
SCOTTISH STATUTORY INSTRUMENTS

2009 No. 182

The Adoptions with a Foreign
Element (Scotland) Regulations 2009

PART 3

ADOPTIONS UNDER THE CONVENTION

CHAPTER 1

PROCEDURE IN SCOTLAND WHERE THE
UNITED KINGDOM IS THE RECEIVING STATE

Application of Chapter 1

10. The provisions of this Chapter apply where—

- (a) a person; or
- (b) a relevant couple,

habitually resident in the British Islands wishes to adopt, in accordance with the Convention, a child who is habitually resident outwith the British Islands.

Application: eligibility, and suitability, to adopt

11. Such a person or couple must—

- (a) apply in writing to an adoption agency for—
 - (i) a determination of their eligibility to adopt; and
 - (ii) an assessment of their suitability to be adoptive parents; and
- (b) provide the agency with such information as it may require for the purposes of the assessment.

Determination of eligibility to adopt

12.—(1) An adoption agency is not to consider prospective adopters eligible to adopt unless at the date of the application under regulation 11 the person or, as the case may be, each member of the relevant couple making the application—

- (a) has attained the age of 21 years; and
- (b) has 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.

(2) An adoption agency must notify prospective adopters in writing as soon as possible after becoming aware that the prospective adopters are not eligible to adopt because they do not meet the requirements of paragraph (1).

Provision of information

13.—(1) Where an application is made under regulation 11, the adoption agency must—

- (a) explain to the prospective adopters the procedure in relation to, and the legal implications of, adopting a child from the State of origin from which the prospective adopters wish to adopt in accordance with the Convention; and
- (b) provide the prospective adopters 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 in that paragraph have been met in respect of the prospective adopters by another adoption agency.

Case records and counselling

14.—(1) Paragraph (2) applies to an adoption agency which—

- (a) has determined that the prospective adopters are eligible to adopt;
- (b) has satisfied the requirements in regulation 13; and
- (c) considers that the prospective adopters' suitability to be adoptive parents should be assessed.

(2) The adoption agency must—

- (a) if it has not already done so, set up a case record in respect of the prospective adopters and place on it any information obtained under regulations 15 and 16; and
- (b) ensure that such counselling as may be necessary in connection with the proposed adoption is made available to the prospective adopters.

(3) Part VIII of the Adoption Agencies Regulations applies to any case record set up in respect of the prospective adopters as a consequence of this regulation as if that record had been created under that Part.

Criminal record checks

15.—(1) This regulation applies to an adoption agency to which regulation 14(2) applies.

(2) The adoption agency must so far as is reasonably practicable obtain information about—

- (a) any criminal convictions of the prospective adopters and any other member of the prospective adopters' household aged 16 or over; and
- (b) any police cautions issued to such persons in England, Wales or Northern Ireland in respect of an offence which was admitted at the time the caution was issued.

(3) In paragraph (2)(a), the reference to criminal convictions includes a reference to convictions in England, Wales or Northern Ireland.

(4) The adoption agency is not to consider prospective adopters to be suitable to be adoptive parents if the prospective adopters or any member of their household aged 16 or over—

- (a) have been convicted of an offence specified in Schedule 1;
- (b) have been convicted of—
 - (i) a specified offence (within the meaning of regulation 23(3) of the Adoption Agencies Regulations 2005(1) (requirement to carry out police checks)), other than an offence mentioned in paragraphs 2 to 11 of Part I of Schedule 3 to those Regulations (offences in Scotland and Northern Ireland); or

- (ii) an offence mentioned in Part 2 of Schedule 3 to those Regulations (repealed statutory offences) notwithstanding its repeal; or
 - (c) have received a police caution in England, Wales or Northern Ireland in respect of an offence mentioned in sub-paragraph (a) or (b) which, at the time the caution was given, the prospective adopters or, as the case may be, the member of their household, admitted.
- (5) The adoption agency must—
- (a) as soon as possible after becoming aware that the prospective adopters are not suitable to be adoptive parents by virtue of paragraph (4), notify the prospective adopters in writing of that fact; and
 - (b) where the conviction or police caution in question relates to the prospective adopters, specify in the notification the conviction or, as the case may be, the police caution.

Duties of adoption agency prior to decision on suitability

- 16.**—(1) This regulation applies to an adoption agency to which regulation 14(2) applies.
- (2) The adoption agency must so far as is reasonably practicable obtain—
- (a) such information in relation to the prospective adopters as is referred to in Part I of Schedule 1 to the Adoption Agencies Regulations; and
 - (b) any other relevant information which may be requested by the adoption panel.
- (3) Where the adoption agency is not the local authority in whose area the prospective adopters have their home—
- (a) the agency must request the authority to provide any relevant information relating to the prospective adopters of which the authority is aware; and
 - (b) the authority must provide the information.
- (4) The adoption agency must prepare a written report which—
- (a) identifies the Convention country from which the prospective adopters wish to adopt a child;
 - (b) confirms the prospective adopters are eligible to adopt a child under the law of that Convention country;
 - (c) provides any other information obtained as a consequence of the requirements of that Convention country;
 - (d) includes the adoption agency’s assessment of the prospective adopters’ suitability to be adoptive parents;
 - (e) includes any other observations of the adoption agency on the matters referred to in this regulation and regulations 12, 14 and 15; and
 - (f) includes any other information about the prospective adopters of the type specified in Article 15(1) of the Convention.
- (5) The adoption agency must notify the prospective adopters that their application is to be referred to an adoption panel and, at the same time—
- (a) send the prospective adopters a copy of the written report referred to in paragraph (4) (excluding any information from third parties given in confidence); and
 - (b) invite the prospective adopters to send any observations on the report in writing to the agency within a period of 14 days beginning with the date on which the notification was sent.

(6) At the end of the period of 14 days referred to in paragraph (5) (or earlier if any observations of the prospective adopters are received before that period has expired), the adoption agency must refer the prospective adopters' case to the adoption panel and pass to the panel—

- (a) the written report referred to in paragraph (4);
- (b) all relevant information obtained by the agency under this regulation and regulations 14 and 15; and
- (c) any observations of the prospective adopters on the written report.

Functions of the adoption panel

17.—(1) The adoption panel must—

- (a) consider the case of the prospective adopters referred to it by the adoption agency; and
- (b) make a recommendation to the agency as to whether the prospective adopters are suitable to be adoptive parents.

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

- (a) must take into account all information and reports passed to it under regulation 16(6);
- (b) must give the prospective adopters the opportunity to meet with the adoption panel to discuss the information and reports;
- (c) may request the adoption agency to obtain any other relevant information which the panel considers necessary; and
- (d) may obtain legal advice in relation to the case.

Adoption agency decision, notification and request for review

18.—(1) The adoption agency must—

- (a) take into account the recommendation of the adoption panel in coming to a decision (in this regulation, “the decision”) on the prospective adopters' suitability to be adoptive parents; 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 the prospective adopters are suitable to be adoptive parents, the adoption agency must notify the prospective adopters in writing of the decision within 14 days of making the decision.

(4) Where the decision is that the prospective adopters are not suitable to be adoptive parents (other than by virtue of regulation 15(4)), the adoption agency must—

- (a) notify the prospective adopters in writing of the decision within 7 days of making the decision;
- (b) send with the notification—
 - (i) its reasons for the decision; and
 - (ii) where the adoption panel's recommendation was that the prospective adopters were suitable to be adoptive parents, a copy of the recommendation;
- (c) inform the prospective adopters in writing that they may require the decision to be reviewed within 28 days of the date of the notification (the “28 day period”); and
- (d) invite the prospective adopters to submit to the adoption agency any representations regarding the decision within the 28 day period.

(5) Where the prospective adopters have, within the 28 day period, required a review of the decision (whether or not they have also submitted any representations under paragraph (4)(d)), the adoption agency must refer the case to the adoption panel and pass any such representations and any other relevant information to the panel for further consideration.

(6) The adoption panel must reconsider any case referred to it under paragraph (5) and make a fresh recommendation to the adoption agency as to whether the prospective adopters are suitable to be adoptive parents.

(7) The adoption agency must, having taken into account the adoption panel's fresh recommendation, make a decision (the "reviewed decision") on the case within 14 days of the date the fresh recommendation was made.

(8) The adoption agency must, within 7 days of making the reviewed decision, notify the prospective adopters of the reviewed decision.

(9) Where the reviewed decision is that the prospective adopters are not suitable to be adoptive parents, the notification under paragraph (8) must—

- (a) state the reasons for the reviewed decision; and
- (b) where the adoption panel's fresh recommendation was that the prospective adopters were suitable to be adoptive parents, include a copy of the adoption panel's fresh recommendation.

Review without request

19.—(1) Where an adoption agency has decided that prospective adopters are suitable to be adoptive parents, the agency must review that decision in accordance with this regulation unless the agency has received written notification from the Central Authority that the agreement under Article 17(c) of the Convention has been made.

(2) A review under this regulation must be carried out whenever the adoption agency considers it necessary but otherwise not more than one year after the decision and thereafter at intervals of not more than one year.

(3) When undertaking such a review the adoption agency must—

- (a) make such enquiries and obtain such information as it considers necessary in order to review whether the prospective adopters continue to be suitable to be adoptive parents; and
- (b) seek and take into account the views of the prospective adopters.

(4) If following the review, the adoption agency considers that the prospective adopters may no longer be suitable to be adoptive parents it must—

- (a) prepare a written report (the "review report") setting out the agency's reasons for its view;
- (b) notify the prospective adopters that the case is to be referred to the adoption panel;
- (c) send the prospective adopters a copy of the review report; and
- (d) invite the prospective adopters to submit any representations to the adoption agency within 14 days of the report's being sent.

(5) At the end of the period of 14 days referred to in paragraph (4)(d) (or earlier if any representations of the prospective adopters are received before that period has expired), the adoption agency must send the review report, together with any such representations, to the adoption panel.

(6) The adoption agency must obtain, so far as is reasonably practicable, any other relevant information which may be required by the adoption panel and send that information to the panel.

(7) The adoption panel must consider the review report, the prospective adopters' representations (if any) and any other information passed to it by the adoption agency and make a recommendation to the agency as to whether the prospective adopters continue to be suitable to be adoptive parents.

(8) The adoption agency must, having taken into account the adoption panel's recommendation under paragraph (7), make a decision as to whether the prospective adopters continue to be suitable to be adoptive parents; and paragraphs (2) to (9) of regulation 18 apply to that recommendation or, as the case may be, decision as if—

- (a) references to the recommendation of the adoption panel were references to a recommendation under paragraph (7); and
- (b) references to the decision were to a decision under this paragraph.

Procedure following decision that prospective adopters are suitable to adopt

20.—(1) Paragraph (2) applies where an adoption agency—

- (a) has determined that the prospective adopters are eligible to adopt; and
- (b) has made a decision that the prospective adopters are suitable to be adoptive parents.

(2) The adoption agency must send to the Central Authority within 7 days of the date the decision mentioned in paragraph (1)(b) is made—

- (a) written confirmation of the decision; and
- (b) a copy of the written report prepared under regulation 16(4).

(3) The Central Authority may, if it considers it appropriate, require further information from the adoption agency.

(4) If the Central Authority is satisfied that the adoption agency has—

- (a) complied with these Regulations; and
- (b) supplied all the information required under paragraph (2) and, where appropriate and available to the Authority, under paragraph (3),

the Authority must send to the CA of the State of origin the documents mentioned in paragraph (5).

(5) The documents are—

- (a) a certificate in the form set out in Schedule 2 confirming that—
 - (i) the prospective adopters are eligible to adopt;
 - (ii) the prospective adopters have been assessed in accordance with these Regulations;
 - (iii) the prospective adopters have been approved as suitable to be adoptive parents; and
 - (iv) the child will be authorised to enter and reside permanently in the United Kingdom if either of the conditions mentioned in paragraph (6) are met;
- (b) the information required under paragraph (2)(a) and (b); and
- (c) the documents (if any) containing information required under paragraph (3).

(6) The conditions are that—

- (a) the requirements specified in section 1(5A) of the British Nationality Act 1981(2) are met;
- (b) 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 Convention adoption is made.

(7) The Central Authority must notify the adoption agency and the prospective adopters in writing that the certificate and documents have been sent to the CA of the State of origin.

(2) 1981 c. 61. Subsection (5A) of section 1 was inserted by the Adoption (Intercountry Aspects) Act 1999, section 7 and was subsequently amended by the Adoption and Children Act 2002 c. 38, sections 137(4)(b) and 148 and Schedule 4.

Procedure following receipt of Article 16 Information

21.—(1) Where the Central Authority receives from the CA of the State of origin the Article 16 Information relating to the child who the CA of the State of origin considers should be placed for adoption with the prospective adopters, the Central Authority must send that information to the adoption agency.

- (2) The adoption agency must consider the Article 16 Information and—
- (a) send the Information to the prospective adopters;
 - (b) meet with the prospective adopters to discuss the Information, the proposed placement and the availability of adoption support services; and
 - (c) if appropriate, offer—
 - (i) such counselling as may be necessary in connection with the proposed adoption; and
 - (ii) further information as required.
- (3) Where—
- (a) the procedure in paragraph (2) has been followed;
 - (b) the prospective adopters have (or, in the case of a relevant couple where there are exceptional circumstances, one of them has) visited the child in the State of origin; and
 - (c) after that visit, the prospective adopters have confirmed to the adoption agency that—
 - (i) they have visited the child;
 - (ii) they have provided the adoption agency with any additional reports and information received on or after that visit; and
 - (iii) they wish to proceed to adopt the child,

the adoption agency must notify the Central Authority in writing that the requirements specified in sub-paragraphs (a) to (c) have been satisfied and, at the same time, confirm that it is satisfied that there are no impediments to the adoption proceeding.

(4) Where the Central Authority has received notification from the adoption agency under paragraph (3), the Authority must—

- (a) notify the CA of the State of origin that—
 - (i) the prospective adopters wish to proceed to adopt the child; and
 - (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 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 Central Authority must inform the adoption agency and the prospective adopters when the agreement under Article 17(c) of the Convention has been made.

(6) For the purposes of this regulation, regulation 22 and regulation 34, “the Article 16 Information” means—

- (a) the report referred to in Article 16 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
- (c) the reasons for the CA of the State of origin's determination on the placement.

Procedure where proposed adoption not to proceed

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

- (a) the 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 adopters and return the Article 16 Information to the Central Authority; and
- (c) the Central Authority must then return the Article 16 Information to the CA of the State of origin.

(2) Where, at any time before the adoption agency receives notification of the agreement under Article 17(c) of the Convention, the agency's decision that the prospective adopters are suitable to be adoptive parents is reviewed under regulation 19 and, as a consequence, the agency determines that the prospective adopters are no longer suitable to be adoptive parents—

- (a) the agency must inform the Central Authority and return the Article 16 Information; and
- (b) the Central Authority must then notify the CA of the State of origin and return that Information.

(3) If, at any time before the child is placed with the prospective adopters, the prospective adopters notify the adoption agency that they do not wish to proceed with the adoption of the child—

- (a) the agency must inform the Central Authority and return the Article 16 Information to that Authority; and
- (b) the Central Authority must then notify the CA of the State of origin of the prospective adopters' decision and return the Information to the CA of the State of origin.

Child's entry into the United Kingdom

23.—(1) Following any agreement under Article 17(c) of the Convention, the prospective adopters must—

- (a) notify the adoption agency of their expected date of entry into the United Kingdom with the child;
- (b) confirm to the agency when the child is placed with them 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 relevant couple, the adoption agency and the CA of the State of origin have agreed that it is necessary for only one member of the couple to do so.

(2) In exceptional circumstances, a nominee of the prospective adopters who has been approved by the adoption agency may accompany the child as mentioned in paragraph (1)(c) instead of the prospective adopters; and in such a case the word "their" in paragraph (1)(a) is to be read as "the nominee's".

Notifications to be given prior to child's entry into the United Kingdom

24. Where the adoption agency is informed by the 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 the agency must—

- (a) send to the Central Authority written notification of the proposed arrival of the child into Scotland;
- (b) send the prospective adopters' registered medical practitioner (and, where required in cases where the prospective adopters are a relevant couple, the registered medical practitioner of each member of the couple) written notification of the proposed placement and send with that notification a written report of the child's health history, so far as it is known;
- (c) send the local authority (if that authority is not the adoption agency), and the Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978⁽³⁾, in whose areas the prospective adopters have their home written notification of the proposed arrival of the child into Scotland; and
- (d) where the child is of school age (within the meaning of section 31 of the Education (Scotland) Act 1980⁽⁴⁾), send the education authority in whose area the prospective adopters have their home written notification of the proposed arrival of the child into Scotland and information about the child's educational history (if known) including whether the child is likely to have additional support needs (within the meaning of the Education (Additional Support for Learning) (Scotland) Act 2004⁽⁵⁾).

Child's entry into the United Kingdom where no Convention adoption made: applicable provisions

25. Regulations 26 to 30 apply where—

- (a) following the agreement between the Central Authority and the CA of the State of origin under Article 17(c) of the Convention that the adoption may proceed—
 - (i) no Convention adoption is made, or applied for, in the State of origin; or
 - (ii) in the case of regulations 29 and 30, a Convention adoption is applied for in the State of origin and regulation 32(2) applies; and
- (b) the child is placed with the prospective adopters who then return (or whose nominee mentioned in regulation 23(2) then returns) to Scotland with the child.

Duty of prospective adopters to notify local authority

26.—(1) The prospective adopters 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 entry into the United Kingdom; and
- (b) of their intention—
 - (i) to apply for an adoption order in accordance with section 18(2) of the Act; or
 - (ii) not to give the child a home.

(3) 1978 c. 29. Section 2 was amended by the National Health Service and Community Care Act 1990 c. 19, sections 28 and 66(1) and Schedule 9; the National Health Service Reform (Scotland) Act 2004 asp 7, section 11 and Schedule 1 and the Smoking, Health and Social Care (Scotland) Act 2005 asp 13, section 42(1) and Schedule 2.

(4) 1980 c. 44.

(5) 2004 asp 4.

(2) In a case where prospective adopters have given notice in accordance with paragraph (1) and subsequently move their home into the area of another local authority, they must within 14 days of so moving confirm in writing to that authority—

- (a) the child’s entry into the United Kingdom; and
- (b) that notice of the prospective adopters’ intention has been given in accordance with paragraph (1)(b).

Functions of the local authority following child’s entry into the United Kingdom

27.—(1) Where notice is given to a local authority in accordance with regulation 26, the functions imposed on the authority by virtue of regulation 5 apply subject to the modifications in paragraph (2).

(2) Paragraph (2) of regulation 5 applies as if—

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

Duty of prospective adopters

28.—(1) The prospective adopters are not obliged to allow the child to visit or stay with any person, or otherwise to allow contact between the child and any person except under and in terms of a contact order within the meaning of section 11(2)(d) of the Children (Scotland) Act 1995(6).

(2) Subject to paragraphs (3) and (4), the prospective adopters must not cause or permit the child—

- (a) to be known by a new surname;
- (b) to be removed from the United Kingdom,

unless the court consents or each parent or guardian of the child gives written consent.

(3) Paragraph (2)(a) does not apply if the competent authority of the State of origin has agreed that the child may be known by a new surname.

(4) Paragraph (2)(b) does not prevent the removal of the child by the prospective adopters for a period of less than one month.

(5) In paragraph (2), “the court” means—

- (a) the Court of Session; or
- (b) the sheriff court of the sheriffdom within which the child is.

Prospective adopters not wishing to proceed with adoption

29.—(1) Where the prospective adopters give notice to the relevant local authority that they do not wish to proceed with the adoption and no longer wish to give the child a home, the prospective adopters must deliver the child to that authority before the end of the period of 7 days beginning with the giving of the notice.

(2) Where a relevant local authority receives a notice in accordance with paragraph (1), that authority must give notice to the Central Authority of the decision of the prospective adopters not to proceed with the adoption.

Withdrawal of child from prospective adopters

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

- (a) the authority must give notice to the prospective adopters of its opinion and request that the child be delivered to the authority; and
- (b) subject to paragraph (3), the prospective adopters must, no later than the end of the period of 7 days beginning with the date on which notice was given, deliver the child to the authority.

(2) When giving notice under paragraph (1)(a) the relevant local authority must notify the Central Authority that it has requested the delivery of the child.

(3) Where notice has been given under paragraph (1)(a) but—

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

the prospective adopters are not required by virtue of paragraph (1) to deliver 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

31.—(1) This regulation applies where—

- (a) notification is given by the prospective adopters under regulation 29 that they do not wish to proceed with the adoption;
- (b) the child is withdrawn from the prospective adopters under regulation 30 or is otherwise removed by the relevant local authority under any other power competent to it;
- (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 68(1) of the Act.

(2) Where the relevant local authority is satisfied that it would be in the child’s best interests to be placed for adoption with other prospective adopters habitually resident in the United Kingdom, the authority must take the necessary measures to identify suitable adoptive parents for the child.

(3) Where the relevant local authority has identified and approved other prospective adopters who are eligible to adopt and who have been assessed as suitable to be adoptive parents in accordance with these Regulations, or their equivalent applying elsewhere in the British Islands, the authority must notify the Central Authority in writing that—

- (a) other prospective adopters have been identified; and
- (b) regulations 13 to 18, 20 and 21 have been complied with in respect of the other prospective adopters.

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

- (a) inform the CA of the State of origin of the proposed placement; and
- (b) seek to reach agreement under Article 17(c) of the Convention with the CA of the State of origin in accordance with the provisions in this Chapter.

- (5) Where the relevant local authority—
- (a) is not satisfied as mentioned in paragraph (2); or
 - (b) is so satisfied but is unable to identify and approve other prospective adopters as mentioned in paragraph (3),

the authority must liaise with the Central Authority to arrange for the return of the child to the child's State of origin.

- (6) Before coming to any decision under this regulation, the relevant local authority must—
- (a) have regard to the wishes and feelings of the child (taking into account the child's age and understanding); and
 - (b) where appropriate, obtain the child's consent in relation to measures to be taken under this regulation.

Convention adoptions subject to a probationary period

32.—(1) Paragraph (2) applies where—

- (a) the child has been placed with the prospective adopters by the competent authority of the State of origin in that State and a Convention adoption has been applied for by the prospective adopters in the State of origin, but the placement is subject to a probationary period before the Convention adoption is made; and
- (b) the prospective adopters return to Scotland with the child before the probationary period is completed and before 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 the competent authority; and such a report must be prepared within such timescales, and contain such information, as the competent authority may reasonably require.

(3) The reference in paragraph (1)(b) to prospective adopters includes a reference to any nominee mentioned in regulation 23(2).

Report of local authority investigation

33. The report of the investigation which a local authority must submit to the court in accordance with section 19(2) of the Act must include—

- (a) confirmation that the certificate of eligibility and approval mentioned in paragraph (5) (a) of regulation 20 has been sent to the CA of the State of origin in accordance with paragraph (4) of that regulation;
- (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 27.

Convention adoption order

34. 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 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 for the order 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 outwith the British Islands;
- (c) copies of the Article 16 Information and the agreement under Article 17(c) of the Convention are made available to the court; and
- (d) in a case where one member of a relevant couple (in the case of an application by a relevant 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 a Convention adoption

35.—(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 State of origin;
- (b) the adoptive parents; and
- (c) the adoption agency and, if different, the relevant local authority.

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

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

Convention adoption order: refusal or withdrawal

36.—(1) Where an application for a Convention adoption order is refused by the court, the prospective adopters must deliver the child to the relevant local authority within the period determined by the court.

(2) Paragraphs (3) and (4) apply where an application for a Convention adoption order in respect of a child is withdrawn by the prospective adopters.

(3) Where the prospective adopters do not submit a fresh application for a Convention adoption order in respect of the child within 28 days of the withdrawal (or such longer period as the relevant local authority may agree in writing) they must deliver the child to the relevant local authority within 7 days of the expiry of the 28 day period or, as the case may be, such longer period.

(4) But where the prospective adopters notify the adoption agency that they do not intend to submit a fresh application for a Convention adoption order in respect of the child, they must deliver the child to the relevant local authority within 7 days of such notification.

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

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Annulment of Convention adoption order or Convention adoption

37. Where a Convention adoption order or a Convention adoption is annulled under section 68(1) of the Act—

- (a) the court must send a copy of the order effecting the annulment to the Central Authority;
and
- (b) the Central Authority must then send a copy of the order to the CA of the State of origin.