(1) Where a Convention adoption order is made, the court must send a copy of that adoption order to the Central Authority.

(2) On receipt of an adoption order under paragraph (1), the 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) SOCA;
  - (b) the adoptive parents; and
  - (c) the adoption agency and, if different, the relevant HSS trust.

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<sup>(7)</sup> Article 16A of the 1987 Order was inserted by section 3 of the 2001 Act

<sup>(8)</sup> 1981 c. 61



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

- (a) the adoptive parents; and
- (b) the adoption agency and, if different, the relevant HSS trust.

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

**21.**—(1) Where an application for a Convention adoption order is refused by the court or is withdrawn, the relevant HSS trust must decide on a plan for the child’s permanent care.

(2) Before coming to any decision under paragraph (1), the relevant HSS trust 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.

(3) If the court so orders, the prospective adopter must surrender the child to the relevant HSS trust within the period determined by the court for the purpose.

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

**22.** Where a Convention adoption order or a Convention adoption is annulled under Article 55A of the 1987 Order, the court must 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 HSS trust.

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(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 shall certify when and by whom the agreement that the adoption could proceed was given