



Children and Adoption Act 2006

2006 CHAPTER 20

PART 2

ADOPTIONS WITH A FOREIGN ELEMENT

9 Declaration of special restrictions on adoptions from abroad

- (1) This section applies if the Secretary of State has reason to believe that, because of practices taking place in a country or territory outside the British Islands (the “other country”) in connection with the adoption of children, it would be contrary to public policy to further the bringing of children into the United Kingdom in the cases mentioned in subsection (2).
- (2) The cases are that a British resident—
 - (a) wishes to bring, or cause another to bring, a child who is not a British resident into the United Kingdom for the purpose of adoption by the British resident, and, in connection with the proposed adoption, there have been, or would have to be, proceedings in the other country or dealings with authorities or agencies there, or
 - (b) wishes to bring, or cause another to bring, into the United Kingdom a child adopted by the British resident under an adoption effected, within the period of twelve months ending with the date of the bringing in, under the law of the other country.
- (3) It is immaterial whether the other country is a Convention country or not.
- (4) The Secretary of State may by order declare, in relation to any such country or territory, that special restrictions are to apply for the time being in relation to the bringing in of children in the cases mentioned in subsection (2).
- (5) Before making an order containing such a declaration the Secretary of State must consult—
 - (a) the National Assembly for Wales, and
 - (b) the Department of Health, Social Services and Public Safety in Northern Ireland.

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- (6) A country or territory in relation to which such a declaration has effect for the time being is referred to below in this section as a “restricted country”.
- (7) The Secretary of State must publish reasons for making the declaration in relation to each restricted country.
- (8) The Secretary of State must publish a list of restricted countries (“the restricted list”) and keep the list up to date.
- (9) The restricted list and the reasons are to be published in whatever way the Secretary of State thinks appropriate for bringing them to the attention of adoption agencies and members of the public.
- (10) In this section—
 - (a) “British resident” means a person habitually resident in the British Islands, and the reference to adoption by a British resident includes adoption by a British resident and another person,
 - (b) “the Convention” means the Convention on Protection of Children and Cooperation in respect of Intercountry Adoption, concluded at The Hague on 29th May 1993,
 - (c) “Convention country” means a country or territory in which the Convention is in force.

10 Review

- (1) The Secretary of State must keep under review, in relation to each restricted country, whether it should continue to be a restricted country.
- (2) If the Secretary of State determines, in relation to a restricted country, that there is no longer reason to believe what is mentioned in subsection (1) of section 9, he must by order revoke the order containing the declaration made in relation to it under subsection (4) of that section.
- (3) Before making a determination under subsection (2), the Secretary of State must consult—
 - (a) the National Assembly for Wales, and
 - (b) the Department of Health, Social Services and Public Safety in Northern Ireland.
- (4) In this section, “restricted country” has the same meaning as in section 9.

11 The special restrictions

- (1) The special restrictions mentioned in section 9(4) are that, except as mentioned in subsection (2) of this section, the appropriate authority is not to take any step which he or it might otherwise have taken in connection with furthering the bringing of a child into the United Kingdom in the cases mentioned in section 9(2) (whether or not that step is provided for by or by virtue of any enactment).
- (2) But nothing in subsection (1) prevents the appropriate authority from taking those steps if, in any particular case, the prospective adopters satisfy—
 - (a) the appropriate authority, or

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- (b) in relation to Northern Ireland, in a case which is not a Convention case, the Secretary of State,
that the appropriate authority should take those steps despite the special restrictions.
- (3) The Secretary of State may make regulations providing for—
- (a) the procedure to be followed by the appropriate authority (or, if subsection (2) (b) applies, the Secretary of State) in determining whether or not he or it is satisfied as mentioned in subsection (2),
 - (b) matters which the appropriate authority (or the Secretary of State) is to take into account when making such a determination (whether or not he or it also takes other matters into account).
- (4) In this section—
- “the appropriate authority” means, in a Convention case, the Central Authority in relation to England, to Wales or to Northern Ireland (as the case may be), and in any other case—
- (a) in relation to England and Wales, the Secretary of State,
 - (b) in relation to Northern Ireland, the Secretary of State (for the purposes of steps which he takes) or the Department of Health, Social Services and Public Safety in Northern Ireland (for the purposes of steps which it takes),
- “Central Authority” is to be construed in accordance with section 2 of the Adoption (Intercountry Aspects) Act 1999 (c. 18) (“the 1999 Act”) or, in relation to Northern Ireland, section 2 of the Adoption (Intercountry Aspects) Act (Northern Ireland) 2001 (c. 11 (N.I.)) (“the 2001 Act”),
- “Convention case” means a case where—
- (a) the child is intended to be adopted under an adoption order which, by virtue of regulations under section 1 of the 1999 Act or section 1 of the 2001 Act (as appropriate), is made as a Convention adoption order, or
 - (b) the child is intended to be adopted under 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,
- and “the Convention” and “Convention country” have the meanings given by section 9(10).

12 Imposition of extra conditions in certain cases

- (1) The Secretary of State may make regulations providing—
- (a) for him to specify in the restricted list, in relation to any restricted country, a step which is not otherwise provided for by or by virtue of any enactment but which, by virtue of the arrangements between the United Kingdom and that country, the appropriate authority normally takes in connection with the bringing in of a child where that country is concerned, and
 - (b) that, if such a step has been so specified in relation to a restricted country, one or more conditions specified in the regulations are to be met in respect of a child brought into the United Kingdom in either of the cases mentioned in section 9(2) (reading the reference there to the “other country” as being to the restricted country in question).
- (2) Those conditions are in addition to any provided for by virtue of—

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- (a) section 83 of the Adoption and Children Act 2002 (c. 38) (restriction on bringing children in), or
 - (b) Article 58ZA of the Adoption (Northern Ireland) Order 1987 (S.I. 1987/2203 (N.I. 22)) (restriction on bringing children in),
- or under or by virtue of any other enactment.
- (3) A person who brings, or causes another to bring, a child into the United Kingdom is guilty of an offence if any condition required to be met by virtue of subsection (1) (b) is not met.
- (4) Subsection (3) does not apply if the step specified in the restricted list in relation to any country had already been taken before the publication of the restricted list.
- (5) A person guilty of an offence under subsection (3) is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months (in England and Wales) or 6 months (in Northern Ireland), or a fine not exceeding the statutory maximum, or both,
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 12 months, or a fine, or both.
- (6) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003 (c. 44) (general limit on magistrates' court's power to impose imprisonment), the reference in subsection (5)(a) to 12 months is to be read as a reference to 6 months.
- This subsection does not extend to Northern Ireland.
- (7) In this section—
- (a) “the appropriate authority” has the meaning given by section 11(4),
 - (b) “restricted country” and “restricted list” have the same meanings as in section 9.

13 Power to charge

After section 91 of the Adoption and Children Act 2002 (c. 38) insert—

“91A Power to charge

- (1) This section applies to adoptions to which—
 - (a) section 83 applies, or
 - (b) regulations made under section 1 of the Adoption (Intercountry Aspects) Act 1999 apply.
- (2) The Secretary of State may charge a fee to adopters for services provided or to be provided by him in relation to adoptions to which this section applies.
- (3) The Assembly may charge a fee to adopters for services provided or to be provided by it as the Central Authority in relation to adoptions to which this section applies by virtue of subsection (1)(b).
- (4) The Secretary of State and the Assembly may determine the level of fee as he or it sees fit, and may in particular—
 - (a) charge a flat fee or charge different fees in different cases or descriptions of case, and

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- (b) in any case or description of case, waive a fee.
- (5) But the Secretary of State and the Assembly must each secure that, taking one financial year with another, the income from fees under this section does not exceed the total cost to him or, as the case may be, to it of providing the services in relation to which the fees are imposed.
- (6) In this section—
 - references to adoptions and adopters include prospective adoptions and prospective adopters,
 - “Central Authority” is to be construed in accordance with section 2 of the Adoption (Intercountry Aspects) Act 1999,
 - “financial year” means a period of twelve months ending with 31st March.”

14 Other amendments relating to adoptions from abroad

- (1) In section 83 of the Adoption and Children Act 2002 (restriction on bringing children into the United Kingdom), in subsection (1)(b), for “six” substitute “twelve”.
- (2) The amendment made by subsection (1) applies only in relation to a child adopted under an external adoption (see section 83(3) of the Adoption and Children Act 2002 (c. 38)) effected after subsection (1) comes into force.
- (3) In Schedule 8 to the Children Act 1989 (c. 41) (privately fostered children), in paragraph 5 (as amended by paragraph 73 of Schedule 3 to the Adoption and Children Act 2002), after sub-paragraph (c) add—
 - “or while he is a child in respect of whom a local authority have functions by virtue of regulations under section 83(6)(b) of the Adoption and Children Act 2002 (which relates to children brought into the United Kingdom for adoption), or corresponding functions by virtue of regulations under section 1 of the Adoption (Intercountry Aspects) Act 1999 (regulations to give effect to Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption).”