

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

ADOPTION (INTERCOUNTRY ASPECTS) ACT 1999

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Implementation of Convention – sections 1 and 2

Section 1. Regulations giving effect to Convention

16. **Section 1** enables the Secretary of State to make regulations to give effect to the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, concluded at the Hague on 29 May 1993 (the Hague Convention). The material parts of the text of the Convention are included as Schedule 1 of the Act.
17. The Regulations may apply and modify any provision of the enactments relating to adoption and create criminal offences. Regulations are to be made by statutory instrument.

Section 2. Central Authorities and accredited bodies.

18. Subsection (1) provides, in accordance with Article 6.1 of the Convention, for the functions under the Convention of a Central Authority to be discharged separately in England and Scotland by the respective Secretary of State and in Wales by the Welsh Assembly. A Central Authority is the body within a political boundary or country which is responsible for implementing the Convention; duties are specified under Articles 6 to 22 of the Convention.
19. Subsection (2) provides in accordance with Article 6.2 that the Central Authority in relation to England may act as the focal point for Great Britain for any communication relating to the Convention.
20. Subsection (3) implements Articles 9 to 11. An accredited body under the Convention is a body approved by the Central Authority in the State in which they operate to carry out work under the Convention. Adoption societies approved by Secretary of State under provisions of the 1976 and 1978 Acts to provide Convention adoption services will automatically be accredited for the purposes of the Convention. Local authorities, as public authorities, will have responsibility for providing a Convention adoption service. They do not require accreditation.
21. Subsection (4) provides that the functions set out under Article 9(a) to (c) of the Convention are to be discharged by local authorities or accredited bodies on behalf of the Central Authority. By amendment of the Local Authority Social Services Act 1970 (see paragraph 1, Schedule 2 of the Act), these functions are to be social services functions within the meaning of the Act.

The functions are:

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- (a) collect, preserve and exchange information about the situation of the child and prospective adoptive parents, so far as is necessary to complete the adoption;
- (b) facilitate, follow and expedite proceedings with a view to obtaining the adoption;
- (c) promote the development of adoption counselling and post-adoption services in their States.

Convention adoptions – sections 3 to 8

Section 3. Convention adoption orders

22. Section 3 provides for the substitution of section 17 of the 1976 and 1978 Acts with a new power enabling the Secretary of State to make regulations for Convention adoption orders. A Convention adoption order is an adoption order which is made in England and Wales or Scotland under the Convention as a Convention adoption order under section 17. It is envisaged that new regulations will be made which will modify existing jurisdictional requirements in order to comply with the Convention.

Section 4. Effect of Convention adoptions in England and Wales

23. Section 38(1) of the 1976 Act is amended by subsection (1) which inserts a new paragraph (cc) 'which is a Convention adoption', thereby adding to the list of types of adoption orders made.
24. The effect of this amendment is to enable Convention adoptions to be recognised in accordance with section 39 of the 1976 Act. A Convention adoption is an adoption order made under the Convention in any Convention country outside the British Isles which has been certified in accordance with the requirements of Article 23(1) of the Convention (see section 8).
25. Subsections (2) and (3) make provisions for simple adoptions.
26. Adoption law of the United Kingdom recognises only one type of adoption – '**full adoption**': this creates a new and irrevocable legal relationship between the child and adoptive parents which severs all legal ties between the child and his birth parents.
27. Section 39(2) of the 1976 Act (status conferred by adoption) provides that a child adopted in England and Wales is to be treated in law as if he were not the child of any person other than the adopters or adopter. In some other countries, however, certain forms of adoption do not have the effect of totally severing all ties from the birth parents – these are known as '**simple adoptions**'.
28. Article 26 of the Convention provides for the recognition of both full and simple adoptions but does not prejudice the application of any legal provision in force in the Contracting State if it is more favourable to the child. By the amendment to section 38(1), all Convention adoptions will be recognised as full adoptions, but new section 39 (3A) provides a mechanism whereby a court may give a direction with regard to the child's status if this is more favourable to the child. Unless such an application is made the adoption is to be treated as a full adoption in accordance with Article 26(3).
29. Article 27 allows a receiving State to convert a simple adoption into a full adoption if its law so permits and provided the birth parents and relevant parties under Article 4 have given their consent to a full adoption. Where England is the receiving State, the Department of Health, as the Central Authority, will ensure in all cases that the birth parents are informed of the effects of a simple adoption in English or Scots law and seek to obtain their consent to a full adoption prior to a Convention adoption or a Convention adoption order being made.
30. Where the UK is not the receiving State, it is possible that a child may be brought to this country in circumstances where simple adoptions are recognised in both the State

of origin and the receiving State and no consent to full adoption has been given (a so called 'third country case'). In those cases, the adoption will still be treated as a full adoption by operation of law, but if any issue of status arises where it is felt it would be more favourable to the child to treat the adoption otherwise than as a full adoption, an application may be made to the High Court.

31. Insertion of a new subsection (3A) provides that where a child has been adopted under a Convention order and the High Court is satisfied, on an application under this subsection,

(a) that under the law of the country in which the adoption was effected the adoption was 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 subsection,

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

32. Article 4(c) of the Convention is concerned with consent to adoption. It places a responsibility on the competent authorities in the State of origin to be satisfied that consent to the adoption of the child has been given by the birth parent or legal guardian after being counselled about the effects of giving consent, in particular whether an adoption will terminate the legal relationship between the child and his birth family; that such consent has been freely given, without payment or any other inducement, and has not been withdrawn; and that the consent of the birth mother has only been given after the birth of the child.

33. Article 4(d) is concerned with the child. The competent authorities are to be satisfied that the child, according to his age and understanding, has been counselled about the proposed adoption; has given consideration to his wishes and feelings; that the child's consent to the adoption has been given freely and in the required legal form, and obtained without payment or inducement of any kind. (In most cases, however, children to be adopted will in fact be too young to give their consent to their adoption.)

34. The effect of this new subsection is to provide a new legal mechanism for the High Court to give a direction whether and to what extent a child adopted under a simple adoption under the Convention should be treated as if he were not the child of any person other than the adopters or adopter. It will be available only if the adoption was not a full adoption, if the consents to a full adoption were not given or the UK is not the receiving State. It must be more favourable to the adopted child for the direction to be given.

35. Situations where a court may be called upon to make a direction may be confined to cases where the birth parents come into unexpected money. Any request by the birth parents for contact may be dealt with under existing Children Act provisions.

36. The court may involve the Attorney General ((3B)(a)) and rules of court may be made for example as to the parties to any application.

Section 5. Effect of Convention adoptions in Scotland

37. This section makes to the 1978 Act amendments similar to those made to the 1976 Act by section 4.

Section 6. Annulment etc. of Convention adoptions

38. Subsection (1) amends section 53(1) of the 1976 Act and section 47(1) of the 1978 Act (annulment etc. of overseas adoptions) to provide for the High Court to annul a

Convention adoption or a Convention adoption order on the ground that the particular adoption or order is contrary to public policy. The effect of any annulment will be that the Convention adoption will cease to have effect in the Great Britain.

39. This amendment implements Article 24 of the Convention: ‘ The recognition of an adoption may be refused in a contracting State only if the adoption is manifestly contrary to its public policy, taking into account the best interests of the child’.
40. Subsection (2) amends subsection 53(5) of the 1976 Act and subsection 47 (5) of the 1978 Act to provide that except as provided by section 53(1) or section 47(1) of the 1978 Act, the validity of a Convention adoption or Convention adoption order shall not be challenged in any court in England and Wales or Scotland.
41. Subsection (4) provides for the recognition in England, Wales and Scotland of determinations made in Convention countries relating to Convention adoptions and Convention adoption orders and of determinations made in respect of any adoption in the Channel Islands, Isle of Man or any colony. A ‘determination’ essentially means a decision of a court or other competent authority to authorise or review an adoption or the revocation or annulment of an adoption. It also makes minor amendments consequent on the proposed repudiation of the 1965 Convention.

Section 7. Acquisition of British citizenship by Convention adoptions

42. This section amends section 1(5) of the British Nationality Act 1981 by providing that if a child who does not have British nationality is adopted either in any UK court or outside the British Islands under the 1993 Convention, he will be able to acquire British nationality automatically provided that at least one of the adoptive parents is a British citizen at the time the adoption order is made and in the case of a Convention adoption, that the adopter or, in the case of an adoption by a married couple, both of the adopters are habitually resident in the UK. In the British Nationality Act in this amendment ‘UK’ includes the Channel Islands and the Isle of Man. This section will have effect throughout the British Islands (section 18(5)).
43. This amendment implements Article 26(2) of the Convention which requires a Contracting State, where an adoption has the effect of terminating a pre-existing legal parent-child relationship, to ensure that

“the child shall enjoy in the receiving State, and any other Contracting State where the adoption is recognised, rights equivalent to those resulting from adoptions having this effect in each such State
44. Under the present law, an adoption order made in a UK court automatically confers British nationality on a child who is not a British citizen where at least one of the adopters is a British citizen. The amendment therefore ensures that the adopted child enjoys the same status from the making of a Convention adoption order as he would if the adoption was made in the UK.
45. Subsections (2) and (3) make necessary minor amendments to subsections (6) and (8) respectively of the 1981 Act as a consequence of the amendment to section 1(5) of the Act.

Section 8. Meaning of ‘Convention adoption’ and related expressions

46. This section provides for the necessary amendments to be made to section 72 of the 1976 Act and section 65 of the 1978 Act (interpretation), giving the meaning of ‘the Convention’, ‘Convention adoption’, ‘Convention adoption order’ and ‘Convention country’. A Convention adoption is an adoption effected outside the British Islands under the 1993 Convention and which has been certified under Article 23(1) of the Convention.

47. Article 23(1) falls under that part of the Convention dealing with the recognition and effects of adoption. It requires that where an adoption has been certified by the competent authority of the State of the adoption as having been made in accordance with the Convention, the adoption shall be recognised by operation of law in the other Contracting States. The certificate is to specify when and by whom the agreements under Article 17(c) were given.
48. Article 17(c) of the Convention falls under the general heading of duties of Central Authorities and accredited bodies and requires the Central Authorities of both States to have agreed that the adoption may take place. Agreement will only be given by each Central Authority if it is satisfied that the requirements of the relevant Articles of the Convention for which each is responsible have been met. A Convention adoption order is an adoption order made in England, Wales or Scotland as a Convention adoption.

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.
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.

Miscellaneous and supplemental – sections 14 to 18

Section 14. Restriction on bringing children into the United Kingdom for adoption

65. Section 14 inserts an additional section after section 56 of the 1976 Act and section 50 of the 1978 Act (restriction on removal of children for adoption outside Great Britain).
66. The new section 56A or 50A makes it a criminal offence for a person habitually resident in the British Islands to bring to the United Kingdom for the purposes of adoption a child who is habitually resident outside those islands unless they comply requirements to be prescribed by regulations.
67. These requirements may apply either prior to the child's arrival or within a period to be prescribed and following a child's arrival; for example, if adopters fail to notify their local authority or the child's arrival within a specified period. The offence does not apply to a parent, guardian or relative of the child.
68. Under the general law, proceedings for an offence may only be brought within six months from the date the offence was committed. However, the new subsection (4) provides that proceedings for an offence under section 56A or section 50A may be brought within a period of six months from the date on which sufficient evidence in the opinion of the prosecutor to warrant the proceedings came to his knowledge. But, proceedings may not be brought more than three years after the offence was committed.
69. The purpose of this amendment is to deter those who bring children to the UK for the purposes of adoption without authority and who fail to make the presence of the child known to the statutory authorities until at least six months have expired (after which under the 1976 Act they would not have been liable to prosecution). The importance of declaring the presence of the child to a local authority is that the child automatically becomes a 'protected child' under section 32 the 1976 and 1978 Acts, placing a responsibility of the local authority to make regular visits to be satisfied about the child's safety and welfare.

Section 15. Amendments and repeals

70. Subsection (1) provides that the enactments mentioned in Schedule 2 are to have effect subject to the amendments specified in that Schedule which are either minor amendments or amendments consequential upon the provisions of this Act.
71. **Schedule 2** amends the Local Authority and Social Services Act 1970 to provide that functions under the Convention will be social services functions; amends the Immigration Act 1971 to provide for Convention adoptions; amends the Family Law Act 1986 to make clear that the court may make a declaration in respect of a Convention

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adoption. It also makes minor amendments to the 1976 Act, mostly to remove references to the 1965 Convention which are no longer required.

72. [Schedule 3](#) deals with repeals, mainly relating to the 1965 Convention (for the effect of which see also clause 17).
73. Subsection (2) provides for the enactments in Schedule 3 to be repealed to the extent specified in that Schedule.

Section 16. Devolution

74. This section deals with devolution matters. There is provision for commencement orders and regulations only to be made after consultation with the National Assembly for Wales. The Act is to be treated as a pre-commencement enactment for the purposes of the Scotland Act 1998.

Section 17. Savings for adoptions etc. under 1965 Convention

75. Savings are made in respect of the 1965 Convention which will remain in force in the UK until it is repudiated. So far as the United Kingdom is concerned, there are known to be two or three adoption orders made under the 1965 Convention affecting British citizens. Section 17 therefore provides that the provisions of the 1976 Act and 1978 Act relating to the 1965 Convention which are amended by clauses 3 to 6 and 8 and Schedule 2 of this Act are to have effect without these amendments in any adoption involving the 1965 Convention.

Section 18. Short title, interpretation commencement and extent

76. Subsection (1) provides the Act its short title.
77. Subsection (2) defines "the 1976 Act" and "the 1978 Act" and "the Convention".
78. Subsection (3) empowers the Secretary of State to make orders bringing the Act into force in whole or in part and at different times.
79. Subsections (4) and (5) provide for the Act to extend to Great Britain save for amendments to those statutes which have a wider extent (British Nationality Act 1981, Immigration Act 1971).