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STATUTORY INSTRUMENTS

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**2005 No. 392**

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

**PART 3**

**ADOPTIONS UNDER THE CONVENTION**

**CHAPTER 2**

**REQUIREMENTS, PROCEDURE, RECOGNITION AND EFFECT OF ADOPTIONS IN ENGLAND AND WALES WHERE THE UNITED KINGDOM IS THE STATE OF ORIGIN**

**Application of Chapter 2**

**35.** The provisions in this Chapter shall apply where a couple or a person habitually resident in a Convention country outside the British Islands, wishes to adopt a child who is habitually resident in the British Islands in accordance with the Convention.

**Counselling and information for the child**

**36.—**(1) Where an adoption agency is considering whether a child is suitable for an adoption in accordance with the Convention, it must provide a counselling service for and information to that child in accordance with regulation 13 of the Agencies Regulations or corresponding Welsh provision and it must—

- (a) explain to the child in an appropriate manner the procedure in relation to, and the legal implications of, adoption under the Convention for that child by a prospective adopter habitually resident in the receiving State; 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.

**Counselling and information for the parent or guardian of the child etc.**

**37.—**(1) An adoption agency must provide a counselling service and information in accordance with regulation 14 of the Agencies Regulations or corresponding Welsh provision for the parent or guardian of the child and, where regulation 14(4) of the Agencies Regulations or corresponding Welsh provision applies, for the father.

(2) The adoption agency must also—

- (a) explain to the parent or guardian, and, where regulation 14(4) of the Agencies Regulations or corresponding Welsh provision applies, the father the procedure in relation to, and the legal implications of, adoption under the Convention by a prospective adopter in a receiving State; and
- (b) provide him with written information about the matters referred to in sub-paragraph (a).

(3) Paragraphs (1) and (2) do 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.

### **Requirements in respect of the child's permanence report and information for the adoption panel**

**38.**—(1) The child's permanence report which the adoption agency is required to prepare in accordance with regulation 17 of the Agencies Regulations or corresponding Welsh provision must include—

- (a) a summary of the possibilities for placement of the child 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 send—

- (a) if received, the Article 15 Report; and
- (b) their observations on that Report,

together with the reports and information referred to in regulation 17(2) of the Agencies Regulations or corresponding Welsh provision to the adoption panel.

### **Recommendation of adoption panel**

**39.** Where an adoption panel make a recommendation in accordance with regulation 18(1) of the Agencies Regulations or corresponding Welsh provision it must consider and take into account the Article 15 Report, if available, and the observations thereon together with the information passed to it as a consequence of regulation 38.

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

**40.** Where the adoption agency decides in accordance with regulation 19 of the Agencies Regulations or corresponding Welsh provision that the child should be placed for an adoption in accordance with the Convention it must notify the relevant Central Authority of—

- (a) the name, sex and age of the child;
- (b) the reasons why they consider that the child may be suitable for such an adoption;
- (c) whether a prospective adopter has been identified and, if so, provide any relevant information; and
- (d) any other information that Authority may require.

### **Convention list**

**41.**—(1) The relevant Central Authority is to maintain a Convention list of children who are notified to that Authority under regulation 40 and shall make the contents of that list available for consultation by other Authorities within the British Islands.

(2) Where an adoption agency—

- (a) places for adoption a child whose details have been notified to the relevant Central Authority under regulation 40; or
- (b) determines that an adoption in accordance with the Convention is no longer in the best interests of the child,

it must notify the relevant Central Authority accordingly and that Authority must remove the details relating to that child from the Convention list.

## **Receipt of the Article 15 Report from the CA of the receiving State**

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

- (a) the relevant Central Authority receives a report from the CA of the receiving State which has been prepared for the purposes of Article 15 of the Convention<sup>(1)</sup> (“the Article 15 Report”);
- (b) the Article 15 Report relates to a prospective adopter who is habitually resident in that receiving State; and
- (c) the prospective adopter named in the Article 15 Report wishes to adopt a child who is habitually resident in the British Islands.

(2) Subject to paragraph (3), if the relevant Central Authority is satisfied the prospective adopter meets the following requirements—

- (a) the age requirements as specified in section 50 of the Act in the case of adoption by a couple, or section 51 of the Act in the case of adoption by one person; and
- (b) in the case of a couple, both are, or in the case of adoption by one person, that person is habitually resident in a Convention country outside the British Islands,

that Authority must consult the Convention list and may, if the Authority considers it appropriate, consult any Convention list maintained by another Central Authority within the British Islands.

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

- (a) need not consult the Convention list; and
- (b) must send the Article 15 Report to the local authority which referred the child’s details to the Authority.

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

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

## **Proposed placement and referral to adoption panel**

**43.**—(1) Where the adoption agency is considering whether a proposed placement should proceed in accordance with the procedure provided for in regulation 31 of the Agencies Regulations or corresponding Welsh provision it must take into account the Article 15 Report.

(2) Where the adoption agency refers the proposal to place the child with the particular prospective adopter to the adoption panel in accordance with regulation 31 of the Agencies Regulations or corresponding Welsh provision, it must also send the Article 15 Report to the panel.

## **Consideration by adoption panel**

**44.** The adoption panel must take into account when considering what recommendation to make in accordance with regulation 32(1) of the Agencies Regulations or corresponding Welsh provision

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(1) Article 15 provides for the CA of the receiving State if satisfied that the applicants are eligible and suited to adopt, to prepare a report including information about their identity, eligibility and suitability to adopt, background, family and medical history, social environment, reasons for adoption, ability to undertake an intercountry adoption, as well as the characteristics of the child for whom they would be qualified to care.

the Article 15 Report and any other information passed to it as a consequence of the provisions in this Chapter.

#### **Adoption agency's decision in relation to the proposed placement**

**45.—**(1) Regulation 33 of the Agencies Regulations or corresponding Welsh provision shall apply as if paragraph (3) of that regulation or corresponding Welsh provision was omitted.

(2) As soon as possible after the agency makes its decision, it must notify the relevant Central Authority of its decision.

(3) 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 relevant Central Authority to that Authority; and
- (b) the relevant Central Authority must then send that Report, any such documents or such information to the CA of the receiving State.

#### **Preparation of the Article 16 Information**

**46.—**(1) If the adoption agency decides that the proposed placement should proceed, it must prepare a report for the purposes of Article 16(1) of the Convention which must include—

- (a) the information about the child which is specified in Schedule 1 to the Agencies Regulations or corresponding Welsh provision; and
- (b) the reasons for their decision.

(2) The adoption agency must send the following to the relevant Central Authority—

- (a) the report referred to in paragraph (1);
- (b) details of any placement order or other orders, if any, made by the courts; and
- (c) confirmation that the parent or guardian consents to the proposed adoption.

(3) The relevant Central Authority must then send the documents referred to in paragraph (2) to the CA of the receiving State.

#### **Requirements to be met before the child is placed for adoption with prospective adopter**

**47.—**(1) The relevant Central Authority may notify the CA of the receiving State that it is prepared to agree that the adoption may proceed provided that CA has confirmed that—

- (a) the prospective adopter has agreed to adopt the child and has received such counselling as may be necessary;
- (b) the prospective adopter has confirmed that he will accompany the child to the receiving State, unless in the case of a couple, the adoption agency and the CA of the receiving State have agreed that it is only necessary for one of them to do so;
- (c) it is content for the adoption to proceed;
- (d) in the case where a Convention adoption is to be effected, it has explained to the prospective adopter the need to make an application under section 84(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 relevant Central Authority may not make an agreement under Article 17(c) of the Convention with the CA of the receiving State unless—

- (a) confirmation has been received in respect of the matters referred to in paragraph (1); and
- (b) the adoption agency has confirmed to the relevant Central Authority that—

- (i) it has met the prospective adopter and explained the requirement to make an application for an order under section 84 of the Act before the child can be removed from the United Kingdom;
- (ii) the prospective adopter has visited the child; and
- (iii) the prospective adopter is content for the adoption to proceed.

(3) An adoption agency may not place a child for adoption unless the agreement under Article 17(c) of the Convention has been made and the relevant Central Authority must advise that agency when that agreement has been made.

(4) In this regulation, the reference to “prospective adopter” means in the case of a couple, both of them.

### **Requirements in respect of giving parental responsibility prior to a proposed Convention adoption**

**48.** In the case of a proposed Convention adoption, the prescribed requirements for the purposes of section 84(3) of the Act (requirements to be satisfied prior to making an order) are—

- (a) the competent authorities of the receiving State have—
  - (i) prepared a report for the purposes of Article 15 of the Convention;
  - (ii) determined and confirmed in writing that the prospective adoptive parent is eligible and suitable to adopt;
  - (iii) ensured and confirmed in writing that the prospective adoptive parent has 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 that 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 that it has complied with the requirements imposed upon it under Part 3 of the Agencies Regulations or corresponding Welsh provision and this Chapter;
- (d) the adoption agency has obtained and made available to the court—
  - (i) the reports and information referred to in regulation 17(1) and (2) of the Agencies Regulations or corresponding Welsh provision;
  - (ii) the recommendation made by the adoption panel in accordance with regulations 18 and 33 of the Agencies Regulations or corresponding Welsh provisions; and
  - (iii) the adoption placement report prepared in accordance with regulation 31(2) of the Agencies Regulations or corresponding Welsh provision;
- (e) the adoption agency includes in their report submitted to the court in accordance with section 43(a) or 44(5) of the Act as modified respectively by regulation 11, details of any reviews and visits carried out as consequence of Part 6 of the Agencies Regulations or corresponding Welsh provision; and
- (f) the prospective adopter has confirmed in writing that he will accompany the child on taking the child out of the United Kingdom to travel to the receiving State or in the case of a couple the agency and competent foreign authority have confirmed that it is necessary for only one of them to do so.

### **Local authority report**

**49.** In the case of a proposed application for a Convention adoption order, the report which a local authority must submit to the court in accordance with section 43(a) or 44(5) of the Act must include a copy of the—

- (a) Article 15 Report;
- (b) report prepared for the purposes of Article 16(1); and
- (c) written confirmation of the agreement under Article 17(c) of the Convention.

### **Convention adoption order**

**50.** 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 a Convention country outside the British Islands for a period of not less than one year ending with the date of the application; or
  - (aa) an application by one person, the applicant has been habitually resident in a Convention country outside 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; and
- (c) the competent authority has confirmed that the child is authorised to enter and remain permanently in the Convention country in which the applicant is habitually resident.

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

**51.—**(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 must be sent to the—

- (a) CA of the receiving State; and
- (b) the relevant local authority.

(3) Where a Convention adoption is made and the Central Authority receives a certificate under Article 23(2) in respect of that Convention adoption, the relevant Central Authority must send a copy of that certificate to the relevant local authority.

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(2) Article 23 of the Convention 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.