

# **ADOPTION (INTERCOUNTRY ASPECTS) ACT (NORTHERN IRELAND) 2001**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes relate to the Adoption (Intercountry Aspects) Act (Northern Ireland) 2001 (“the Act”). They have been prepared by the Department of Health, Social Services and Public Safety in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by the Assembly.
2. The Notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require an explanation or comment, none is given.

### **BACKGROUND AND POLICY OBJECTIVES**

3. The Act amends the Adoption (Northern Ireland) Order 1987, and related legislation, in respect of intercountry adoption. Equivalent legislation in England, Wales and Scotland, the Adoption (Intercountry Aspects) Act 1999, was designed to enable the United Kingdom to ratify the 1993 Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption. The Act implements the Convention in Northern Ireland, mainly through the introduction of regulation-making powers for the Department of Health, Social Services and Public Safety.
4. The Hague Convention is a framework setting out minimum standards for the process of intercountry adoption to work in the best interests of the children concerned and to enable countries to absorb its Articles within their own substantive law. The Convention is underpinned by the 1989 United Nations Convention on the Rights of the Child which set out principles concerning the rights of children and included a reference to adoption where a child cannot live with his or her own birth parents. “Intercountry adoption” is a general term referring to the adoption of a child resident abroad by a resident of this country (at present there are about 25 – 30 such adoptions each year in Northern Ireland). It may also refer to the adoption of a child from this country by a resident overseas.

5. In broad terms, the Act places the existing arrangements for intercountry adoptions on a statutory basis. It also ensures that such adoptions only take place when it is in the best interests of the child. The Act creates two new offences which make it unlawful (a) for anyone, other than an adoption agency, to assess the suitability of persons as prospective adopters of children from overseas, and (b) to bring a child into Northern Ireland for the purposes of adoption without certain conditions, which will be prescribed by regulations, being satisfied.

## **CONSULTATION**

6. A consultation document entitled “Adoption – A Service for Children” was published in 1996 by the Department of Health and the Welsh Office. This proposed a number of reforms of domestic adoption law together with legislation which would give effect to the 1993 Hague Convention. The consultation document was circulated to HSS Boards, Trusts, voluntary adoption agencies and others.
7. The consultation document included a draft Bill, but in the event no legislation was brought forward until the Adoption (Intercountry Aspects) Act 1999 which deals solely with matters relating to the 1993 Convention. As this Act is similarly required specifically to implement an international convention, further consultation was considered unnecessary.

## **OPTIONS CONSIDERED**

8. The United Kingdom is a signatory to the 1993 Hague Convention on intercountry adoption. The Convention requirements have been implemented in the rest of the United Kingdom and the Act implements them here. Implementation has to be by the introduction of legislation.

## **OVERVIEW**

9. The Act comprises 16 Sections and a Schedule which sets out the relevant text of the 1993 Convention. The Act amends the Adoption (Northern Ireland) Order 1987 (hereafter referred to as the 1987 Order). Some consequential amendments are also made to the Matrimonial and Family Proceedings (Northern Ireland) Order 1989 and the Adoption (Hague Convention) Act (Northern Ireland) 1969.

## **COMMENTARY ON SECTIONS**

### **IMPLEMENTATION OF CONVENTION - SECTIONS 1 AND 2**

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

10. **Section 1** enables the Department of Health, Social Services and Public Safety to make regulations to give effect in Northern Ireland to the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, concluded at the Hague on 29 May 1993 (the Hague Convention).
11. The Regulations may apply and modify any provision of the enactments relating to adoption and create criminal offences for the purpose of implementing the Convention. The Regulations will be subject to negative resolution.

#### ***Section 2 - Central Authority and accredited bodies***

12. **Section 2**, subsection (1) provides, for the purposes of Article 6 of the Convention, for the functions under the Convention of a Central Authority to be discharged in Northern Ireland by the Department of Health, Social Services and Public Safety. A Central Authority is the body within a political boundary or country which is responsible for implementing the Convention. The duties of Central Authorities are addressed under Articles 7 to 22 of the Convention.
13. Subsection (2) provides that the Central Authority for England may act as the focal point for any communication relating to the Convention.
14. Subsection (3) provides that adoption societies registered under the 1987 Order to provide Convention adoption services will automatically be accredited for the purposes of the Convention. HSS Trusts, as public authorities, will have responsibility for providing a Convention adoption service. They will not require accreditation.
15. Subsection (4) provides that the functions set out under Article 9(a) to (c) of the Convention are to be discharged by Boards, HSS Trusts and accredited bodies on behalf of the Central Authority.
16. Subsection (5) defines the term “registered adoption society” as having the same meaning as in the 1987 Order. (The amendments to Article 4 of the 1987 Order contained in section 8 below allow for two types of registration, depending on whether the registered adoption society is permitted to act in relation to intercountry adoptions).

## **CONVENTION ADOPTIONS - SECTIONS 3 TO 6**

### ***Section 3 - Convention adoption orders***

17. **Section 3** amends the 1987 Order to provide that, on an application to the court for a Convention adoption order, the order made will be a Convention adoption order. Any such order will be subject to prescribed requirements.

### ***Section 4 - Effect of Convention adoptions***

18. **Section 4** amends Article 39(1) of the 1987 Order to clarify the position with regard to Convention adoptions made outside the UK, Channel Islands and the Isle of Man. It is concerned with the legal status in Northern Ireland of children who are the subject of such adoptions.
19. Subsection (1) adds the term “Convention adoption” to the definition of adoption in Article 39(1) of the 1987 Order. This definition in the 1987 Order sets out the legal status of adopted children. The effect of the amendment is to enable Convention adoptions to be recognised in accordance with Article 40 of the 1987 Order. A Convention adoption is an adoption order made under the Convention in any Convention country (outside the UK, Channel Islands and the Isle of Man) which has been certified in accordance with the requirements of Article 23(1) of the Convention.
20. Subsections (2) and (3) deal with certain cases where a Convention adoption is made outside the UK, Channel Islands and the Isle of Man. The cases addressed are those which are not “full adoptions” and those where consents required by Article 4(c) and (d) of the Convention have not been given for a full adoption (e.g. matters relating to the consent of the birth mother, the consent of the child (where relevant) and safeguards against consents induced by payment).
21. Northern Ireland adoption law, in common with that in the rest of the UK, recognises only one type of adoption – “full adoption”. The latter creates a new and irrevocable legal relationship between the child and the adoptive parents which severs all legal ties between the child and birth parents and is set out in Article 40(2) of the 1987 Order. This contrasts with “simple adoptions” which may be made in some Convention countries, where some forms of adoption do not totally sever all legal ties with birth parents.
22. Article 26 of the Convention provides for the recognition of both full and simple adoptions, but does not prejudice the application of any legal provision in force in the Contracting State if it is more favourable to the child. By the amendment to Article 39(1) noted above, all Convention adoptions will be recognised as full adoptions. However a new paragraph (3A) is inserted into Article 40 of the 1987 Order by Section 4(3). This provides a mechanism whereby the High Court may give a direction with regard to the child’s status if this is more favourable to the

child. The Court may thus direct that Article 40(2) shall not apply or shall not apply to the extent specified in the direction.

23. Situations where a court may be called upon to give a direction might include cases where the birth parents come into unexpected money.

#### ***Section 5 - Annulment etc of Convention adoptions***

24. **Section 5** inserts a new Article 55A into the 1987 Order. This permits the High Court to annul (on application) a Convention adoption or a Convention adoption order on the ground that the particular adoption or order is contrary to public policy, or that the authority, which purported to authorise the adoption, was not so authorised. The effect of any annulment will be that the adoption will cease to have effect in Northern Ireland. Similar provision is made for overseas adoptions and determinations not covered by the Convention.

25. This amendment also provides that the validity of a Convention adoption, a Convention adoption order, an overseas adoption or determination shall not be challenged in any court in Northern Ireland, except by means of an application under Article 55A.

26. Section 5 also inserts a new Article 55B into the 1987 Order. This contains supplementary provisions to Article 55A. It concerns the manner of applications to the High Court and how the court is to gauge the competence of an authority which purported to authorise an adoption as referred to in Article 55A. In this regard the court is to be bound by any finding of fact by the authority in relation to its competence.

#### ***Section 6 - Meaning of 'Convention adoption' and related expressions in 1987 Order***

27. **Section 6** provides for amendments to be made to Article 2 of the 1987 Order which sets out definitions of terms used in that Order.

28. The "Convention" is defined as meaning the 1993 Convention. A "Convention adoption" is an adoption effected outside the United Kingdom, the Channel Islands and the Isle of Man under the 1993 Convention and which has been certified under Article 23(1) of the Convention dealing with the recognition and effects of adoption. The latter requires that where an adoption has been certified by the competent authority of the State of the adoption as having been made in accordance with the Convention, the adoption shall be recognised under the law of the other Contracting States. The certificate is to specify when and by whom the agreements under Article 17(c) of the Convention were given.

29. Article 17(c) of the Convention falls under the general heading of the duties of Central Authorities and accredited bodies and requires the Central Authorities of both States to have agreed that the adoption may take place. Agreement will only be

given by each Central Authority if it is satisfied that the requirements of the relevant Articles of the Convention for which each is responsible have been met. A “Convention adoption order” is an adoption order made in Northern Ireland as a convention adoption.

## **INTERCOUNTRY ADOPTIONS - SECTIONS 7 TO 11**

### ***Section 7 - Adoption service to include intercountry adoptions etc***

30. **Section 7** provides for a new paragraph (2A) to be added to Article 3 of the 1987 Order. Article 3 requires each HSS Trust to maintain an Adoption Service for its area. The amendment provides that the adoption service shall include the adoption of children wherever they may be habitually resident and effected under the law of any country or territory. This amendment makes clear that the adoption service is a comprehensive service which is intended to include both domestic and intercountry adoption.

### ***Section 8 - Registration of adoption societies to provide intercountry adoption services***

31. **Section 8** amends Article 4 of the 1987 Order (registration of adoption societies). The amendments provide that a voluntary adoption society may be approved to act as an adoption agency in relation either to adoptions which are not intercountry adoptions, or to all adoptions including intercountry adoptions.

### ***Section 9 - Six months residence required for certain intercountry adoptions***

32. **Section 9** inserts a new paragraph in Article 13 of the 1987 Order (child to live with adopters before order is made). It provides that where a child habitually resident outside the United Kingdom, the Channel Islands and the Isle of Man is to be adopted in Northern Ireland by an adoption order or a Convention adoption order, the child is required to have had his home with the prospective adopters for a period of at least six months before an adoption order may be made. The period of six months is only to apply to those cases where the placement of the child was made by an adoption agency.

33. In those cases where a child has been brought to the United Kingdom for the purposes of adoption and the arrangements for adoption were not made by an adoption agency, the current provisions of the 1987 Order, concerning the period before an adoption order may be made, will remain at 12 months. The effect of this amendment is therefore to reduce the period of residence from 12 to six months in cases dealt with by adoption agencies.

### ***Section 10 - Registration of certain intercountry adoptions***

34. **Section 10** makes provision for the Registrar General to keep records of certain intercountry adoptions. Subsection (1) provides for an amendment to Article 50 of

the 1987 Order (Adopted Children Register) which, in addition to entries currently made pursuant to adoption orders, will require the Registrar General to make such entries in the Adopted Children Register as may be required under Article 53 of the Order as amended by clause 10(2). A new paragraph (3A) sets out the conditions to be met and the procedure to be followed before the Registrar is able to make an entry of a registerable foreign adoption in the Adopted Children Register.

35. Under the 1987 Order an adoption order made in Northern Ireland should include a direction to the Registrar to make an entry in the Adopted Children Register. The new paragraph (3A) has the effect of modifying the duty imposed upon the Registrar to include an entry in the Adopted Children Register of an adoption order made under the Convention or an adoption order made overseas which meets criteria to be set out in Regulations. Requests for entry in the Register for these adoption orders will be made by application to the Registrar. Power has been taken to set out in regulations the form, content and persons by whom application may be made. The Registrar will be required to make the entry if he is satisfied that he has sufficient particulars to enable an entry to be made.
36. Section 10 also provides that the Registrar General may alter or amend the Register to take account of errors and Convention adoptions, Convention adoption orders and overseas adoptions which have ceased to have effect.

#### ***Section 11 - Construction of certain references***

37. **Section 11** inserts two new paragraphs in Article 2 of the 1987 Order. New paragraph (3A) extends the interpretation in the 1987 Order relating to arrangements for adoption. It provides that, in relation to the proposed adoption of a child resident outside the United Kingdom, the Channel Islands and the Isle of Man, references to “arrangements for the adoption of a child” include references to arrangements for an assessment for the purpose of indicating whether or not a person is suitable to adopt a child.
38. Article 11 of the 1987 Order provides that arrangements for the adoption of a child can only be carried out by an adoption agency (except for certain exemptions for relatives and cases where a person is acting under the authority of the High Court). The effect of the new paragraph (3A) is to make clear that in intercountry cases, a home study assessment report for the purposes of adoption must be prepared by, or on behalf of, an adoption agency.
39. New paragraph (3B) extends the interpretation to be given to placing a child for adoption to include placing for adoption children habitually resident outside the United Kingdom, the Channel Islands and the Isle of Man.
40. The effect of the new paragraph (3B) is to provide that where an adoption agency has made arrangements for the adoption of a child from overseas, the placement will be deemed to be an agency placement. This will be the case even though the agency

is not directly involved in those stages of the process (such as the “matching” of the child with the adopters or the actual placing of the child with them) which take place in the child’s country of origin. When the child is brought to Northern Ireland, the adoption agency’s duties as regards, for example, supervision and reports, will be equivalent to those of an adoption agency placing a child for adoption in non-intercountry cases.

## **MISCELLANEOUS AND SUPPLEMENTARY - SECTIONS 12 TO 16**

### ***Section 12 - Restriction on bringing children into the United Kingdom for adoption***

41. **Section 12** inserts an additional Article 58ZA into the 1987 Order. The new Article makes it a criminal offence for a person habitually resident in the British Islands to bring to the United Kingdom, for the purposes of adoption, a child who is habitually resident outside those islands unless they comply with requirements to be prescribed by Regulations. The term “British Islands” is defined as meaning the United Kingdom, the Channel Islands and the Isle of Man.
42. Normally, summary proceedings for an offence may only be brought within six months from the date the offence was committed. However Article 58ZA(4) provides that proceedings for an offence under Article 58A may be brought within a period of six months from the date on which sufficient evidence, in the opinion of the prosecution, came to its knowledge. However, proceedings may not be brought more than three years after the offence was committed.

### ***Section 13 - Effect of determinations in Convention countries, etc***

43. **Section 13** inserts an additional Article 58ZB into the 1987 Order. The new Article makes provision for determinations of an authority of a Convention country (other than the United Kingdom) to have effect in Northern Ireland, subject to specified conditions. The authorities referred to are those which have power to authorise or review a Convention adoption, or which have power to revoke or annul an adoption or Convention adoption (or which have power to review a decision to revoke or annul such an adoption). Similar provision is made as regards the Channel Islands and the Isle of Man.

### ***Section 14 - Minor and consequential amendments and repeals***

44. **Section 14** effects minor and consequential amendments to the 1987 Order, the Matrimonial and Family Proceedings (Northern Ireland) Order 1989 and the Adoption (Hague Convention) Act (Northern Ireland) 1969.

### ***Section 15 - Interpretation***

45. **Section 15** defines certain terms used in the Act.



**Section 16 - Short title and commencement**

46. **Section 16** sets out the title of the legislation and provides that the substantive provisions will come into operation on such day or days as may be decided by the Department of Health, Social Services and Public Safety.

**Schedule**

47. The **Schedule** sets out the text of the Convention, so far as is material, under the following headings:

Chapter I	Scope of the Convention	Articles 1-3
Chapter II	Requirements for intercountry adoption	Articles 4-5
Chapter III	Central Authorities and Accredited Bodies	Articles 6-13
Chapter IV	Procedural requirements	Articles 14-22
Chapter V	Recognition and effects of the adoption	Articles 23-27
Chapter VI	General provisions	Articles 28-42