
SCOTTISH STATUTORY INSTRUMENTS

2009 No. 182

**The Adoptions with a Foreign
Element (Scotland) Regulations 2009**

PART 3

ADOPTIONS UNDER THE CONVENTION

CHAPTER 2

**PROCEDURE IN SCOTLAND WHERE THE
UNITED KINGDOM IS THE STATE OF ORIGIN**

Application of Chapter 2

38. The provisions of this Chapter apply to—

- (a) a child who is habitually resident in the British Islands;
- (b) a person, or a relevant couple, habitually resident outwith the British Islands who wishes to adopt such a child in accordance with the Convention.

Counselling and information for the child

39.—(1) Where an adoption agency is considering whether a child is suitable for an adoption in accordance with the Convention, it must so far as reasonably practicable—

- (a) ensure that such counselling as may be necessary in connection with such an adoption is made available to the child;
- (b) explain to the child in an appropriate manner the procedure in relation to, and the legal implications of, adoption in accordance with the Convention for the child by prospective adopters habitually resident in the receiving State; and
- (c) provide the child with written information about the matters referred to in subparagraph (b).

(2) Paragraph (1) does not apply if the adoption agency is satisfied that the requirements in that paragraph have been met in respect of the child by another adoption agency.

Counselling and information for parent or guardian and counselling for others

40.—(1) Where an adoption agency is considering whether a child is suitable for an adoption in accordance with the Convention, it must—

- (a) ensure that such counselling as may be necessary in connection with an adoption in accordance with the Convention is made available to—
 - (i) the parent or guardian of the child; and
 - (ii) any individual who has any parental responsibilities or parental rights in relation to the child;

- (b) explain to the parent or guardian the procedure in relation to, and the legal implications of, adoption in accordance with the Convention by prospective adopters habitually resident in the receiving State; and
 - (c) provide the parent or guardian with written information about the matters referred to in sub-paragraph (b).
- (2) Paragraph (1) does not apply–
- (a) if the adoption agency is satisfied that the requirements in that paragraph have been met in respect of the parent, guardian or, as the case may be, individual mentioned in sub-paragraph (a)(ii) of that paragraph by another adoption agency;
 - (b) to the father of the child if, after reasonable steps have been taken by the adoption agency, his identity cannot be ascertained.

Information for inclusion in report and for adoption panel

41.—(1) The report mentioned in regulation 18(1)(i) of the Adoption Agencies Regulations must include–

- (a) a summary of the possibilities (if any) for placement of the child for adoption within the United Kingdom; and
 - (b) an assessment of whether an adoption by a person in a particular receiving State is in the child’s best interests.
- (2) The adoption agency must refer the child’s case to the adoption panel and send to the panel–
- (a) if received, the report from the CA of the receiving State which has been prepared for the purposes of Article 15 of the Convention (in this Chapter, the “Article 15 Report”);
 - (b) the agency’s observations on any Article 15 report; and
 - (c) copies of–
 - (i) the report on the health of the child mentioned in regulation 18(1)(d) of the Adoption Agencies Regulations and any report obtained in accordance with regulation 18(2) of those Regulations; and
 - (ii) the report mentioned in regulation 18(1)(i) of those Regulations.

Function of the adoption panel in assessing the child

42.—(1) The adoption panel must consider the case of the child and make a recommendation to the adoption agency as to whether adoption by a person, or a relevant couple, habitually resident in a Convention country outwith the British Islands is in the best interests of the child.

- (2) In considering what recommendation to make under paragraph (1), the adoption panel must–
- (a) have regard to the duties imposed on an adoption agency by section 14 of the Act (considerations applying to the exercise of powers);
 - (b) take into account all the information and reports passed to it under regulation 41;
 - (c) request the adoption agency to obtain any other relevant information which the panel considers necessary; and
 - (d) obtain such legal advice in relation to the case as may be necessary.

Decision and notification

43.—(1) The adoption agency must–

- (a) take into account the recommendation of the adoption panel in coming to a decision (“the decision”) on whether adoption by a person, or a relevant couple, habitually resident in a Convention country outwith the British Islands is in the best interests of the child; and
 - (b) make the decision within 14 days of the date the recommendation was made.
- (2) No member of the adoption panel which made the recommendation is to take part in the decision.
- (3) Where the decision is that adoption is in the best interests of the child, the adoption agency must, within 7 days of making the decision, notify the Central Authority of—
- (a) the name and age of the child;
 - (b) the reasons why the agency considers that the child may be suitable for adoption by a person, or a relevant couple, habitually resident in a Convention country outside the British Islands; and
 - (c) any other information that the Central Authority may require.
- (4) The adoption agency must within 7 days of the day on which the decision is made notify in writing the parent or guardian of the child, and any individual who has any parental responsibilities or parental rights in relation to the child, that the child has been approved in principle for adoption in a Convention country outwith the British Islands.
- (5) Paragraph (4) does not apply if, after reasonable steps have been taken by the adoption agency, the identity of the parent, guardian or individual cannot be ascertained.

Convention list

- 44.**—(1) The Central Authority must—
- (a) maintain a list of children (in this Chapter, the “Convention list”) in respect of whom it is given notification under regulation 43(3); and
 - (b) make the contents of the Convention list available for inspection by the other Central Authorities within the British Islands on request.
- (2) Where an adoption agency—
- (a) places for adoption a child in respect of whom notification under regulation 43(3) has been given to the Central Authority; or
 - (b) determines that an adoption in accordance with the Convention is no longer in the best interests of the child,
- the agency must notify the Central Authority accordingly and the Authority must remove the details relating to that child from the Convention list.

Receipt of Article 15 Report

- 45.**—(1) This regulation applies where—
- (a) the Central Authority receives from the CA of the receiving State an Article 15 Report which relates to a prospective adopter who is habitually resident in that receiving State (a “Convention prospective adopter”); and
 - (b) the Convention prospective adopter wishes to adopt a child who is habitually resident in the British Islands.
- (2) Subject to paragraph (3), if the Central Authority is satisfied that the Convention prospective adopter meets—
- (a) the age requirements specified in section 29 of the Act (in the case of a relevant couple) or section 30 of the Act (in the case of adoption by one person); and

- (b) in the case of adoption by a relevant couple, both members of the couple are, or in the case of adoption by one person, that person is, habitually resident in a Convention country outwith the British Islands,

the Central Authority must consult the Convention list and may, if the Authority considers it appropriate, consult any list of children notified to any other Central Authority within the British Islands in accordance with provisions which correspond to regulation 44(1) (a “Convention list equivalent”).

(3) Where a Convention prospective adopter has already been identified in relation to a proposed adoption of a particular child and the Central Authority is satisfied that the Convention prospective adopter meets the requirements in paragraph (2)(a) and (b), the Authority—

- (a) need not consult the Convention list; and
- (b) must send the Article 15 Report to the adoption agency which notified the Central Authority of the child’s details.

(4) The Central Authority may pass a copy of the Article 15 Report to any other Central Authority within the British Islands for the purpose of enabling the other Central Authority to consult its Convention list equivalent.

(5) Where the Central Authority identifies a child on the Convention list who may be suitable for adoption by the Convention prospective adopter, the Authority must send the Article 15 Report to the adoption agency which notified the Authority of the child’s details.

(6) In considering whether it is appropriate to place the child for adoption with the Convention prospective adopter, the adoption agency must take into account the Article 15 Report.

(7) Where the adoption agency considers such a placement appropriate, it must refer the proposed placement to the adoption panel together with—

- (a) the Article 15 Report;
- (b) the documents referred to in sub-paragraphs (b) and (c) of regulation 41(2);
- (c) its observations on the proposed adoption; and
- (d) any other relevant information about the child.

Proposed placement: functions of adoption panel and adoption agency

46.—(1) The adoption panel must consider the proposed placement referred to it by an adoption agency under regulation 45(7) and make a recommendation to the agency as to whether—

- (a) the Convention prospective adopter is suitable to be an adoptive parent for the child; and
- (b) the proposed placement is in the best interests of the child.

(2) In considering what recommendation to make under paragraph (1), the adoption panel—

- (a) must have regard to—
 - (i) the child’s upbringing and ethnic, religious and cultural background;
 - (ii) the duties imposed on the adoption agency by section 14 of the Act (considerations applying to the exercise of powers); and
 - (iii) the documents referred to it under regulation 45(7);
- (b) may ask the adoption agency to obtain any other relevant information which the panel considers necessary; and
- (c) may obtain legal advice in relation to the case.

(3) The adoption agency must—

- (a) take into account the recommendation of the adoption panel in coming to a decision (“the decision”) about whether the proposed placement should proceed or not; and
 - (b) make the decision within 14 days of the date the recommendation was made.
- (4) No member of the adoption panel which made the recommendation is to take part in the decision.
- (5) Paragraphs (6) to (8) apply where the decision is that the proposed placement should proceed.
- (6) The adoption agency must, if practicable, within 7 days of making the decision, notify in writing the parent or guardian of the child, and any individual who has any parental responsibilities or parental rights in relation to the child, that the child has been or, as the case may be, is to be placed for adoption in a Convention country outwith the British Islands.
- (7) Where the adoption agency is a local authority it must—
- (a) make an application to the appropriate court⁽¹⁾ for a permanence order; and
 - (b) in the application, request that the order include—
 - (i) ancillary provisions vesting in the local authority the parental responsibilities and parental rights referred to in paragraph (a) of subsection (1) of section 82 of the Act (permanence orders: ancillary provisions); and
 - (ii) provision granting authority for the child to be adopted.
- (8) Where the adoption agency is not a local authority, the agency must notify the local authority for the area where the child has a home of its decision; and that local authority must make an application and request as mentioned in paragraph (7).
- (9) An application under paragraph (7) must be made—
- (a) where notification is given under paragraph (6), within 28 days of the adoption agency giving such notification;
 - (b) where notification is not given under that paragraph, within 28 days of the adoption agency making the decision.
- (10) An application under paragraph (8) must be made within 28 days of the local authority being notified under that paragraph.

Adoption agency’s decision: notification and return of documents

- 47.**—(1) As soon as possible after the adoption agency makes a decision under regulation 46(3), it must notify the Central Authority of the decision.
- (2) If the proposed placement is not to proceed—
- (a) the adoption agency must return the Article 15 Report and any other documents or information sent to it by the Central Authority to that Authority; and
 - (b) the Central Authority must then send the Article 15 Report and any such documents or information to the CA of the receiving State.

Preparation of the Article 16 Report

- 48.**—(1) If the adoption agency decides that the proposed adoption should proceed, it must prepare a report for the purposes of Article 16 of the Convention (the “Article 16 Report”) which must include—
- (a) the information about the child specified in Part II of Schedule 1 to the Adoption Agencies Regulations; and

(1) “appropriate court” is defined in section 118 of the 2007 Act.

- (b) the reasons for the agency's decision.
- (2) Where a permanence order including provision granting authority for the child to be adopted is made the adoption agency must, within 14 days of the order being made, send to the Central Authority—
 - (a) the Article 16 Report;
 - (b) details of the permanence order; and
 - (c) where known, details of any other orders made by the courts in relation to the child.
- (3) The Central Authority must then send to the CA of the receiving State—
 - (a) the Article 16 Report; and
 - (b) the other information sent to it by virtue of paragraph (2).
- (4) Where a court does not grant an application for a permanence order as mentioned in paragraph (2) the adoption agency must, within 14 days of the decision of the court, notify the Central Authority of the decision.

Requirements to be met before child placed with Convention prospective adopter

- 49.**—(1) The Central Authority may notify the CA of the receiving State that it is prepared to agree that the proposed adoption should proceed provided the CA of the receiving State has confirmed that—
- (a) the Convention prospective adopter has agreed to adopt the child and has received such counselling as may be necessary;
 - (b) the Convention prospective adopter has confirmed that—
 - (i) the Convention prospective adopter will accompany the child to the receiving State unless, in the case of a relevant couple, the adoption agency and the CA of the receiving State have agreed that it is necessary for only one member of the relevant couple to do so; or
 - (ii) in exceptional circumstances, the child will be accompanied to the receiving State by a nominee of the Convention prospective adopter who has been approved by the adoption agency;
 - (c) it is content for the proposed adoption to proceed;
 - (d) in the case where a Convention adoption is to be effected, it has explained to the Convention prospective adopter the need to make an application under section 59(1) of the Act; and
 - (e) the child is or will be authorised to enter and reside permanently in the Convention country if a Convention adoption is effected or a Convention adoption order is made.
- (2) The Central Authority may not make an agreement with the CA of the receiving State under Article 17(c) of the Convention unless—
- (a) confirmation has been received in respect of the matters referred to in paragraph (1);
 - (b) the adoption agency has confirmed to the Central Authority that—
 - (i) it has met the Convention prospective adopter and explained the requirement to make an application under section 59(1) of the Act before the child can be taken or sent out of Great Britain;
 - (ii) the Convention prospective adopter or, where the Convention prospective adopter is a relevant couple and there are exceptional circumstances, one member of the couple has visited the child; and
 - (iii) the Convention prospective adopter is content for the proposed adoption to proceed.

(3) The adoption agency may not place the child for adoption with the Convention prospective adopter unless the agreement under Article 17(c) of the Convention has been made; and the Central Authority must advise the agency when the agreement has been made.

Requirements for order under section 59 of the Act prior to proposed Convention adoption

50.—(1) This regulation prescribes, for the purposes of subsection (3) of section 59 of the Act (preliminary order where child to be adopted abroad), the requirements to be satisfied before an order under that section may be made in the case where the prospective adopters (within the meaning of that section) intend to adopt a child under a Convention adoption.

(2) This regulation applies in the case of a child placed for adoption with the prospective adopters by an adoption agency.

(3) The requirements are that—

- (a) the competent authorities of the receiving State have—
 - (i) prepared an Article 15 report;
 - (ii) determined and confirmed in writing that the prospective adopters are eligible and suitable to adopt;
 - (iii) ensured and confirmed in writing that the prospective adopters have been counselled as may be necessary; and
 - (iv) determined and confirmed in writing that the child is or will be authorised to enter and reside permanently in the receiving State;
- (b) the report required for the purposes of Article 16(1) of the Convention has been prepared by the adoption agency;
- (c) the adoption agency confirms in writing to the court that it has complied with the requirements imposed on it under Parts IV and V of the Adoption Agencies Regulations;
- (d) the adoption agency has obtained and made available to the court—
 - (i) a copy of the recommendations of the adoption panel under regulation 46(1);
 - (ii) a copy of the report on the health of the child mentioned in regulation 18(1)(d) of the Adoption Agencies Regulations and any report obtained in accordance with regulation 18(2) of those Regulations;
 - (iii) a copy of the report and information mentioned in regulation 18(1)(i) of those Regulations; and
 - (iv) a copy of the permanence order including provision granting authority for the child to be adopted;
- (e) the adoption agency includes in any report submitted to the court in accordance with subsection (2) of section 17 of the Act (reports where child placed by agency), or subsection (2) of section 19 of the Act (notice under section 18: local authority's duties) (as those sections fall to be construed by virtue of the modifications in regulation 9), details of—
 - (i) visits carried out under regulation 25(1) of the Adoption Agencies Regulations; and
 - (ii) any reviews carried out under regulation 26(2) of those Regulations;
- (f) in a case where there is only one prospective adopter, the prospective adopter has confirmed in writing to the adoption agency that the prospective adopter will accompany the child out of Great Britain and into the receiving State; and
- (g) in a case where the prospective adopters are a relevant couple, they have confirmed in writing to the adoption agency—
 - (i) that both members of the relevant couple will so accompany the child; or

- (ii) if the adoption agency and the competent authority of the receiving State have confirmed that it is necessary for only one such member so to accompany the child, that one such member will do so.

Convention adoption order

51. An adoption order may not be made as a Convention adoption order unless—

- (a) in the case of—
 - (i) an application for the order by a relevant couple, both members of the couple have been habitually resident in a Convention country outwith the British Islands for a period of not less than one year ending with the date of the application;
 - (ii) an application for the order by one person, the applicant has been habitually resident in a Convention country outwith 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 was, on the date on which the agreement under Article 17(c) of the Convention was made, habitually resident in any part of the British Islands;
- (c) copies of the Article 16 Report (within the meaning of regulation 48) and the agreement under Article 17(c) of the Convention are made available to the court; and
- (d) the competent authority of the receiving State has confirmed that the child is authorised to enter and remain permanently in the Convention country in which the applicant is or, as the case may be, the applicants are habitually resident.

Requirements following a Convention adoption order or a Convention adoption

52.—(1) Where a Convention adoption order is made by a court in Scotland, the court must send a copy of the order to the Central Authority.

(2) On receipt of a copy of the order under paragraph (1), the Central Authority must issue a certificate in the form set out in Schedule 3 certifying that the adoption has been made in accordance with the Convention.

- (3) A copy of the certificate issued under paragraph (2) must be sent to—
- (a) the CA of the receiving State; and
 - (b) the relevant local authority.

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

- (a) the adoption agency which sent the Central Authority the Article 16 Report under regulation 48(2); and
- (b) the Registrar General of Births, Deaths and Marriages for Scotland.