

# **ADOPTION (INTERCOUNTRY ASPECTS) ACT 1999**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### ***Intercountry adoptions – sections 9 to 13***

##### ***Section 9. Adoption Service to include intercountry adoptions etc.***

49. **Section 9** provides for a new subsection (3A) to be added to section 1 of the 1976 and 1978 Acts (establishment of Adoption Service) to clarify that the description of the adoption service includes the adoption of children wherever they may be habitually resident and effected under the law of any country or territory. This amendment makes clear that the adoption service is a comprehensive service which is intended to include both domestic and intercountry adoption.

##### ***Section 10. Approval of adoption agencies to provide intercountry adoption services***

50. This section inserts two new subsections (6A) and (6B) to section 3 of the 1976 Act (approval of adoption societies). New subsection (6A) provides that a voluntary adoption society may be approved to act as an adoption agency in relation either to adoptions which are not intercountry adoptions, or all adoptions including intercountry adoptions.
51. The effect will be that the majority of voluntary adoption agencies will be approved under subsection (6A)(a) and those which undertake intercountry adoptions will be approved under (6A)(b). An adoption agency wishing to specialise in intercountry adoptions must therefore also satisfy the general requirements for an adoption agency. With minor exceptions, voluntary adoptions societies so approved to work in intercountry adoption will be able to operate independently of local authorities.
52. The effect of this and the preceding amendment is to ensure that both local authorities and approved adoption agencies may provide prospective adopters with intercountry adoption services. In Scotland, amendments previously made by the Children (Scotland) Act 1995 mean that adoption agencies may already be approved for specific purposes.

##### ***Section 11. Six months residence required for certain intercountry adoptions***

53. This section inserts a new subsection (4) to section 13 of the 1976 Act and the 1978 Act (child to live with adopters before order is made). It provides that where a child habitually resident outside the British Islands is to be adopted in England, Wales or Scotland by an adoption order or a Convention adoption order, the child is required to have had his home with the prospective adopters for a period of at least 6 months before an adoption order may be made. The period of 6 months is only to apply to those cases where the placement of the child was made by an adoption agency. (See section 13.)

54. In those cases where a child has been brought to the United Kingdom for the purposes of adoption and the arrangements for adoption were not made by an adoption agency, the current provisions of the 1976 Act, concerning the period before an adoption order may be made, will remain at 12 months. The effect of this amendment is therefore to reduce the period of residence from 12 to 6 months in cases dealt with by adoption agencies.

### ***Section 12. Registration of certain intercountry adoptions***

55. Subsection (1) provides for an amendment to section 50(1) of the 1976 Act and section 45(1) of the 1978 Act (Adopted Children Register) which in addition to entries currently made pursuant to adoption orders, will require the Registrar General or the Registrar General for Scotland ("the Registrar") to make such entries in the Adopted Children Register as may be required under Schedule 1 to the Act.

Subsection (2) removes the obligation to mark the entry in the Adopted Children Register as a "Convention order".

56. Subsection (3) provides for paragraph 3 of Schedule 1 to be substituted by a new paragraph which sets out the conditions to be met and the procedure to be followed before the Registrar is able to make an entry of a registrable foreign adoption in the Adopted Children Register.

57. Subsection (4) provides for a consequential amendment to be made to paragraph 4(5) (a) of Schedule 1.

58. The amendment makes a change in the way the registration of adopted children is to be made in cases where an adoption was effected overseas. The entry in the Register of Adopted Children will no longer indicate 'Convention adoption'. Any relevant entry in the Registers of Birth will be marked 'adopted' or 're-adopted' and include the country in which the adoption order was made. The amendment expands the scope of registration by including children whose adoption was effected under the Convention or as an overseas adoption.

59. Under the 1976 and 1978 Acts, an adoption order made in England, Wales or Scotland should include a direction to the Registrar to make an entry in the Adopted Children Register. This amendment has the effect of extending the duty imposed upon the Registrar to include an entry in the Adopted Children Register of an adoption order made under the Convention or an adoption order made overseas which meets criteria to be set out in Regulations. Requests for entry in the Register for these adoption orders will be made by application to the Registrar. Power has been taken to set out in regulations the form, content and persons by whom application may be made. The Registrar will be required to make the entry if he is satisfied that he has sufficient particulars to enable an entry to be made.

### ***Section 13. Construction of certain references in 1976 Act***

60. Section 13 amends section 72 of the 1976 Act (interpretation) and section 65 of the 1978 Act (interpretation). It inserts two new subsections.

61. New subsection (3A) extends the interpretation in the 1976 and 1978 Acts relating to arrangements for adoption by providing that in relation to the proposed adoption of a child resident outside the British Islands, references to arrangements for the adoption include references to arrangements for an assessment for the purpose of indicating whether a person is suitable or not to adopt a child.

62. The effect is to put it beyond doubt that in intercountry cases, a home study assessment report for the purposes of adoption must be prepared by or on behalf of an adoption agency. The amendment should be read with sections 11 and 56 of the 1976 Act and sections 11 and 51 of the 1978 Act which deal with restrictions on arranging adoptions and prohibitions on making certain payments in connection with the adoption of children.

*These notes refer to the Adoption (Intercountry Aspects) Act  
1999 (c.18) which received Royal Assent on 27 July 1999*

63. New subsection (3B) extends the interpretation to be given to placing a child for adoption to include placing for adoption children habitually resident outside the British Islands. It provides that in relation to an adoption of a child habitually resident outside the British Islands which is proposed to be effected by an adoption order or a Convention adoption order, references to a child placed with any persons by an adoption agency is to include reference to a child who, in pursuance of arrangements made by such an agency, has been adopted or placed for adoption by those persons under the law of a country or territory outside the British Islands.
64. The effect of this amendment is to provide that where an adoption agency has made arrangements for the adoption of a child from overseas, the placement will be deemed to be an agency placement, even though the agency is not directly involved in those stages of the process (such as the "matching" of the child with the adopters, or the actual placing of the child with them) which take place in the child's country of origin. When the child is brought to England, Wales or Scotland, the adoption agency's duties as to, for example, supervision and reports, will be equivalent to those of an adoption agency placing a child for adoption in non-intercountry cases.