

---

STATUTORY INSTRUMENTS

---

**2005 No. 392**

**The Adoptions with a Foreign Element Regulations 2005**

**PART 3**

**ADOPTIONS UNDER THE CONVENTION**

**CHAPTER 1**

**REQUIREMENTS, PROCEDURE, RECOGNITION AND EFFECT OF  
ADOPTIONS WHERE THE UNITED KINGDOM IS THE RECEIVING STATE**

**Application of Chapter 1**

**12.** The provisions in this Chapter shall apply where a couple or a person, habitually resident in the British Islands, wishes to adopt a child who is habitually resident in a Convention country outside the British Islands in accordance with the Convention<sup>(1)</sup>.

**Requirements applicable in respect of eligibility and suitability**

**13.—(1)** A couple or a person who wishes to adopt a child habitually resident in a Convention country outside the British Islands shall—

- (a) apply in writing to an adoption agency for a determination of eligibility, and an assessment of his suitability, to adopt; and
- (b) give the agency any information it may require for the purposes of the assessment.

(2) An adoption agency may not consider an application under paragraph (1) unless at the date of that application—

- (a) in the case of an application by a couple, they have both—
  - (i) attained the age of 21 years; and
  - (ii) been habitually resident in a part of the British Islands for a period of not less than one year ending with the date of application; and
- (b) in the case of an application by one person, he has—
  - (i) attained the age of 21 years; and
  - (ii) been habitually resident in a part of the British Islands for a period of not less than one year ending with the date of application.

**Counselling and information**

**14.—(1)** An adoption agency must provide a counselling service in accordance with regulation 21(1)(a) of the Agencies Regulations or corresponding Welsh provision and must—

---

<sup>(1)</sup> See section 18 of the 1999 Act.

- (a) explain to the prospective adopter the procedure in relation to, and the legal implications of, adopting a child from the State of origin from which the prospective adopter wishes to adopt in accordance with the Convention; and
- (b) provide him with written information about the matters referred to in sub-paragraph (a).

(2) Paragraph (1) does not apply if the adoption agency is satisfied that the requirements set out in that paragraph have been carried out in respect of the prospective adopter by another agency.

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

**15.**—(1) Regulation 22 of the Agencies Regulations (requirement to consider application for an assessment of suitability) or corresponding Welsh provision shall apply as if the reference to an application in those Regulations or corresponding Welsh provision was to an application made in accordance with regulation 13.

(2) Where the adoption agency is satisfied that the requirements in—

- (a) regulation 14; and
- (b) regulations 23 (police checks) and 24 (preparation for adoption) of the Agencies Regulations or corresponding Welsh provision,

have been met, regulations 25 (prospective adopter's report) and 26 (adoption panel) of the Agencies Regulations or corresponding Welsh provisions shall apply.

(3) The adoption agency must place on the prospective adopter's case record any information obtained as a consequence of this Chapter(2).

(4) The adoption agency must include in the prospective adopter's report—

- (a) the State of origin from which the prospective adopter wishes to adopt a child;
- (b) confirmation that the prospective adopter is eligible to adopt a child under the law of that State;
- (c) any additional information obtained as a consequence of the requirements of that State; and
- (d) the agency's assessment of the prospective adopter's suitability to adopt a child who is habitually resident in that State.

(5) The references to information in regulations 25(5) and 26(2) of the Agencies Regulations or corresponding Welsh provisions shall include information obtained by the adoption agency or adoption panel as a consequence of this regulation.

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

**16.** The adoption agency must make a decision about whether the prospective adopter is suitable to adopt a child in accordance with regulation 27 of the Agencies Regulations and regulations made under section 45 of the Act, or corresponding Welsh provisions.

### **Review and termination of approval**

**17.** The adoption agency must review the approval of each prospective adopter in accordance with regulation 29 of the Agencies Regulations or corresponding Welsh provision unless the agency has received written notification from the relevant Central Authority that the agreement under Article 17(c) of the Convention(3) has been made.

---

(2) An adoption agency is required to set up a case record in respect of a prospective adopter under regulation 22(1) of the Agencies Regulations or corresponding Welsh provision.

(3) Article 17 sets out the conditions which must be satisfied before a decision is made by the State of origin that a child may be placed with prospective adopters. The condition in Article 17(c) is that the Central Authorities of the State of origin and receiving State have agreed that the adoption may proceed.

### **Procedure following decision as to suitability to adopt**

**18.**—(1) Where an adoption agency has made a decision that the prospective adopter is suitable to adopt a child in accordance with regulation 16, it must send to the relevant Central Authority—

- (a) written confirmation of the decision and any recommendation the agency may make in relation to the number of children the prospective adopter may be suitable to adopt, their age range, sex, likely needs and background;
- (b) the enhanced criminal record certificate obtained under regulation 23 of the Agencies Regulations or corresponding Welsh provision;
- (c) all the documents and information which were passed to the adoption panel in accordance with regulation 25(9) of the Agencies Regulations or corresponding Welsh provision;
- (d) the record of the proceedings of the adoption panel, its recommendation and the reasons for its recommendation; and
- (e) any other information relating to the case as the relevant Central Authority or the CA of the State of origin may require.

(2) If the relevant Central Authority is satisfied that the adoption agency has complied with the duties and procedures imposed by the Agencies Regulations or corresponding Welsh provision, and that all the relevant information has been supplied by that agency, the Authority must send to the CA of the State of origin—

- (a) the prospective adopter’s report prepared in accordance with regulation 25 of the Agencies Regulations or corresponding Welsh provision;
- (b) the enhanced criminal record certificate;
- (c) a copy of the adoption agency’s decision and the adoption panel’s recommendation;
- (d) any other information that the CA of the State of origin may require; and
- (e) a certificate in the form set out in Schedule 1 confirming that the—
  - (i) prospective adopter is eligible to adopt;
  - (ii) prospective adopter has been assessed in accordance with this Chapter;
  - (iii) prospective adopter has been approved as suitable to adopt a child; and
  - (iv) child will be authorised to enter and reside permanently in the United Kingdom if entry clearance, and leave to enter or remain as may be necessary, is granted and not revoked or curtailed and a Convention adoption order or Convention adoption(4) is made.

(3) The relevant Central Authority must notify the adoption agency and the prospective adopter in writing that the certificate and the documents referred to in paragraph (2) have been sent to the CA of the State of origin.

### **Procedure following receipt of the Article 16 Information from the CA of the State of origin**

**19.**—(1) Where the relevant Central Authority receives from the CA of the State of origin, the Article 16 Information relating to the child whom the CA of the State of origin considers should be placed for adoption with the prospective adopter, the relevant Central Authority must send that Information to the adoption agency.

(2) The adoption agency must consider the Article 16 Information and—

---

(4) The term “Convention adoption order” means an adoption which by virtue of section 1 of the Adoption (Intercountry Aspects) Act 1999 (c. 18) is made as a Convention adoption order (see section 144 of the 2002 Act and regulation 31). The term “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 (see section 66(1)(c) of the 2002 Act).

- (a) send that Information to the prospective adopter;
  - (b) meet with him to discuss—
    - (i) that Information;
    - (ii) the proposed placement;
    - (iii) the availability of adoption support services; and
  - (c) if appropriate, offer a counselling service and further information as required.
- (3) Where—
- (a) the procedure in paragraph (2) has been followed;
  - (b) the prospective adopter (and where the prospective adopters are a couple each of them) has visited the child in the State of origin; and
  - (c) after that visit to the child, the prospective adopter has confirmed in writing to the adoption agency that—
    - (i) he has visited the child;
    - (ii) he has provided the adoption agency with additional reports and information received on or after that visit; and
    - (iii) he wishes to proceed to adopt that child,
 the agency must notify the relevant Central Authority in writing that the requirements specified in sub-paragraphs (a) to (c) have been satisfied and at the same time it must confirm that it is content for the adoption to proceed.
- (4) Where the relevant Central Authority has received notification from the adoption agency under paragraph (3), the relevant Central Authority shall—
- (a) notify the CA of the State of origin that—
    - (i) the prospective adopter wishes to proceed to adopt the child;
    - (ii) it is prepared to agree with the CA of the State of origin that the adoption may proceed; and
  - (b) confirm to the CA of the State of origin that—
    - (i) in the case where the requirements specified in section 1(5A) of the British Nationality Act 1981<sup>(5)</sup> are met that the child will be authorised to enter and reside permanently in the United Kingdom; or
    - (ii) in any other case, if entry clearance and leave to enter and remain, as may be necessary, is granted and not revoked or curtailed and a Convention adoption order or a Convention adoption is made, the child will be authorised to enter and reside permanently in the United Kingdom.
- (5) The relevant Central Authority must inform the adoption agency and the prospective adopter when the agreement under Article 17(c) of the Convention has been made.
- (6) For the purposes of this regulation and regulation 20 “the Article 16 Information” means—
- (a) the report referred to in Article 16(1) of the Convention including information about the child’s identity, adoptability, background, social environment, family history, medical history including that of the child’s family and any special needs of the child;
  - (b) proof of confirmation that the consents of the persons, institutions and authorities whose consents are necessary for adoption have been obtained in accordance with Article 4 of the Convention; and

---

(5) 1981 c. 61. Section 1 is amended by section 7 of the Adoption (Intercountry Aspects) Act 1999 and by section 137 of the 2002 Act.

- (c) the reasons for the CA of the State of origin's determination on the placement.

**Procedure where proposed adoption is not to proceed**

**20.**—(1) If, at any stage before the agreement under Article 17(c) of the Convention is made, the CA of the State of origin notifies the relevant Central Authority that it has decided the proposed placement should not proceed—

- (a) the relevant Central Authority must inform the adoption agency of the CA of the State of origin's decision;
- (b) the agency must then inform the prospective adopter and return the Article 16 Information to the relevant Central Authority; and
- (c) the relevant Central Authority must then return those documents to the CA of the State of origin.

(2) Where at any stage before the adoption agency receives notification of the agreement under Article 17(c) of the Convention the approval of the prospective adopter is reviewed under regulation 29 of the Agencies Regulations or corresponding Welsh provision, and as a consequence, the agency determines that the prospective adopter is no longer suitable to adopt a child—

- (a) the agency must inform the relevant Central Authority and return the documents referred to in regulation 19(1);
- (b) the relevant Central Authority must notify the CA of the State of origin and return those documents.

(3) If, at any stage before the child is placed with him, the prospective adopter notifies the adoption agency that he does not wish to proceed with the adoption of the child—

- (a) that agency must inform the relevant Central Authority and return the documents to that Authority; and
- (b) the relevant Central Authority must notify the CA of the State of origin of the prospective adopter's decision and return the documents to the CA of the State of origin.

**Applicable requirements in respect of prospective adopter entering the United Kingdom with a child**

**21.** Following any agreement under Article 17(c) of the Convention, the prospective adopter must—

- (a) notify the adoption agency of his expected date of entry into the United Kingdom with the child;
- (b) confirm to the adoption agency when the child is placed with him by the competent authority in the State of origin; and
- (c) accompany the child on entering the United Kingdom unless, in the case of a couple, the adoption agency and the CA of the State of origin have agreed that it is necessary for only one of them to do so.

**Applicable requirements in respect of an adoption agency before the child enters the United Kingdom**

**22.** Where the adoption agency is informed by the relevant Central Authority that the agreement under Article 17(c) of the Convention has been made and the adoption may proceed, before the child enters the United Kingdom that agency must—

- (a) send the prospective adopter's general practitioner written notification of the proposed placement and send with that notification a written report of the child's health history and current state of health, so far as it is known;
- (b) send the local authority (if that authority is not the adoption agency) and the Primary Care Trust or Local Health Board (Wales), in whose area the prospective adopter has his home, written notification of the proposed arrival of the child into England or Wales; and
- (c) where the child is of compulsory school age, send the local education authority, in whose area the prospective adopter has his home, written notification of the proposed arrival of the child into England or Wales and information about the child's educational history if known and whether he is likely to be assessed for special educational needs under the Education Act 1996<sup>(6)</sup>.

**Applicable provisions following the child's entry into the United Kingdom where no Convention adoption is made**

23. Regulations 24 to 27 apply where—

- (a) following the agreement between the relevant Central Authority and the CA of the State of origin under Article 17(c) of the Convention that the adoption may proceed, no Convention adoption is made, or applied for, in the State of origin; and
- (b) the child is placed with the prospective adopter in the State of origin who then returns to England or Wales with that child.

**Applicable requirements in respect of prospective adopter following child's entry into the United Kingdom**

24.—(1) A prospective adopter must within the period of 14 days beginning with the date on which the child enters the United Kingdom give notice to the relevant local authority—

- (a) of the child's arrival in the United Kingdom; and
- (b) of his intention—
  - (i) to apply for an adoption order in accordance with section 44(2) of the Act; or
  - (ii) not to give the child a home.

(2) In a case where a prospective adopter has given notice in accordance with paragraph (1) and he subsequently moves his home into the area of another local authority, he must within 14 days of that move confirm to that authority in writing the child's entry into the United Kingdom and that notice of his intention—

- (a) to apply for an adoption order in accordance with section 44(2) of the Act has been given to another local authority; or
- (b) not to give the child a home,

has been given.

**Functions imposed on the local authority following the child's entry into the United Kingdom**

25.—(1) Where notice is given to a local authority in accordance with regulation 24, the functions imposed on the local authority by virtue of regulation 5 shall apply subject to the modifications in paragraph (2).

(2) Paragraph (1) of regulation 5 shall apply as if—

---

(6) 1996 c. 56.

- (a) in sub-paragraph (a)—
  - (i) in head (i) for the words “relevant foreign authority” there is substituted “CA of the State of origin and competent foreign authority”;
  - (ii) in head (v) there is substituted “the relevant Central Authority”; and
- (b) sub-paragraphs (b) to (d) were omitted.

### **Prospective adopter unable to proceed with adoption**

**26.** Where the prospective adopter gives notice to the relevant local authority that he does not wish to proceed with the adoption and no longer wishes to give the child a home, that authority must—

- (a) receive the child from him before the end of the period of seven days beginning with the giving of the notice; and
- (b) give notice to the relevant Central Authority of the decision of the prospective adopter not to proceed with the adoption.

### **Withdrawal of child from prospective adopter**

**27.—(1)** Where the relevant local authority are of the opinion that the continued placement of the child is not in the child’s best interests—

- (a) that authority must give notice to the prospective adopter of their opinion and request the return of the child to them; and
- (b) subject to paragraph (3), the prospective adopter must, not later than the end of the period of seven days beginning with the date on which notice was given, return the child to that authority.

(2) Where the relevant local authority has given notice under paragraph (1), that authority must at the same time notify the relevant Central Authority that they have requested the return of the child.

(3) Where notice is given under paragraph (1) but—

- (a) an application for a Convention adoption order was made prior to the giving of that notice; and
- (b) the application has not been disposed of,

the prospective adopter is not required by virtue of paragraph (1) to return the child unless the court so orders.

(4) This regulation does not affect the exercise by any local authority or other person of any power conferred by any enactment or the exercise of any power of arrest.

### **Breakdown of placement**

**28.—(1)** This regulation applies where—

- (a) notification is given by the prospective adopter under regulation 26 (unable to proceed with adoption);
- (b) the child is withdrawn from the prospective adopter under regulation 27 (withdrawal of child from prospective adopter);
- (c) an application for a Convention adoption order is refused;
- (d) a Convention adoption which is subject to a probationary period cannot be made; or
- (e) a Convention adoption order or a Convention adoption is annulled pursuant to section 89(1) of the Act.

(2) Where the relevant local authority are satisfied that it would be in the child's best interests to be placed for adoption with another prospective adopter habitually resident in the United Kingdom they must take the necessary measures to identify a suitable adoptive parent for that child.

(3) Where the relevant local authority have identified and approved another prospective adopter who is eligible, and has been assessed as suitable, to adopt in accordance with these Regulations—

- (a) that authority must notify the relevant Central Authority in writing that—
  - (i) another prospective adopter has been identified; and
  - (ii) the provisions in regulations 14, 15 and 16 have been complied with; and
- (b) the requirements specified in regulations 18 and 19 have been complied with.

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

- (a) it shall inform the CA of the State of origin of the proposed placement; and
- (b) it shall agree the placement with the CA of the State of origin in accordance with the provisions in this Chapter.

(5) Subject to paragraph (2), where the relevant local authority is not satisfied it would be in the child's best interests to be placed for adoption with another prospective adopter in England or Wales, it must liaise with the relevant Central Authority to arrange for the return of the child to his State of origin.

(6) Before coming to any decision under this regulation, the relevant local authority must have regard to the wishes and feelings of the child, having regard to his age and understanding, and where appropriate, obtain his consent in relation to measures to be taken under this regulation.

### **Convention adoptions subject to a probationary period**

**29.**—(1) This regulation applies where—

- (a) the child has been placed with the prospective adopters by the competent authority in the State of origin and a Convention adoption has been applied for by the prospective adopters in the State of origin but the child's placement with the prospective adopter is subject to a probationary period before the Convention adoption is made; and
- (b) the prospective adopter returns to England or Wales with the child before that probationary period is completed and the Convention adoption is made in the State of origin.

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

### **Report of local authority investigation**

**30.** The report of the investigation which a local authority must submit to the court in accordance with section 44(5) of the Act must include—

- (a) confirmation that the Certificate of eligibility and approval has been sent to the CA of the State of origin in accordance with regulation 18;
- (b) the date on which the agreement under Article 17(c) of the Convention was made; and
- (c) details of the reports of the visits and reviews made in accordance with regulation 5 as modified by regulation 25.

### **Convention adoption order**

**31.** An adoption order shall not be made as a Convention adoption order unless—

- (a) in the case of—



- (i) an application by a couple, both members of the couple have been habitually resident in any part of the British Islands for a period of not less than one year ending with the date of the application; or
- (ii) an application by one person, the applicant has been habitually resident in any part of the British Islands for a period of not less than one year ending with the date of the application;
- (b) the child to be adopted was, on the date on which the agreement under Article 17(c) of the Convention was made, habitually resident in a Convention country outside the British Islands; and
- (c) in a case where one member of a couple (in the case of an application by a couple) or the applicant (in the case of an application by one person) is not a British citizen, the Home Office has confirmed that the child is authorised to enter and reside permanently in the United Kingdom.

### **Requirements following a Convention adoption order or Convention adoption**

**32.**—(1) Where the relevant Central Authority receives a copy of a Convention adoption order made by a court in England or Wales that Authority must issue a certificate in the form set out in Schedule 2 certifying that the adoption has been made in accordance with the Convention.

(2) A copy of the certificate issued under paragraph (1) must be sent to the—

- (a) CA of the State of origin;
- (b) adoptive parent; and
- (c) adoption agency and, if different, the relevant local authority.

(3) Where a Convention adoption is made and the relevant Central Authority receives a certificate under Article 23(7) of the Convention in respect of that Convention adoption, the relevant Central Authority must send a copy of that certificate to the—

- (a) adoptive parent; and
- (b) adoption agency and, if different, the relevant local authority.

### **Refusal of a court in England or Wales to make a Convention adoption order**

**33.** Where an application for a Convention adoption order is refused by the court or is withdrawn, the prospective adopter must return the child to the relevant local authority within the period determined by the court.

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

**34.** Where a Convention adoption order or a Convention adoption is annulled under section 89(1) of the Act and the relevant Central Authority receives a copy of the order from the court, it must forward a copy of that order to the CA of the State of origin.

---

(7) Article 23 provides that an adoption certificate certified by the competent authority of the State as having been made in accordance with the Convention shall be recognised by other contracting States. The certificate must specify when and by whom the agreement that the adoption could proceed was given.