



2001 CHAPTER 11

Implementation of Convention

Regulations giving effect to Convention

1.—(1) Subject to the provisions of this Act, regulations made by the Department of Health, Social Services and Public Safety (“the Department”) may make provision for giving effect to the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, concluded at the Hague on 29th May 1993 (“the Convention”).

(2) The text of the Convention (so far as material) is set out in the Schedule.

(3) Regulations under this section may—

(a) apply, with or without modifications, any statutory provision relating to adoption;

(b) provide that any person who contravenes any provision of the regulations is to be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding level 5 on the standard scale, or both; and

(c) make such incidental, supplementary, consequential or transitional provision as appears to the Department to be expedient.

(4) Regulations under this section shall be subject to negative resolution.

(5) Any power to make subordinate legislation under or for the purposes of any statutory provision relating to adoption includes power to do so with a view to giving effect to the provisions of the Convention.

Central Authority and accredited bodies

2.—(1) The functions under the Convention of the Central Authority shall be discharged in relation to Northern Ireland by the Department.

(2) A communication may be sent to the Central Authority in relation to Northern Ireland by sending it to the Central Authority in relation to England (for forwarding to the Central Authority in relation to Northern Ireland).

(3) A registered adoption society is an accredited body for the purposes of the Convention if its registration extends to the provision of facilities in respect of Convention adoptions and adoptions effected by Convention adoption orders.

(4) The functions 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.

(5) In this section “registered adoption society” has the same meaning as in the [Adoption \(Northern Ireland\) Order 1987 \(NI 22\)](#) (“the 1987 Order”); and expressions which are also used in that Order have the same meaning as in that Order.

Convention adoptions

Convention adoption orders

3. After Article 16 of the 1987 Order (parental agreement) there shall be inserted the following Article—

“Convention adoption orders

16A. An adoption order shall be made as a Convention adoption order if—

- (a) the application is for a Convention adoption order; and
- (b) any prescribed requirements are complied with.”.

Effect of Convention adoptions

4.—(1) In paragraph (1) of Article 39 of the 1987 Order (meaning of “adoption” for purposes of provisions relating to status of adopted children), after sub-paragraph (c) there shall be inserted the following sub-paragraph—

“(cc) which is a Convention adoption; or”.

(2) In paragraph (2) of Article 40 of that Order (status conferred by adoption), for the words “paragraph (3)” there shall be substituted the words “paragraphs (3) and (3A)”.

(3) After paragraph (3) of that Article there shall be inserted the following paragraphs—

“(3A) Where, in the case of a Convention adoption, the High Court is satisfied, on an application under this paragraph—

- (a) that under the law of the country in which the adoption was effected the adoption is not a full adoption;
- (b) that the consents referred to in Article 4(c) and (d) of the Convention have not been given for a full adoption, or that the United Kingdom is not the receiving State (within the meaning of Article 2 of the Convention); and
- (c) that it would be more favourable to the adopted child for a direction to be given under this paragraph,

the High Court may direct that paragraph (2) shall not apply, or shall not apply to such extent as may be specified in the direction.

(3B) In paragraph (3A) “full adoption” means an adoption by virtue of which the adopted child falls to be treated in law as if he were not the child of any person other than the adopters or adopter.

(3C) The following provisions of the [Matrimonial and Family Proceedings \(Northern Ireland\) Order 1989 \(NI 4\)](#)—

- (a) Article 35 (provisions relating to the Attorney-General); and
- (b) Article 36 (supplementary provisions as to declarations),

shall apply in relation to, and to an application for, a direction under paragraph (3A) as they apply in relation to, and to an application for, a declaration under Part V of that Order.”.

Annulment, etc., of Convention adoptions, etc.

5. After Article 55 of the 1987 Order (revocation of adoptions on legitimation) there shall be inserted the following Articles—

“Annulment etc. of overseas adoptions

55A.—(1) The High Court may, on an application under this paragraph, by order annul a Convention adoption or a Convention adoption order on the ground that the adoption or order is contrary to public policy.

(2) The High Court may, on an application under this paragraph—

- (a) order that an overseas adoption or a determination shall cease to be valid in Northern Ireland on the ground that the adoption or determination is contrary to public policy or that the authority which purported to authorise the adoption or make the determination was not competent to entertain the case;
- (b) decide the extent, if any, to which a determination has been affected by a subsequent determination.

(3) Except as provided by this Article the validity of a Convention adoption, a Convention adoption order, an overseas adoption or a determination shall not be impugned in proceedings in any court in Northern Ireland.

Provisions supplementary to Article 55A

55B.—(1) Any application for an order under Article 55A or a decision under paragraph (2)(b) of that Article shall be made in the prescribed manner and within such period, if any, as may be prescribed.

(2) No application shall be made under Article 55A(1) unless immediately before the application is made the person adopted or the adopter habitually resides in Northern Ireland or, as the case may be, both adopters habitually reside there.

(3) In deciding in pursuance of Article 55A whether such an authority as is mentioned in Article 58ZB was competent to entertain a particular case, the court shall be bound by any finding of fact made by the authority and stated by the authority to be so made for the purpose of determining whether the authority was competent to entertain the case.

(4) In Article 55A “determination” means such a determination as is mentioned in Article 58ZB.”.

Meaning of “Convention adoption” and related expressions in 1987 Order

6. In Article 2(2) of the 1987 Order (interpretation), after the definition of “child” there shall be inserted the following definitions—

““the Convention” means the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, concluded at the Hague on 29th May 1993;

“Convention adoption” means an adoption effected under the law of a Convention country outside the United Kingdom, the Channel Islands and the Isle of Man and certified in pursuance of Article 23(1) of the Convention;

“Convention adoption order” means an adoption order made in accordance with Article 16A;

“Convention country” means any country or territory in which the Convention is in force;”.

Intercountry adoptions

Adoption Service to include intercountry adoptions etc.

7. In Article 3 of the 1987 Order (Adoption Service), after paragraph (2) there shall be inserted the following paragraph—

“(2A) In this Part references to adoption are to the adoption of children, wherever they may be habitually resident, effected under the law of any country or territory, whether within or outside the United Kingdom, the Channel Islands and the Isle of Man.”.

Registration of adoption societies to provide intercountry adoption services

8. In Article 4 of the 1987 Order (registration of adoption societies)—
- (a) in paragraph (3)(a), after the words “may register the applicant” there shall be added the words “so it may act either—
 - (i) in relation to facilities provided in respect of adoptions other than those mentioned in paragraph (3A); or
 - (ii) in relation to facilities provided in respect of any adoptions, including those mentioned in paragraph (3A)”;
 - (b) after paragraph (3) there shall be inserted the following paragraph—

“(3A) The adoptions referred to in paragraph (3)(a)(i) and (ii) are—

 - (a) a Convention adoption;
 - (b) an adoption effected by a Convention adoption order;
 - (c) an overseas adoption;
 - (d) an adoption of a child habitually resident in the United Kingdom, the Channel Islands or the Isle of Man which is not a Convention adoption and is effected under the law of a country or territory outside the United Kingdom, the Channel Islands and the Isle of Man; and
 - (e) an adoption of a child habitually resident outside the United Kingdom, the Channel Islands or the Isle of Man which is effected by an adoption order other than a Convention adoption order.”.

Six months residence required for certain intercountry adoptions

9. In Article 13 of the 1987 Order (child to live with adopters before order made), after paragraph (3) there shall be added the following paragraph—
- “(4) In relation to—
- (a) an adoption proposed to be effected by a Convention adoption order; or
 - (b) an adoption of a child habitually resident outside the United Kingdom, the Channel Islands and the Isle of Man which is proposed to be effected by an adoption order other than a Convention adoption order,

paragraph (1) shall have effect as if the reference to the preceding 13 weeks were a reference to the preceding 6 months.”.

Registration of certain intercountry adoptions

10.—(1) In Article 50 of the 1987 Order (Adopted Children Register), in paragraph (1)(a) for the words from “shall be made” to “no other entries” there shall be substituted the following words “such entries as may be—

- (i) directed to be made in it by adoption orders, or
- (ii) required to be made under Article 53,

and no other entries, shall be made”.

(2) In Article 53 of that Order (registration of adoptions made outside Northern Ireland)—

- (a) after paragraph (3) there shall be inserted the following paragraphs—

“(3A) If the Registrar General is satisfied, on an application under this paragraph, that he has sufficient particulars relating to a child adopted under a registrable foreign adoption to enable an entry in the form set out in Schedule 2 to be made in the Adopted Children Register for the child—

- (a) he shall make the entry accordingly; and
- (b) if he is also satisfied that an entry in the Register of Births relates to the child, he shall mark the entry “Adopted” or “Re-adopted”, as the case may be, followed by the name in brackets of the country in which the adoption was effected.

(3B) An application under paragraph (3A) shall be made, in the prescribed manner, by a prescribed person and give the prescribed particulars.

- (3C) If the Registrar General is satisfied—

- (a) that a Convention adoption, a Convention adoption order or an overseas adoption has ceased to have effect, whether on annulment or otherwise; or
- (b) that any entry or mark was erroneously made in pursuance of paragraph (3A) in any register mentioned in that paragraph,

he may cause such alterations to be made in any such register as he considers are required in consequence of the cesser or to correct the error; and where an entry in such a register is amended in pursuance of this paragraph, any copy or extract of the entry shall be deemed to be accurate if and only if it shows the entry as amended but without indicating that it has been amended.

(3D) In this Article “registrable foreign adoption” means a Convention or overseas adoption which satisfies prescribed requirements.”;

- (b) in paragraph (4) for the words “and (3)” there shall be substituted the words “, (3) and (3C)”.

Construction of certain references

11. In Article 2 of the 1987 Order (interpretation), after paragraph (3) there shall be inserted the following paragraphs—

“(3A) In this Order, 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 a person is suitable to adopt a child or not.

(3B) In this Order, in relation to—

- (a) an adoption proposed to be effected by a Convention adoption order; or
- (b) an adoption of a child habitually resident outside the United Kingdom, the Channel Islands and the Isle of Man which is proposed to be effected by an adoption order other than a Convention adoption order,

references to a child placed with any persons by an adoption agency include references to a child who, in pursuance of arrangements made by such an agency, has been adopted by or placed with those persons under the law of a country or territory outside the United Kingdom, the Channel Islands and the Isle of Man.”.

Miscellaneous and supplementary

Restriction on bringing children into the United Kingdom for adoption

12. After Article 58 of the 1987 Order (restriction on removal of children for adoption outside Northern Ireland) there shall be inserted the following Article—

“Restriction on bringing children into the United Kingdom for adoption

58ZA.—(1) A person habitually resident in the British Islands who at any time brings into the United Kingdom for the purpose of adoption a child who is habitually resident outside those Islands shall be guilty of an offence unless such requirements as may be prescribed are satisfied either—

- (a) before that time; or
- (b) within such period beginning with that time as may be prescribed.

(2) Paragraph (1) does not apply where the child is brought into the United Kingdom for the purpose of adoption by a parent, guardian or relative.

(3) A person guilty of an offence under this Article shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding 6 months or to both.

(4) Proceedings for an offence under this Article may be brought within a period of 6 months from the date on which evidence sufficient in the opinion of the prosecution to warrant the proceedings came to its knowledge; but no such proceedings shall be brought by virtue of this paragraph more than 3 years after the commission of the offence.

(5) In this Article “the British Islands” means the United Kingdom, the Channel Islands and the Isle of Man.”.

Effect of determinations in Convention countries, etc.

13. After Article 58ZA of the 1987 Order (inserted by Article 12) (restriction on bringing children into the United Kingdom for adoption) there shall be inserted the following Article—

“Effect of determinations in Convention countries, etc.

58ZB. Where—

- (a) an authority of a Convention country (other than the United Kingdom) having power under the law of that country—
 - (i) to authorise, or review the authorisation of, a Convention adoption; or
 - (ii) to give or review a decision revoking or annulling such an adoption or a Convention adoption order; or
- (b) an authority of any of the Channel Islands, the Isle of Man or any colony having power under the law of that territory—
 - (i) to authorise, or review the authorisation of, a Convention adoption or an adoption effected in that territory; or
 - (ii) to give or review a decision revoking or annulling such an adoption or a Convention adoption order,

makes a determination in the exercise of that power, then, subject to Article 55A and any subsequent determination having effect under this Article, the determination shall have effect in Northern Ireland for the purpose of effecting, confirming or terminating the adoption in question or confirming its termination as the case may be.”.

Minor and consequential amendments and repeals

14.—(1) In Article 2(2) of the 1987 Order (interpretation)—

(a) after the definition of “order freeing a child for adoption” there shall be inserted the following definition—

““overseas adoption” means an adoption which is an overseas adoption for the purposes of the Adoption Act 1976 or the Adoption (Scotland) Act 1978;”;

(b) in the definition of “prescribed”, after “4,” there shall be inserted “16A, 58ZA”.

(2) In Article 33(1) of the [Matrimonial and Family Proceedings \(Northern Ireland\) Order 1989 \(NI 4\)](#) (declarations as to adoptions effected overseas), for sub-paragraph (a) there shall be substituted the following sub-paragraph—

“(a) a Convention adoption as defined by Article 2(2) of the Adoption (Northern Ireland) Order 1987 or an overseas adoption as so defined; or”.

(3) The following provisions of the Adoption (Hague Convention) Act (Northern Ireland) [1969 \(c. 22\)](#) are hereby repealed—

(a) in section 5(1), the words “or a specified order” in paragraph (a) and the words “a specified order” in paragraph (b); and

(b) section 8(1).

(4) In Article 39(1) of the 1987 Order, the word “or” at the end of sub-paragraph (c) is hereby repealed.

Interpretation

15. In this Act—

“the Convention” means the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, concluded at the Hague on 29th May 1993;

“the Department” means the Department of Health, Social Services and Public Safety;

“the 1987 Order” means the [Adoption \(Northern Ireland\) Order 1987 \(NI 22\)](#);

“statutory provision” has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) [1954 \(c. 33\)](#).

Short title and commencement

16.—(1) This Act may be cited as the Adoption (Intercountry Aspects) Act (Northern Ireland) 2001.

(2) This Act, except this section and section 15, shall come into operation on such day or days as the Department may by order appoint.