



# Adoption (Intercountry Aspects) Act 1999

## 1999 CHAPTER 18

An Act to make provision for giving effect to the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, concluded at the Hague on 29th May 1993; to make further provision in relation to adoptions with an international element; and for connected purposes. [27th July 1999]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### *Implementation of Convention*

#### **1 Regulations giving effect to Convention**

- (1) Subject to the provisions of this Act, regulations made by the Secretary of State may make provision for giving effect to the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, concluded at the Hague on 29th May 1993 (“the Convention”).
- (2) The text of the Convention (so far as material) is set out in Schedule 1 to this Act.
- (3) Regulations under this section may—
  - (a) apply, with or without modifications, any provision of the enactments relating to adoption;
  - (b) provide that any person who contravenes or fails to comply with any provision of the regulations is to be 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;
  - (c) make different provision for different purposes or areas; and
  - (d) make such incidental, supplementary, consequential or transitional provision as appears to the Secretary of State to be expedient.

- (4) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) Subject to subsection (6), any power to make subordinate legislation under or for the purposes of the enactments relating to adoption includes power to do so with a view to giving effect to the provisions of the Convention.
- (6) Subsection (5) does not apply in relation to any power which is exercisable by the National Assembly for Wales.

## **2 Central Authorities and accredited bodies**

- (1) The functions under the Convention of the Central Authority are to be discharged—
  - (a) separately in relation to England and Scotland by the Secretary of State; and
  - (b) in relation to Wales by the National Assembly for Wales.
- (2) A communication may be sent to the Central Authority in relation to any part of Great Britain by sending it (for forwarding if necessary) to the Central Authority in relation to England.
- (3) An approved adoption society is an accredited body for the purposes of the Convention if the approval extends to the provision of facilities in respect of Convention adoptions and adoptions effected by Convention adoption orders.
- (4) The functions under Article 9(a) to (c) of the Convention are to be discharged by local authorities and accredited bodies on behalf of the Central Authority.
- (5) In this section in its application to England and Wales, “approved adoption society” has the same meaning as in Part I of the Adoption Act 1976 (“the 1976 Act”); and expressions which are also used in that Act have the same meanings as in that Act.
- (6) In this section in its application to Scotland, “approved adoption society” has the same meaning as in section 65(1) (interpretation) of the Adoption (Scotland) Act 1978 (“the 1978 Act”); and expressions which are also used in that Act have the same meanings as in that Act.

### *Convention adoptions*

## **3 Convention adoption orders**

For section 17 of the 1976 and 1978 Acts there shall be substituted—

### **“17 Convention adoption orders**

An adoption order shall be made as a Convention adoption order if—

- (a) the application is for a Convention adoption order; and
- (b) such requirements as may be prescribed by regulations made by the Secretary of State are complied with.”

#### **4 Effect of Convention adoptions in England and Wales**

(1) In subsection (1) of section 38 of the 1976 Act (meaning of “adoption” for purposes of provisions relating to status of adopted children), after paragraph (c) there shall be inserted—

“(cc) which is a Convention adoption;”.

(2) In subsection (2) of section 39 of that Act (status conferred by adoption), for “subsection (3)” there shall be substituted “subsections (3) and (3A)”.

(3) After subsection (3) of that section there shall be inserted—

“(3A) Where, in the case of a Convention adoption, the High Court is satisfied, on an application under this subsection—

- (a) that under the law of the country in which the adoption was effected the adoption is not a full adoption;
- (b) that the consents referred to in Article 4(c) and (d) of the Convention have not been given for a full adoption, or that the United Kingdom is not the receiving State (within the meaning of Article 2 of the Convention); and
- (c) that it would be more favourable to the adopted child for a direction to be given under this subsection,

the Court may direct that subsection (2) shall not apply, or shall not apply to such extent as may be specified in the direction.

In this subsection “full adoption” means an adoption by virtue of which the adopted child falls to be treated in law as if he were not the child of any person other than the adopters or adopter.

(3B) The following provisions of the Family Law Act 1986—

- (a) section 59 (provisions relating to the Attorney General); and
- (b) section 60 (supplementary provision as to declarations),

shall apply in relation to, and to an application for, a direction under subsection (3A) as they apply in relation to, and to an application for, a declaration under Part III of that Act.”

#### **5 Effect of Convention adoptions in Scotland**

(1) In subsection (1) of section 38 of the 1978 Act (meaning of “adoption order” for purposes of provisions relating to status of adopted children), after paragraph (c) there shall be inserted—

“(cc) a Convention adoption;”.

(2) In subsection (1) of section 39 of that Act (status conferred by adoption), in subparagraph (ii) of each of paragraphs (a), (b) and (c), at the beginning there shall be inserted “subject to subsection (2A)”.

(3) After subsection (2) of that section there shall be inserted—

“(2A) Where, in the case of a child adopted under a Convention adoption, the Court of Session is satisfied, on an application under this subsection—

- (a) that under the law of the country in which the adoption was effected the adoption is not a full adoption;

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- (b) that the consents referred to in Article 4(c) and (d) of the Convention have not been given for a full adoption, or that the United Kingdom is not the receiving State (within the meaning of Article 2 of the Convention); and
- (c) that it would be more favourable to the child for a direction to be given under this subsection,

the Court may direct that sub-paragraph (ii) of, as the case may be, paragraph (a), (b) or (c) of subsection (1) shall not apply, or shall not apply to such extent as may be specified in the direction: and in this subsection “full adoption” means an adoption by virtue of which the child falls to be treated in law as if he were not the child of any person other than the adopters or adopter.”

## 6 Annulment of Convention adoptions etc

- (1) For subsection (1) of section 53 of the 1976 Act (annulment etc. of overseas adoptions) there shall be substituted—

“(1) The High Court may, on an application under this subsection, by order annul a Convention adoption or a Convention adoption order on the ground that the adoption or order is contrary to public policy.”;

and the same amendment shall be made to section 47 of the 1978 Act (corresponding provision for Scotland) except that for “the High Court” there shall substituted “the Court of Session”.

- (2) In subsection (5) of each of those sections, after “validity of” there shall be inserted “a Convention adoption, a Convention adoption order,”.
- (3) In subsection (4) of section 54 of the 1976 Act (provisions supplementary to sections 52(3) and 53), and in subsection (4) of section 48 of the 1978 Act (provisions supplementary to sections 46(2) and 47), the definitions of “notified provision” and “relevant time” shall cease to have effect.
- (4) For subsection (1) of section 59 of the 1976 Act (effect of determinations and orders made in Scotland and overseas in adoption proceedings) there shall be substituted—

“(1) Where—

- (a) an authority of a Convention country (other than the United Kingdom) having power under the law of that country—
  - (i) to authorise, or review the authorisation of, a Convention adoption; or
  - (ii) to give or review a decision revoking or annulling such an adoption or a Convention adoption order; or
- (b) an authority of any of the Channel Islands, the Isle of Man or any colony having power under the law of that territory—
  - (i) to authorise, or review the authorisation of, a Convention adoption or an adoption effected in that territory; or
  - (ii) to give or review a decision revoking or annulling such an adoption or a Convention adoption order,

makes a determination in the exercise of that power, then, subject to section 53 and any subsequent determination having effect under this subsection, the determination shall have effect in England and Wales

for the purpose of effecting, confirming or terminating the adoption in question or confirming its termination as the case may be.”;

and the same amendment shall be made to section 53 of the 1978 Act (effect of determinations and orders made in England and Wales and overseas in adoption proceedings) except that for “section 53” there shall be substituted “section 47” and for “England and Wales” there shall be substituted “Scotland”.

## **7 Acquisition of British citizenship by Convention adoptions**

(1) For subsection (5) of section 1 of the British Nationality Act 1981 (acquisition by birth or adoption) there shall be substituted—

“(5) Where—

- (a) any court in the United Kingdom makes an order authorising the adoption of a minor who is not a British citizen; or
- (b) a minor who is not a British citizen is adopted under a Convention adoption,

that minor shall, if the requirements of subsection (5A) are met, be a British citizen as from the date on which the order is made or the Convention adoption is effected, as the case may be.

(5A) Those requirements are that on the date on which the order is made or the Convention adoption is effected (as the case may be)—

- (a) the adopter or, in the case of a joint adoption, one of the adopters is a British citizen; and
- (b) in a case within subsection (5)(b), the adopter or, in the case of a joint adoption, both of the adopters are habitually resident in the United Kingdom.”

(2) In subsection (6) of that section, after “order” there shall be inserted “or a Convention adoption”.

(3) At the end of subsection (8) of that section there shall be inserted “and in this section “Convention adoption” has the same meaning as in the Adoption Act 1976 and the Adoption (Scotland) Act 1978”.

## **8 Meaning of “Convention adoption” and related expressions in 1976 and 1978 Acts**

In subsection (1) of section 72 of the 1976 Act and section 65 of the 1978 Act (interpretation), for the definitions of “the Convention”, “Convention adoption order” and “Convention country” there shall be substituted—

““the Convention” means the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, concluded at the Hague on 29th May 1993;

“Convention adoption” means an adoption effected under the law of a Convention country outside the British Islands, and certified in pursuance of Article 23(1) of the Convention;

“Convention adoption order” means an adoption order made in accordance with section 17;

“Convention country” means any country or territory in which the Convention is in force.”

### *Intercountry adoptions*

## **9 Adoption Service to include intercountry adoptions etc**

After subsection (3) of section 1 of the 1976 and 1978 Acts (establishment of Adoption Service) there shall be inserted—

“(3A) In this Part, references to adoption are to the adoption of children, wherever they may be habitually resident, effected under the law of any country or territory, whether within or outside the British Islands.”

## **10 Approval of adoption societies to provide intercountry adoption services**

After subsection (6) of section 3 of the 1976 Act (approval of adoption societies) there shall be inserted—

“(6A) Approval under this section may be given on terms that the applicant may act as an adoption society either—

- (a) in relation to facilities provided in respect of adoptions other than those mentioned in subsection (6B); or
- (b) in relation to facilities provided in respect of any adoptions, including those so mentioned.

(6B) The adoptions are—

- (a) a Convention adoption;
- (b) an adoption effected by a Convention adoption order;
- (c) an overseas adoption;
- (d) an adoption of a child habitually resident in the British Islands which is not a Convention adoption and is effected under the law of a country or territory outside the British Islands; and
- (e) an adoption of a child habitually resident outside the British Islands which is effected by an adoption order other than a Convention adoption order.”

## **11 Six months residence required for certain intercountry adoptions**

After subsection (3) of section 13 of the 1976 and 1978 Acts (child to live with adopters before order is made) there shall be inserted—

“(4) In relation to—

- (a) an adoption proposed to be effected by a Convention adoption order; or
- (b) an adoption of a child habitually resident outside the British Islands which is proposed to be effected by an adoption order other than a Convention adoption order,

subsection (1) shall have effect as if the reference to the preceding 13 weeks were a reference to the preceding six months.”

## 12 Registration of certain intercountry adoptions

- (1) In subsection (1) of section 50 of the 1976 Act and section 45 of the 1978 Act (Adopted Children Register), for the words from “shall be made” to the end there shall be substituted “such entries as may be—
- (a) directed to be made in it by adoption orders, or
  - (b) required to be made under Schedule 1 to this Act,

and no other entries, shall be made.”

- (2) In paragraph 1 of Schedule 1 to the 1976 and 1978 Acts (registration of adoption orders), sub-paragraph (2) shall cease to have effect.
- (3) For paragraph 3 of Schedule 1 to the 1976 Act there shall be substituted—

### *“Registration of foreign adoptions*

- 3 (1) If the Registrar General is satisfied, on an application under this paragraph, that he has sufficient particulars relating to a child adopted under a registrable foreign adoption to enable an entry to be made in the Adopted Children Register for the child—
- (a) he must make the entry accordingly, and
  - (b) if he is also satisfied that an entry in the Registers of Births relates to the child, he must secure that the entry in those Registers is marked “Adopted” or “Re-adopted”, as the case may be, followed by the name in brackets of the country in which the adoption was effected.
- (2) An entry made in the Adopted Children Register by virtue of this paragraph must be made in the specified form.
- (3) An application under this paragraph must be made, in the specified manner, by a specified person and give the specified particulars.
- (4) In this paragraph—

“registrable foreign adoption” means a Convention or overseas adoption which satisfies specified requirements;

“specified” means specified by regulations made by the Registrar General.”;

and the same amendment shall be made to Schedule 1 to the 1978 Act (corresponding provision for Scotland) except that for “the Registrar General” (in both places) there shall be substituted “the Registrar General for Scotland”, for “the Registers of Births” there shall be substituted “the register of births” and for “those Registers” there shall be substituted “that register”.

- (4) In paragraph 4(5)(a) of Schedule 1 to the 1976 Act and paragraph 4(4)(a) of Schedule 1 to the 1978 Act, after “that” there shall be inserted “a Convention adoption,”.

## 13 Construction of certain references in 1976 and 1978 Acts

After subsection (3) of section 72 of the 1976 Act and section 65 of the 1978 Act (interpretation) there shall be inserted—

“(3A) In this Act, in relation to the proposed adoption of a child resident outside the British Islands, references to arrangements for the adoption of a child include references to arrangements for an assessment for the purpose of indicating whether a person is suitable to adopt a child or not.

(3B) In this Act, in relation to—

- (a) an adoption proposed to be effected by a Convention adoption order; or
- (b) an adoption of a child habitually resident outside the British Islands which is proposed to be effected by an adoption order other than a Convention adoption order,

references to a child placed with any persons by an adoption agency include references to a child who, in pursuance of arrangements made by such an agency, has been adopted by or placed with those persons under the law of a country or territory outside the British Islands.”

*Miscellaneous and supplemental*

#### 14 **Restriction on bringing children into the United Kingdom for adoption**

The following provision shall be inserted after section 56 of the 1976 Act as section 56A and after section 50 of the 1978 Act as section 50A—

**. Restriction on bringing children into the United Kingdom for adoption**

- (1) A person habitually resident in the British Islands who at any time brings into the United Kingdom for the purpose of adoption a child who is habitually resident outside those Islands shall be guilty of an offence unless such requirements as may be prescribed by regulations made by the Secretary of State are satisfied either—
  - (a) before that time; or
  - (b) within such period beginning with that time as may be so prescribed.
- (2) Subsection (1) does not apply where the child is brought into the United Kingdom for the purpose of adoption by a parent, guardian or relative.
- (3) A person guilty of an offence under this section is 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.
- (4) Proceedings for an offence under this section may be brought within a period of six months from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to his knowledge; but no such proceedings shall be brought by virtue of this subsection more than three years after the commission of the offence.”

#### 15 **Amendments and repeals**

- (1) The enactments mentioned in Schedule 2 to this Act shall have effect subject to the amendments specified in that Schedule, being minor amendments and amendments consequential on the provisions of this Act.



- (2) The enactments mentioned in Schedule 3 to this Act are repealed to the extent specified in that Schedule.

## **16 Devolution**

- (1) Any function of the Secretary of State under section 1 or 18(3), or section 17 or 56A of the 1976 Act, is exercisable only after consultation with the National Assembly for Wales.
- (2) For the purposes of the Scotland Act 1998, any provision of this Act which extends to Scotland is to be taken to be a pre-commencement enactment within the meaning of that Act.

## **17 Savings for adoptions etc. under 1965 Convention**

- (1) In relation to—
- (a) a 1965 Convention adoption order or an application for such an order; or
  - (b) a 1965 Convention adoption,
- the 1976 and 1978 Acts shall have effect without the amendments made by sections 3 to 6 and 8 and Schedule 2 to this Act and the associated repeals made by Schedule 3 to this Act.
- (2) In subsection (1) in its application to the 1976 or 1978 Act—
- “1965 Convention adoption order” has the meaning which “Convention adoption order” has in that Act as it has effect without the amendments and repeals mentioned in that subsection;
  - “1965 Convention adoption” has the meaning which “regulated adoption” has in that Act as it so has effect.

## **18 Short title, interpretation, commencement and extent**

- (1) This Act may be cited as the Adoption (Intercountry Aspects) Act 1999.
- (2) In this Act—
- “the 1976 Act” means the Adoption Act 1976;
  - “the 1978 Act” means the Adoption (Scotland) Act 1978;
  - “the Convention” means the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, concluded at the Hague on 29th May 1993.
- (3) This Act, except this section, shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint and different days may be appointed for different purposes.
- (4) Subject to subsection (5), this Act extends to Great Britain only.
- (5) Any amendment of an enactment which extends to any other part of the British Islands or any colony also extends to that part or colony.

## SCHEDULES

### SCHEDULE 1

Section 1.

#### CONVENTION ON PROTECTION OF CHILDREN AND CO-OPERATION IN RESPECT OF INTERCOUNTRY ADOPTION

The States signatory to the present Convention.

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Recalling that each State should take, as a matter of priority, appropriate measures to enable the child to remain in the care of his or her family of origin,

Recognizing that intercountry adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her State of origin,

Convinced of the necessity to take measures to ensure that intercountry adoptions are made in the best interests of the child and with respect for his or her fundamental rights, and to prevent the abduction, the sale of, or traffic in children,

Desiring to establish common provisions to this effect, taking into account the principles set forth in international instruments, in particular the United Nations Convention on the Rights of the Child, of 20 November 1989, and the United Nations Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally (General Assembly Resolution 41/85, of 3 December 1986),

Have agreed upon the following provisions—

### CHAPTER I

#### SCOPE OF THE CONVENTION

##### *Article 1*

The objects of the present Convention are—

- (a) to establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognised in international law;
- (b) to establish a system of co-operation amongst Contracting States to ensure that those safeguards are respected and thereby prevent the abduction, the sale of, or traffic in children;
- (c) to secure the recognition in Contracting States of adoptions made in accordance with the Convention.

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### *Article 2*

- 1 The Convention shall apply where a child habitually resident in one Contracting State (“the State of origin”) has been, is being, or is to be moved to another Contracting State (“the receiving State”) either after his or her adoption in the State of origin by spouses or a person habitually resident in the receiving State, or for the purposes of such an adoption in the receiving State or in the State of origin.
- 2 The Convention covers only adoptions which create a permanent parent-child relationship.

### *Article 3*

The Convention ceases to apply if the agreements mentioned in Article 17, sub-paragraph (c), have not been given before the child attains the age of eighteen years.

## **CHAPTER II**

### **REQUIREMENTS FOR INTERCOUNTRY ADOPTIONS**

### *Article 4*

An adoption within the scope of the Convention shall take place only if the competent authorities of the State of origin—

- (a) have established that the child is adoptable;
- (b) have determined, after possibilities for placement of the child within the State of origin have been given due consideration, that an intercountry adoption is in the child’s best interests;
- (c) have ensured that—
  - (i) the persons, institutions and authorities whose consent is necessary for adoption, have been counselled as may be necessary and duly informed of the effects of their consent, in particular whether or not an adoption will result in the termination of the legal relationship between the child and his or her family of origin,
  - (ii) such persons, institutions and authorities have given their consent freely, in the required legal form, and expressed or evidenced in writing,
  - (iii) the consents have not been induced by payment or compensation of any kind and have not been withdrawn, and
  - (iv) the consent of the mother, where required, has been given only after the birth of the child; and
- (d) have ensured, having regard to the age and degree of maturity of the child, that—
  - (i) he or she has been counselled and duly informed of the effects of the adoption and of his or her consent to the adoption, where such consent is required,
  - (ii) consideration has been given to the child’s wishes and opinions,
  - (iii) the child’s consent to the adoption, where such consent is required, has been given freely, in the required legal form, and expressed or evidenced in writing, and
  - (iv) such consent has not been induced by payment or compensation of any kind.

### *Article 5*

An adoption within the scope of the Convention shall take place only if the competent authorities of the receiving State—

- (a) have determined that the prospective adoptive parents are eligible and suited to adopt;
- (b) have ensured that the prospective adoptive parents have been counselled as may be necessary; and
- (c) have determined that the child is or will be authorised to enter and reside permanently in that State.

## CHAPTER III

### CENTRAL AUTHORITIES AND ACCREDITED BODIES

#### *Article 6*

- 1 A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities.
- 2 Federal States, States with more than one system of law or States having autonomous territorial units shall be free to appoint more than one Central Authority and to specify the territorial or personal extent of their functions. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which any communication may be addressed for transmission to the appropriate Central Authority within that State.

#### *Article 7*

- 1 Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their States to protect children and to achieve the other objects of the Convention.
- 2 They shall take directly all appropriate measures to—
  - (a) provide information as to the laws of their States concerning adoption and other general information, such as statistics and standard forms;
  - (b) keep one another informed about the operation of the Convention and, as far as possible, eliminate any obstacles to its application.

#### *Article 8*

Central Authorities shall take, directly or through public authorities, all appropriate measures to prevent improper financial or other gain in connection with an adoption and to deter all practices contrary to the objects of the Convention.

#### *Article 9*

Central Authorities shall take, directly or through public authorities or other bodies duly accredited in their State, all appropriate measures, in particular to—

- (a) collect, preserve and exchange information about the situation of the child and the prospective adoptive parents, so far as is necessary to complete the adoption;
- (b) facilitate, follow and expedite proceedings with a view to obtaining the adoption;

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- (c) promote the development of adoption counselling and post-adoption services in their States;
- (d) provide each other with general evaluation reports about experience with intercountry adoption;
- (e) reply, in so far as is permitted by the law of their State, to justified requests from other Central Authorities or public authorities for information about a particular adoption situation.

#### *Article 10*

Accreditation shall only be granted to and maintained by bodies demonstrating their competence to carry out properly the tasks with which they may be entrusted.

#### *Article 11*

An accredited body shall—

- (a) pursue only non-profit objectives according to such conditions and within such limits as may be established by the competent authorities of the State of accreditation;
- (b) be directed and staffed by persons qualified by their ethical standards and by training or experience to work in the field of intercountry adoption; and
- (c) be subject to supervision by competent authorities of that State as to its composition, operation and financial situation.

#### *Article 12*

A body accredited in one Contracting State may act in another Contracting State only if the competent authorities of both States have authorised it to do so.

#### *Article 13*

The designation of the Central Authorities and, where appropriate, the extent of their functions, as well as the names and addresses of the accredited bodies shall be communicated by each Contracting State to the Permanent Bureau of the Hague Conference on Private International Law.

### **CHAPTER IV**

#### **PROCEDURAL REQUIREMENTS IN INTERCOUNTRY ADOPTION**

#### *Article 14*

Persons habitually resident in a Contracting State, who wish to adopt a child habitually resident in another Contracting State, shall apply to the Central Authority in the State of their habitual residence.

#### *Article 15*

- 1 If the Central Authority of the receiving State is satisfied that the applicants are eligible and suited to adopt, it shall prepare a report including information about their identity, eligibility and suitability to adopt, background, family and

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medical history, social environment, reasons for adoption, ability to undertake an intercountry adoption, as well as the characteristics of the children for whom they would be qualified to care.

- 2 It shall transmit the report to the Central Authority of the State of origin.

#### *Article 16*

- 1 If the Central Authority of the State of origin is satisfied that the child is adoptable, it shall—

- (a) prepare a report including information about his or her identity, adoptability, background, social environment, family history, medical history including that of the child's family, and any special needs of the child;
- (b) give due consideration to the child's upbringing and to his or her ethnic, religious and cultural background;
- (c) ensure that consents have been obtained in accordance with Article 4; and
- (d) determine, on the basis in particular of the reports relating to the child and the prospective adoptive parents, whether the envisaged placement is in the best interests of the child.

- 2 It shall transmit to the Central Authority of the receiving State its report on the child, proof that the necessary consents have been obtained and the reasons for its determination on the placement, taking care not to reveal the identity of the mother and the father if, in the State of origin, these identities may not be disclosed.

#### *Article 17*

Any decision in the State of origin that a child should be entrusted to prospective adoptive parents may only be made if—

- (a) the Central Authority of that State has ensured that the prospective adoptive parents agree;
- (b) the Central Authority of the receiving State has approved such decision, where such approval is required by the law of that State or by the Central Authority of the State of origin;
- (c) the Central Authorities of both States have agreed that the adoption may proceed; and
- (d) it has been determined, in accordance with Article 5, that the prospective adoptive parents are eligible and suited to adopt and that the child is or will be authorised to enter and reside permanently in the receiving State.

#### *Article 18*

The Central Authorities of both States shall take all necessary steps to obtain permission for the child to leave the State of origin and to enter and reside permanently in the receiving State.

#### *Article 19*

- 1 The transfer of the child to the receiving State may only be carried out if the requirements of Article 17 have been satisfied.
- 2 The Central Authorities of both States shall ensure that this transfer takes place in secure and appropriate circumstances and, if possible, in the company of the adoptive or prospective adoptive parents.

- 3 If the transfer of the child does not take place, the reports referred to in Articles 15 and 16 are to be sent back to the authorities who forwarded them.

#### *Article 20*

The Central Authorities shall keep each other informed about the adoption process and the measures taken to complete it, as well as about the progress of the placement if a probationary period is required.

#### *Article 21*

- 1 Where the adoption is to take place after the transfer of the child to the receiving State and it appears to the Central Authority of that State that the continued placement of the child with the prospective adoptive parents is not in the child's best interests, such Central Authority shall take the measures necessary to protect the child, in particular—
- (a) to cause the child to be withdrawn from the prospective adoptive parents and to arrange temporary care;
  - (b) in consultation with the Central Authority of the State of origin, to arrange without delay a new placement of the child with a view to adoption or, if this is not appropriate, to arrange alternative long-term care; an adoption shall not take place until the Central Authority of the State of origin has been duly informed concerning the new prospective adoptive parents;
  - (c) as a last resort, to arrange the return of the child, if his or her interests so require.
- 2 Having regard in particular to the age and degree of maturity of the child, he or she shall be consulted and, where appropriate, his or her consent obtained in relation to measures to be taken under this Article.

#### *Article 22*

- 1 The functions of a Central Authority under this Chapter may be performed by public authorities or by bodies accredited under Chapter III, to the extent permitted by the law of its State.
- 2 Any Contracting State may declare to the depositary of the Convention that the functions of the Central Authority under Articles 15 to 21 may be performed in that State, to the extent permitted by the law and subject to the supervision of the competent authorities of that State, also by bodies or persons who—
- (a) meet the requirements of integrity, professional competence, experience and accountability of that State; and
  - (b) are qualified by their ethical standards and by training or experience to work in the field of intercountry adoption.
- 3 A Contracting State which makes the declaration provided for in paragraph 2 shall keep the Permanent Bureau of the Hague Conference on Private International Law informed of the names and addresses of these bodies and persons.
- 4 Any Contracting State may declare to the depositary of the Convention that adoptions of children habitually resident in its territory may only take place if the functions of the Central Authorities are performed in accordance with paragraph 1.

- 5 Notwithstanding any declaration made under paragraph 2, the reports provided for in Articles 15 and 16 shall, in every case, be prepared under the responsibility of the Central Authority or other authorities or bodies in accordance with paragraph 1.

## CHAPTER V

### RECOGNITION AND EFFECTS OF THE ADOPTION

#### *Article 23*

- 1 An adoption certified by the competent authority of the State of the adoption as having been made in accordance with the Convention shall be recognised by operation of law in the other Contracting States. The certificate shall specify when and by whom the agreements under Article 17, sub-paragraph c, were given.
- 2 Each Contracting State shall, at the time of signature, ratification, acceptance, approval or accession, notify the depositary of the Convention of the identity and the functions of the authority or the authorities which, in that State, are competent to make the certification. It shall also notify the depositary of any modification in the designation of these authorities.

#### *Article 24*

The recognition of an adoption may be refused in a contracting State only if the adoption is manifestly contrary to its public policy, taking into account the best interests of the child.

#### *Article 25*

Any Contracting State may declare to the depositary of the convention that it will not be bound under this Convention to recognise adoptions made in accordance with an agreement concluded by application of Article 39, paragraph 2.

#### *Article 26*

- 1 The recognition of an adoption includes recognition of
- (a) the legal parent-child relationship between the child and his or her adoptive parents;
  - (b) parental responsibility of the adoptive parents for the child;
  - (c) the termination of a pre-existing legal relationship between the child and his or her mother and father, if the adoption has this effect in the Contracting State where it was made.
- 2 In the case of an adoption having the effect of terminating a pre-existing legal parent-child relationship, the child shall enjoy in the receiving State, and in any other Contracting State where the adoption is recognised, rights equivalent to those resulting from adoptions having this effect in each such State.
- 3 The preceding paragraphs shall not prejudice the application of any provision more favourable for the child, in force in the Contracting State which recognises the adoption.



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*Article 27*

- 1 Where an adoption granted in the State of origin does not have the effect of terminating a pre-existing legal parent-child relationship, it may, in the receiving State which recognises the adoption under the Convention, be converted into an adoption having such an effect—
  - (a) if the law of the receiving State so permits; and
  - (b) if the consents referred to in Article 4, sub-paragraphs c and d, have been or are given for the purpose of such an adoption.
- 2 Article 23 applies to the decision converting the adoption.

**CHAPTER VI**

GENERAL PROVISIONS

*Article 28*

The Convention does not affect any law of a State of origin which requires that the adoption of a child habitually resident within that State take place in that State or which prohibits the child's placement in, or transfer to, the receiving State prior to adoption.

*Article 29*

There shall be no contact between the prospective adoptive parents and the child's parents or any other person who has care of the child until the requirements of Article 4, sub-paragraphs a to c, and Article 5, sub-paragraph a, have been met, unless the adoption takes place within a family or unless the contact is in compliance with the conditions established by the competent authority of the State of origin.

*Article 30*

- 1 The competent authorities of a Contracting State shall ensure that information held by them concerning the child's origin, in particular information concerning the identity of his or her parents, as well as the medical history, is preserved.
- 2 They shall ensure that the child or his or her representative has access to such information, under appropriate guidance, in so far as is permitted by the law of that State.

*Article 31*

Without prejudice to Article 30, personal data gathered or transmitted under the Convention, especially data referred to in Articles 15 and 16, shall be used only for the purposes for which they were gathered or transmitted.

*Article 32*

- 1 No one shall derive improper financial or other gain from an activity related to an intercountry adoption.
- 2 Only costs and expenses, including reasonable professional fees of persons involved in the adoption, may be charged or paid.

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- 3           The directors, administrators and employees of bodies involved in an adoption shall not receive remuneration which is unreasonably high in relation to services rendered.

*Article 33*

A competent authority which finds that any provision of the Convention has not been respected or that there is a serious risk that it may not be respected, shall immediately inform the Central Authority of its State. This Central Authority shall be responsible for ensuring that appropriate measures are taken.

*Article 34*

If the competent authority of the State of destination of a document so requests, a translation certified as being in conformity with the original must be furnished. Unless otherwise provided, the costs of such translation are to be borne by the prospective adoptive parents.

*Article 35*

The competent authorities of the contracting States shall act expeditiously in the process of adoption.

*Article 36*

In relation to a State which has two or more systems of law with regard to adoption applicable in different territorial units—

- (a) any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;
- (b) any reference to the law of that State shall be construed as referring to the law in force in the relevant territorial unit;
- (c) any reference to the competent authorities or to the public authorities of that State shall be construed as referring to those authorised to act in the relevant territorial unit;
- (d) any reference to the accredited bodies of that State shall be construed as referring to bodies accredited in the relevant territorial unit.

*Article 37*

In relation to a State which with regard to adoption has two or more systems of law applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.

*Article 38*

A State within which different territorial units have their own rules of law in respect of adoption shall not be bound to apply the Convention where a State with a unified system of law would not be bound to do so.

*Article 39*

- 1           The convention does not affect any international instrument to which Contracting States are Parties and which contains provisions on matters governed by the

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Convention, unless a contrary declaration is made by the States parties to such instrument.

- 2 Any Contracting State may enter into agreements with one or more other Contracting States, with a view to improving the application of the Convention in their mutual relations. These agreements may derogate only from the provisions of Articles 14 to 16 and 18 to 21. The States which have concluded such an agreement shall transmit a copy to the depositary of the Convention.

*Article 40*

No reservation to the Convention shall be permitted.

*Article 41*

The Convention shall apply in every case where an application pursuant to Article 14 has been received after the Convention has entered into force in the receiving State and the State of origin.

*Article 42*

The Secretary General of the Hague Conference on Private International Law shall at regular intervals convene a Special Commission in order to review the practical operation of the Convention.

SCHEDULE 2

Section 15(1).

MINOR AND CONSEQUENTIAL AMENDMENTS

*Local Authority and Social Services Act 1970 (c. 42)*

- 1 In Schedule 1 to the Local Authority and Social Services Act 1970 (enactments conferring functions assigned to social services committee), at the end there shall be inserted—

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“Adoption (Intercountry Aspects) Act  
1999 (c. 18)

Section 2(4)

Functions under Article 9(a) to (c)  
of the Convention on Protection of  
Children and Co-operation in respect of  
Intercountry Adoption, concluded at the  
Hague on 29th May 1993.”

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*Immigration Act 1971 (c. 77)*

- 2 In subsection (1) of section 33 of the Immigration Act 1971 (interpretation)—  
(a) after the definition of “certificate of entitlement” there shall be inserted—

““Convention adoption” has the same meaning as in the Adoption  
Act 1976 and the Adoption (Scotland) Act 1978;” and

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- (b) in the definition of “legally adopted”, after “Islands” there shall be inserted “, under a Convention adoption”.

*Adoption Act 1976 (c. 36)*

- 3 (1) In subsection (2) of section 14 of the 1976 Act (adoption by married couple), in paragraph (b), for “section 17 is” there shall be substituted “the requirements of regulations under section 17 are”.
- (2) In subsection (2) of section 15 of that Act (adoption by one person), in paragraph (b), for “section 17 is” there shall be substituted “the requirements of regulations under section 17 are”.
- (3) In section 16 of that Act (parental agreement), subsection (3) shall cease to have effect.
- (4) In section 52 of that Act (revocation of adoptions on legitimation), subsection (3) shall cease to have effect.
- (5) In subsection (4) of section 62 of that Act (courts), for “paragraphs (b), (c) and (d) of subsection (2) do not apply” there shall be substituted “paragraph (d) of subsection (2) does not apply”.
- (6) In subsection (6) of section 67 of that Act (orders, rules and regulations), after “paragraph 1(1)” insert “or 3”.
- (7) Section 70 of that Act (nationality) shall cease to have effect.
- (8) In subsection (2) of section 72 of that Act (interpretation), for “Great Britain” there shall be substituted “the British Islands”.

*Adoption (Scotland) Act 1978 (c. 28)*

- 4 (1) In subsection (2) of section 14 of the 1978 Act (adoption by married couple), in paragraph (b), for “section 17 is” there shall be substituted “the requirements of regulations under section 17 are”.
- (2) In subsection (2) of section 15 of that Act (adoption by one person), in paragraph (b), for “section 17 is” there shall be substituted “the requirements of regulations under section 17 are”.
- (3) In section 16 of that Act (parental agreement), subsection (3) shall cease to have effect.
- (4) In section 46 of that Act (revocation of adoptions on legitimation), subsection (2) shall cease to have effect.
- (5) In section 56 of that Act (courts)—
- (a) in subsection (2), for “subsections (4) and (5)” there shall substituted “subsection (5)”; and
- (b) subsection (4) shall cease to have effect.
- (6) In subsection (6) of section 60 of that Act (orders, rules and regulations), after “paragraph 1(1)” there shall be inserted “or 3”.
- (7) Section 63 of that Act (nationality) shall cease to have effect.

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(8) In subsection (2) of section 65 of that Act (interpretation), for “Great Britain” there shall be substituted “the British Islands”.

*Family Law Act 1986 (c. 55)*

5 In subsection (1) of section 57 of the Family Law Act 1986 (declarations as to adoptions effected overseas), for paragraph (a) there shall be substituted—  
“(a) a Convention adoption as defined by subsection (1) of section 72 of the Adoption Act 1976 or an overseas adoption as defined by subsection (2) of that section, or”.

SCHEDULE 3

Section 15(2).

REPEALS

<i>Chapter</i>	<i>Short title</i>	<i>Extent of repeal</i>
1976 c. 36.	Adoption Act 1976.	Section 16(3). Section 52(3). In section 53(5), the words “and section 52(3)”. In section 54, in subsections (1) and (2), the words “52(3) or”, and in subsection (4), the definitions of “notified provision” and “relevant time”. In section 61(1), the words “(other than an order to which section 17(6) applies)”. Section 70. In section 72(1), the definitions of “regulated adoption” and “specified order”. In Schedule 1, paragraph 1(2).
1978 c. 28.	Adoption (Scotland) Act 1978.	Section 16(3). Section 46(2). In section 47(5), the words “and section 46(2)”. In section 48, in subsections (1) and (2), the words “46(2) or”, and in subsection (4),

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<i>Chapter</i>	<i>Short title</i>	<i>Extent of repeal</i>
		the definitions of “notified provision” and “relevant time”.
		In section 55(1), the words “(other than an order to which section 17(6) applies)”.
		Section 56(4).
		Section 63.
		In section 65(1), the definitions of “regulated adoption” and “specified order”.
		In Schedule 1, paragraph 1(2).

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