

# Draft Adoption Regulations and Guidance for Consultation

- Adoption Reports
- Adoptions with a Foreign Element

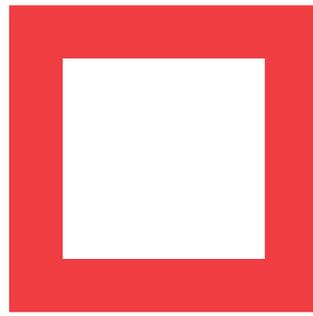
**ADOPTION AND CHILDREN ACT 2002**

department for

**education and skills**

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## CONSULTATION ON THE PREPARATION OF ADOPTION REPORTS AND ADOPTIONS WITH A FOREIGN ELEMENT

**Launch Date** 31 January 2004

**Closing Date** 30 April 2004

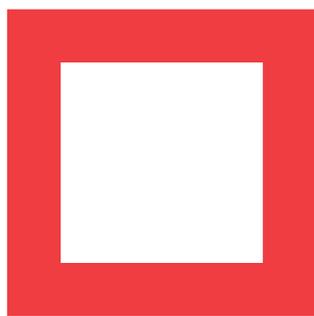
**Reference** DfES/ACA200202

**To** All local authorities with social services responsibilities in England  
All local authorities in Wales  
Voluntary adoption agencies  
Stakeholders with an interest in adoption reports  
Anyone involved in the preparation of adoption reports  
Stakeholders with an interest in intercountry adoption

**Enquiries to** Sarah Bramley-Harker, tel: 020 7972 4597 (intercountry adoption) or  
Kelly Groves, tel: 020 7972 4750 (adoption reports)

Fax number: 020 7972 4179

Email: [reportsandforeign.consultation@dfes.gsi.gov.uk](mailto:reportsandforeign.consultation@dfes.gsi.gov.uk)



# Foreword by Margaret Hodge



I am delighted to publish the second consultation document on the adoption Regulations and guidance to be put into place as part of our work to implement the Adoption and Children Act 2002. The Act represents the most radical overhaul of adoption law for 26 years, replacing the outdated Adoption Act 1976 and modernising the entire legal framework for domestic and intercountry adoption.

Since the Adoption and Children Act received Royal Assent in November 2002 a great deal of progress has been made. Some of the Act's key provisions have already been implemented in the context of the existing Adoption Act 1976. These include:

- New restrictions on the adoption of children from outside the British Islands from 1 June 2003
- The introduction of new adoption support services in England for adoptive families from 31 October 2003
- Putting in place a contract to establish a new Independent Review Mechanism to allow prospective adopters to ask for a review of their case when an adoption agency is minded not to approve them as suitable to adopt. This will begin to operate in April 2004.

The Government is also working to develop the adoption regulations and guidance to be made when the 2002 Act is implemented in full and the Adoption Act 1976 is repealed. We are committed to developing them with the full involvement of all those with an interest. They will be finalised by the end of 2004 and will come into force after allowing sufficient time for local preparation and training.

I have already published the draft Regulations and guidance that are intended to completely replace those that currently provide for the operation of the adoption service by adoption agencies. Over the coming months we will be publishing further sets of draft adoption regulations and accompanying guidance covering:

- Access to information
- Adoption support services and the regulation of Adoption Support Agencies
- Mechanisms and Structures (including phase two of the Independent Review Mechanism, fees and payments)
- The E-Commerce Directive

We will also be publishing a consultation document on the introduction of new special guardianship orders.

The draft Regulations and guidance in this document have taken into account:

- Existing good practice
- The issues raised in Parliament while the 2002 Act was being debated, and
- The responses provided to the range of consultation exercises that have been undertaken on adoption since the publication of the Prime Minister's Review of Adoption in July 2000

The Government is committed to consulting fully on the changes to adoption legislation. To ensure that the best outcomes are delivered for children and their families, we again need the help of service users, adoption agencies and others with an interest in adoption.

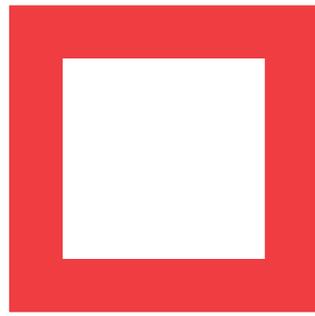
I am issuing this document today for a three month consultation period. We have asked you a number of questions about the draft regulations and guidance and would welcome written comments on these as well as your general comments on the document as a whole.

Over the coming months we will also be arranging a number of events to discuss the issues arising from our various consultation documents on the implementation of the 2002 Act. We hope that this will allow you to feed your views in even if you do not wish to send written comments. However they are provided, we will ensure that all the responses to the consultation are considered before the regulations and guidance are finalised and published.



**Margaret Hodge**

Minister for Children, Young People and Families.



# Executive Summary

This consultation document includes new Regulations and guidance that will, for the first time, explicitly set out the skills and experience required before someone will be permitted to prepare the assessments and evaluations that form an essential part of the adoption decision-making process. It also contains the draft Regulations and guidance that will, when finalised, completely replace those that currently provide for the provision of all intercountry adoption services and will, for the first time, create clear criteria that must be met for adoption orders made outside the British Islands to be recognised in England and Wales.

The document has been developed with the National Assembly for Wales and the final Regulations will be made for England and Wales by the Secretary of State after consulting with the National Assembly for Wales.

The Department for Education and Skills and the National Assembly for Wales are continuing to work with the Department for Constitutional Affairs to develop the associated Court Rules that will give effect to the new arrangements in the Courts.

The feedback form includes a number of questions about specific issues as well as seeking more general comments upon the proposals.





# Background and Context

The Adoption and Children Act 2002 legally underpins the Government's strategy to modernise and improve adoption services. It includes new powers to restrict the preparation of reports to support the adoption process to those with specified skills and experience and provisions that allow the regulation of intercountry adoption.

## **RESTRICTIONS ON THE PREPARATION OF ADOPTION REPORTS**

A number of high profile adoption cases have involved the preparation of inaccurate and unjustifiably favourable reports by individuals working as independent social workers. Particular criticisms have been made about the preparation of private assessments on the suitability of prospective adopters and the lack of regulation concerning the skills and experience of those calling themselves adoption social workers. Such reports are critical to the recommendations and decisions as to whether prospective adopters should be approved as suitable to adopt.

Section 94 of the 2002 Act includes powers that allow the Secretary of State to regulate the preparation of all assessment, post-placement and post adoption reports and to ensure that only suitably skilled staff, working on behalf of an adoption agency, carry out the necessary evaluations and report writing.

The draft Regulations made under this section restrict the preparation of prescribed adoption reports to those who are qualified social workers, registered with the General Social Care Council (GSCC) in England or the Care Council for Wales. The Councils were established by the Care Standards Act 2000 to implement higher standards in conduct, practice and training for social care workers and from 1 April 2003 maintain registers of qualified social workers. Everyone who registers as a social worker must accept and work within the Council's Codes of Practice for Social Care Workers and Employers and therefore the requirement in the draft Regulations will ensure that only those who have accepted these standards prepare adoption reports.

#### **ADOPTIONS WITH A FOREIGN ELEMENT**

A number of international instruments provide a framework for the operation of intercountry adoption that keeps the interest of the child central to the process and to any decisions that are made.

The 2002 Act includes amendments to the Adoption Act 1976 to strengthen the safeguards for adoptions with a foreign element and increase the penalties for those failing to comply with the new restrictions. These changes were brought into force on 1 June 2003 together with the majority of the provisions in the Adoption (Intercountry Aspects) Act 1999.

The new arrangements mean that anyone habitually resident in England and Wales and wishing to adopt from a foreign country must first be assessed by an adoption agency and approved as eligible and suitable to adopt, regardless of their relationship to the child or the country they wish to adopt from. Likewise, before any child living in the UK can be adopted outside the British Islands, the High Court must make an order for the transfer of parental responsibility of the child to the prospective adopters.

The regulations made under the 1999 Act, together with the supporting Court Rules and the equivalent legislation put into place in Scotland and Northern Ireland, also allowed the UK to ratify the 1993 Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption on 1 June 2003. The Convention aims to establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and establishes a system of co-operation amongst those states that have brought the Convention into force to help prevent the abduction, the sale of, or traffic in children.

Chapter 6 of the 2002 Act incorporates many of the measures of the 1999 Act together with the revisions made to the Adoption Act 1976. The 2002 Act:

- Makes clear that local authorities are under a duty to establish and maintain an adoption service that includes an intercountry adoption service
- Imposes restrictions on intercountry adoption (whether the UK is the receiving State or the State of origin), and

- Allows the creation of criteria that must be met for adoptions made overseas to be recognised in the UK

Although the 2002 Act does not replace the primary legislation that allowed the UK to ratify the Hague Convention, it does change the way that the adoption system will operate. This means that all the Regulations governing the provision of intercountry adoption services in England and Wales will need to be replaced in their entirety.

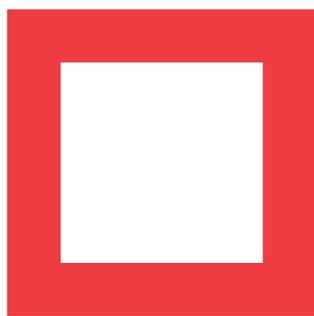
#### **OVERSEAS ADOPTIONS**

The Adoption (Designation of Overseas Adoptions) Order 1973 (as amended in 1993) lists 66 countries (the designated list). By virtue of the Order, adoptions made in the countries included on the designated list are automatically recognised in England and Wales.

The 2002 Act includes new powers to ensure that the status of those adopted from countries included on the list in the 1973 Order is not undermined. It also includes powers to set clear requirements that must be met in future if an adoption is to be recognised in England and Wales.

The Government has previously announced its intention to develop clear criteria that must be met for an adoption to be recognised and to review the existing designated list in the light of these.





# Proposals

## **RESTRICTIONS ON THE PREPARATION OF ADOPTION REPORTS**

The Government believes that only qualified, regulated individuals working on behalf of local authorities and registered voluntary adoption agencies acting without financial gain should be able to prepare sensitive adoption reports.

Section 94 of the 2002 Act enables the Secretary of State to set out in Regulations the description of a person who may prepare a report about the suitability of a child for adoption, or of a person to adopt a child or about the adoption, or placement for adoption, of a child. Anyone who does not meet the description set out in Regulations will be guilty of an offence.

To be permitted to prepare a report an individual must be working for a local authority or a registered voluntary adoption agency and must be managed and supervised in accordance with their particular level of skill and development needs. The draft Regulations specify that anyone preparing a prescribed adoption report must be a qualified social worker or a student social worker studying an approved social work degree course. They are also clear that anyone preparing a report falling within the restrictions must either have at least 3 years post-qualifying experience in adoption and family placement work, or be managed and supervised by someone with at least 3 years post-qualifying experience in adoption and family placement work.

The adoption reports proposed for inclusion within the restrictions are:

- The assessment report on a child where an adoption agency is considering adoption for him
- The assessment report on prospective adopters
- The assessment report where an agency is considering placing a child for adoption with prospective adopters

- The report prepared for the Court considering an adoption application
- The reports which review a child's case after he has been placed for adoption or where an adoption agency is authorised to place the child for adoption but the placement has not yet taken place
- The report which may be prepared at the request of a foreign government in intercountry adoption cases, after an interim or full adoption order has been made
- The report which is prepared for the Court considering giving parental responsibility prior to adoption abroad

The feedback form seeks views on whether the Regulations and guidance are clear and easily understood and if the specified level of skills and experience appears reasonable and the reports being restricted are the right ones.

#### **ADOPTIONS WITH A FOREIGN ELEMENT**

The Government is committed to ensuring that the same practice and professional standards are applied to intercountry adoptions as to domestic adoptions and that safeguards are in place to protect the children, birth parents and adopters involved.

The draft Adoptions with a Foreign Element Regulations set out the process that must be followed by those habitually resident in England and Wales wishing to adopt a child from outside the British Islands. They also set out the process for identifying children in England and Wales suitable for adoption outside the British Islands and how to match them with prospective adopters from outside the UK. They should be read in conjunction with the draft Adoption Agencies Regulations and the draft Suitability of Adopters Regulations (or the equivalent sets of regulations for Wales) as these will apply to all adoptions (domestic and intercountry).

It is intended that, when finalised, a number of the provisions in the draft Regulations will be incorporated into the Adoption Agencies Regulations for England and the equivalent Regulations for Wales. The Adoptions with a Foreign Element Regulations will be made by the Secretary of State, after consultation with the National Assembly for Wales, and apply to both England and Wales.

The new Regulations will be accompanied by new Court Rules that are being developed by the Department for Constitutional Affairs and will be consulted upon with key interests later this year.

The draft Regulations together with the draft supporting guidance seek to replicate the requirements and guidance that currently apply to intercountry adoption but reflect the new arrangements brought into force by the Adoption and Children Act 2002.

The main change relates to the establishment of specific duties to monitor the placements of children brought into England and Wales from outside the British Islands for the purposes of adoption. This essentially replicates the existing duties under the Adoption Act 1976. We have also proposed introducing a new requirement for the adoption agency to carry out a review into the placement if an application to adopt has not been made to a Court within two years of the child arriving in the UK.

The feedback form seeks views on the new placement monitoring requirements and asks those who have implemented the arrangements introduced on 1 June 2003 to advise if any changes need to be made in the light of their experiences. During the consultation period the Regulations will also be considered further in a number of events and meetings involving key interests.

As the consultation progresses and the associated Court Rules are developed it is likely that work will be needed to resolve issues that are identified. In particular it is likely that the different forms of parental consent from outside the British Islands and the requirements for the making of Section 84 (parental responsibility) Orders prior to a child being adopted outside the British Islands will need to be considered further. When considering these and other issues that are identified as part of the consultation the Government is committed to working with key interest groups and sharing the revised draft before the final Regulations and Court Rules are made.

The draft Adoptions with a Foreign Element Regulations are intended to work with the draft Adoption Agencies Regulations, which were published for consultation on 6 November 2003 and will also apply to intercountry adoption. It is intended that the Adoption Agencies Regulations, when finalised, will incorporate some aspects of the Adoptions with a Foreign Element Regulations.

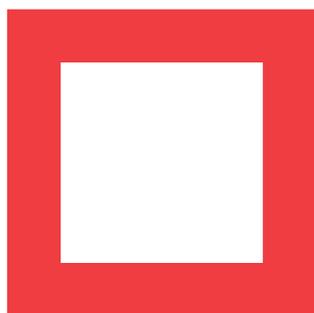
#### **OVERSEAS ADOPTIONS (FORMERLY KNOWN AS DESIGNATED LIST ADOPTIONS)**

Except for the inclusion of China in 1993, the Designated List has not been reviewed or amended since its creation in 1973. During the passage of the Adoption and Children Bill through Parliament it was agreed that the government would carry out a review of the designated list. Part of the review will involve a set of requirements being drawn up against which those countries included on the existing designated list will be assessed. Other countries, not currently included on the designated list, may also be assessed against these requirements. Section 87 of the 2002 Act allows the Secretary of State to specify clear criteria that must be met for an adoption made outside the British Islands to be recognised in England and Wales. It also ensures that the status of those adopted from countries included in the existing Designation of Overseas Adoptions Order 1973 is not undermined.

The draft Adoptions with a Foreign Element Regulations include the list of requirements that overseas adoption systems must meet if their adoptions are to be recognised. These have been drawn up to reflect the overall spirit of the Hague Convention and include:

- That the child is treated as not being the child of any person other than the adopter
- That measures are in place to prevent the abduction, sale of, or traffic in children and to prevent improper financial or other gain
- That informed consent is given by those with parental responsibility and that the consent of the mother is given not less than six weeks after the child's birth
- That the prospective adopter has been assessed and found to be eligible and suitable to adopt

The feedback form seeks views on whether the requirements are reasonable.



# How to respond

If you wish to comment on any aspect of the draft regulations and draft guidance in this document, please complete the electronic feedback form, which can be found at <http://www.dfes.gov.uk/consultations>. Alternatively, you may complete and return the hard copy of the feedback form that can be found in the wallet at the back of this document, or write to us at:

Consultation Unit  
Department for Education and Skills  
Area 2A  
Castle View House  
East Lane  
Runcorn  
Cheshire  
WA7 2GJ

You may also fax your views to 01928 794311 or email your comments to us at [reportsandforeign.consultation@dfes.gsi.gov.uk](mailto:reportsandforeign.consultation@dfes.gsi.gov.uk).

Regardless of the way you choose to respond, the deadline is **30 April 2004**.

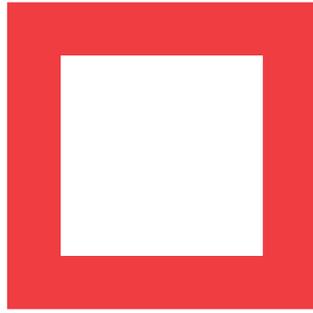
If you choose not to use the feedback form, please ensure your letter, fax or email includes the following information:

- your name
- your job title and interest in adoption
- your telephone number

- whether your comments represent your own view, the corporate view of your organisation<sup>1</sup>, or the view of a group or team within your organisation
- your specific comments on the draft regulations, guidance **or consultation questions** set out in the feedback form. Please quote the relevant paragraph number
- any general comments you wish to make
- whether your comments may be made available to the public when the final regulations and guidance are published, or whether you wish your comments to remain confidential

Remember, if you want your comments and views to be considered we need to receive them before **30 April 2004**.

<sup>1</sup> We welcome responses from both individuals and organisations. Where an organisation is considering responding to this consultation, in the context of its own policies, procedures and practice, an internal consultation exercise on these regulations and their accompanying guidance may help to involve staff in usefully shaping the corporate response.



# Additional Copies

Anyone with an interest in adoption may ask for a free copy of this document and is welcome to comment on it. Copies can be obtained from:

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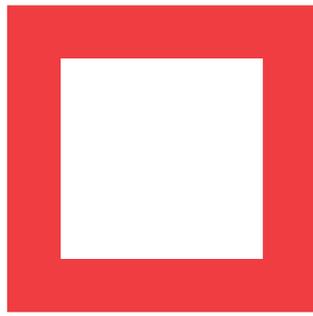
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The document may also be accessed from the Department of Education and Skills' website at: [www.dfes.gov.uk/consultations](http://www.dfes.gov.uk/consultations).



## Appendix A:



# Draft Guidance on the Restrictions on the Preparation of Adoption Reports

## INTRODUCTION & SCOPE

1. This draft guidance accompanies the draft Restriction on the Preparation of Adoption Reports Regulations (the draft Regulations) made under section 94 of the Adoption and Children Act 2002 (the 2002 Act).
2. The draft Regulations and guidance are being issued for consultation as part of the second consultation package for the implementation of the 2002 Act. This package also relates to the provisions for intercountry adoption. **However, section 94 of the 2002 Act, and therefore these draft Regulations and guidance, applies equally to both reports prepared in domestic adoption and intercountry adoption cases.**
3. Section 94 of the 2002 Act provides for restrictions on the preparation of certain adoption reports, the intention being to ensure that only properly qualified, experienced and supervised staff carry out the necessary assessments which form an essential part of the adoption decision-making process. Adoption reports should be an accurate and impartial reflection of an assessment which has been conducted with the paramount consideration being the best interests of the child and the ability of prospective adopters to meet their needs.

## INTERPRETATION

4. Regulation 2 defines terms which appear throughout the draft Regulations.

## REGULATION 3 – A PERSON WITHIN A PRESCRIBED DESCRIPTION

5. Regulation 3 sets out persons who are within a prescribed description for the purposes of section 94. The effect of section 94 is that only persons who fall within that description may prepare the adoption reports which are set out in regulation 4. Paragraph (1) states that the person must be employed by a local authority or a voluntary adoption agency (VAA) and be a social worker and satisfy the conditions set out in paragraph (2)(a) or (b), or a social work student and satisfy the condition in paragraph (2)(b).

6. The draft Regulations do not prevent adoption agencies from making use of independent social workers to prepare adoption reports on their behalf, but in doing so the adoption agency must satisfy itself that the social worker they wish to use is appropriately qualified and experienced and meets the conditions set out in paragraphs (1)(a) and (2)(a) or (b). Agencies must also ensure that a satisfactory CRB check on the independent social worker has been completed before they begin work on the agency's behalf. We intend to exercise the powers in section 3(4) of the 2002 Act to provide that local authorities may commission independent social workers who satisfy these conditions to prepare reports on their behalf.

7. Where an adoption agency wishes to use an independent social worker to prepare adoption reports, it is also for the adoption agency to ensure that the reports prepared are of the same standard as reports prepared by social workers who are employed in the adoption agency. The independent social worker must be managed and supervised by a suitable adoption agency manager while undertaking the work and reports prepared by that social worker should follow the same procedures and go through the same processes as reports prepared by social workers employed by the adoption agency.

8. Paragraph (1)(a) states that a person must be a registered with either the General Social Care Council (GSCC) or the Care Council for Wales (CCW) as a qualified social worker. Further details on the GSCC, the CCW and the registration processes can be obtained from [www.gsc.org.uk](http://www.gsc.org.uk) and [www.ccwales.org.uk](http://www.ccwales.org.uk).

9. The GSCC and the CCW were established by the Care Standards Act 2000 in order to encourage higher standards in the conduct, practice and training for social care workers. The GSCC and CCW were also charged with establishing and maintaining registers of social care workers. The Councils began exercising their functions in October 2001 and the Central Council for Education and Training in Social Work (CCETSW) was finally abolished on 1 April 2002. The Social Care Workers Registers were opened on 1 April 2003 when they began to accept and process applications for registration from qualified social workers (which is one of the categories of 'social care worker' as defined in section 55 of the Care Standards Act). Everyone who registers as a social worker must accept and work within the Council's Codes of Practice for Social Care Workers and Employers, which were published in September 2002.

**10.** When section 61 of the Care Standards Act 2000 comes into force, use of the title of 'social worker' will be protected (the proposed implementation date is currently 1 April 2005). This means that only those qualified and registered with a UK Care Council will be able to use the title of Social Worker in England and Wales. Those who are not so qualified and registered, and who use the title with intent to deceive, will be committing an offence and liable to a fine up to level 5 on the standard scale.

**11.** Paragraph (1)(b) allows those who are studying on an approved social work degree course to prepare adoption reports, provided that doing so is an official part of a practice placement and they are closely managed, supervised and supported by a social worker who has at least 3 years post-qualifying experience in adoption and family placement work in accordance with paragraph (2)(b). This will ensure that students, although unqualified, have the opportunity to acquire expertise and experience in preparing adoption reports and in the future widen the pool of those who will be able to do the work.

**12.** In addition to being a qualified and registered social worker, paragraph (2) requires that social workers preparing reports must have at least 3 years post-qualifying experience in adoption and family placement work, or be managed and supervised by someone with at least 3 years post-qualifying experience in adoption and family placement work. This requirement acknowledges the need for those conducting important assessments to be aware of and understand the possible outcomes of their assessments, how their reports contribute to the wider adoption process and the impact the reports could have in a particular case.

**13.** Everyone preparing adoption reports, including independent social workers, must be managed and supervised in accordance with their particular level of skill and development needs. Where reports are being prepared by social work students, social workers with less than 3 years post-qualifying experience or independent social workers, the drafts should be discussed in supervision and signed off by an experienced manager before going to panel or leaving the agency. This will help to ensure that reports are coherent, credible and objective for the protection of vulnerable children.

#### **REGULATION 4 – THE PRESCRIBED CIRCUMSTANCES**

**14.** Regulation 4 sets out the adoption reports which are covered by the restrictions provided by section 94 of the 2002 Act. Only those who satisfy the conditions in regulation 3 may prepare these reports.

**15.** The following reports are covered by the restrictions (the references are to the relevant part of the draft Adoption Agency Regulations):

- The report on a child where the adoption agency is considering his adoption (Part 3)
- The report on prospective adopters where the adoption agency is considering whether they should be approved to adopt (Part 4)

- The report where an agency is considering placing a child for adoption with prospective adopters (Part 5)
- The reports of visits where a child is placed for adoption (regulation 31)
- The reports on reviews of cases (regulation 31)
- The report which may be requested by a foreign government in intercountry adoption cases, after an interim or full adoption order has been made.
- The reports prepared for the Court considering an adoption application (section 43 and 44(5) of the 2002 Act)
- The report prepared for the Court considering giving parental responsibility prior to adoption abroad (section 84 of the 2002 Act)

**16.** Where a child has been adopted from another country, many countries expect to receive progress reports on the child at regular intervals. This is a private arrangement between the adopter and the foreign authority and in some cases may be required at any point until the child reaches 18. Where a foreign authority requests a post adoption report from the adopters, they should ask (and pay the expenses of) either a local authority or a VAA to prepare the report in accordance with the draft Regulations that meets the requirements of the foreign authority. It is an offence under section 94(2) of the 2002 Act for anyone else to prepare a post adoption order report or to ask someone who does not meet the conditions in regulation 3 to prepare a post adoption order report and indeed any of the adoption reports listed in the draft Regulations.

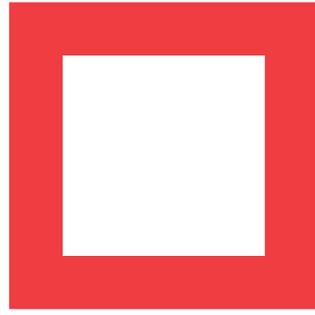
#### **OFFENCES**

**17.** Section 94(3) of the 2002 Act provides that a manager of a VAA will also be guilty of an offence if someone who works for the VAA and who does not meet the conditions in draft Regulations prepares a report or asks someone else who does not meet the conditions to prepare a report.

**18.** Section 94(4) of the 2002 Act provides a defence for those who ask someone who does not fulfil the conditions in regulation 3 to prepare a report, provided that it can be proved that person was not aware that doing so would be an offence. Local authorities and VAAs should inform staff and intercountry adopters of the new restrictions to minimise the chance of offences being committed under section 94.

**19.** Anyone who commits an offence under section 94 of the 2002 Act will be liable on summary conviction to imprisonment for a term not exceeding 6 months, or a fine not exceeding level 5 on the standard scale, or both.

Appendix B:



# Draft Guidance on Adoptions with a Foreign Element





# Department for Education and Skills

## Guide to Adoptions with a Foreign Element

JANUARY 2004

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Enquiries about this document should be addressed to:

Department for Education and Skills

Looked After Children Division

Room 105

Wellington House

133-155 Waterloo Road

London

SE1 8UG

Fax: 020 7972 4179

General Intercountry Adoption Enquiries Tel: 020 7972 4014

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#### PLEASE NOTE

**This document replaces the Intercountry Adoption Guide published by the Department of Health in May 2003**

**This document is for guidance only. It provides an overview of the law relating to intercountry adoption and is not an authoritative statement of the law. It should be read alongside the relevant primary legislation and statutory instruments.**

## AIDE MEMOIRE

**Please Note:** This document is for guidance only. It provides an overview of the law relating to intercountry adoption and is not an authoritative statement of the law. It should be read alongside the relevant primary legislation, statutory instruments and guidance including those listed in Chapter One of the Guide to Adoptions with a Foreign Element.

## INTERNATIONAL LAW

- The following principles are enshrined in a number of international agreements, declarations, resolutions and Conventions to which the UK is party to:
  - Children who cannot live with their birth parents should be either found a placement with a family member or given the opportunity to live with a family within their State of origin
  - Intercountry adoption may be considered as an alternative means of providing a permanent family for a child who cannot be cared for in a suitable manner in his or her own country
  - Intercountry adoption should only take place where it is in the best interests of the child and with respect for his or her fundamental rights
  - Safeguards and standards equivalent to those which apply in domestic adoption should be applied in intercountry adoption to protect the welfare of the child.
  - Profit should not be made from the process

## DOMESTIC LAW – RESTRICTIONS AND OFFENCES

*Bringing Children into the UK (Section 83 of the Adoption and Children Act 2002 and the Adoption (Intercountry Aspects) Act 1999)*

- Anyone habitually resident in the UK (*including* parents, guardians, step-parents and relatives) wishing to adopt a child habitually resident outside the British Islands must comply with the requirements and conditions specified in the Adoptions with a Foreign Element Regulations XXXX
- The conditions include being assessed and approved as suitable to adopt in accordance with the Adoption Agencies Regulations XXXX and the Suitability of Adopters Regulations XXXX by a local authority or voluntary adoption agency (VAA) registered to work on intercountry adoption and having a certificate of eligibility and suitability issued by the Secretary of State or relevant Central Authority
- Failure to comply with the Regulations may be a criminal offence and is punishable by up to 12 months imprisonment and/or an unlimited fine upon conviction

### *Taking Children out of the UK (Section 85 of the 2002 Act)*

- Anyone (including parents, guardians, step-parents and relatives) wishing to take a child who is a Commonwealth citizen or a child habitually resident in the UK outside the British Islands of the UK with a view to adoption in a foreign country must first apply to the High Court for and receive a Court Order authorising a proposed foreign adoption and conferring parental responsibility upon them
- Failure to do so may be a criminal offence and is punishable by up to 12 months imprisonment and/or an unlimited fine upon conviction

### *Making Arrangements for Adoption (Section 92 of the Adoption and Children Act 2002)*

- Only voluntary adoption agencies registered with the Commission for Social Care Inspection, local authorities and those acting in accordance with an Order made by the High Court are permitted to make arrangements for adoption. This includes assessing and approving individuals as eligible and suitable to adopt
- Anyone convicted of illegally making arrangements for adoption is liable to up to 6 months imprisonment and/or a £10,000 fine

### *Preparation of Reports (Section 94 of the 2002 Act)*

- The Restrictions on the Preparation of Adoption Reports Regulations XXXX make clear that only suitably skilled, professionally qualified staff or professionally supervised social work students working for a local authority or VAA may carry out the necessary assessments and evaluations that form an essential part of the adoption decision making process
- Failure to comply with the Regulations is punishable by up to 6 months imprisonment and/or a £5,000 fine upon conviction

## **STATUS OF COUNTRIES**

### *The 1993 Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption*

- The Hague Convention came into effect in the UK from 1 June 2003. It aims to ensure that intercountry adoption takes place in the best interests of the child, puts in place a system of co-operation between those who have implemented the Convention, and ensures that adoption orders made under the Convention are recognised in all Hague Convention countries
- The following website gives up to date information on the countries to which the Hague Convention applies: [www.hcch.net/e/status/adoshte.html](http://www.hcch.net/e/status/adoshte.html)

*Overseas Adoptions (formerly known as the Designated List)*

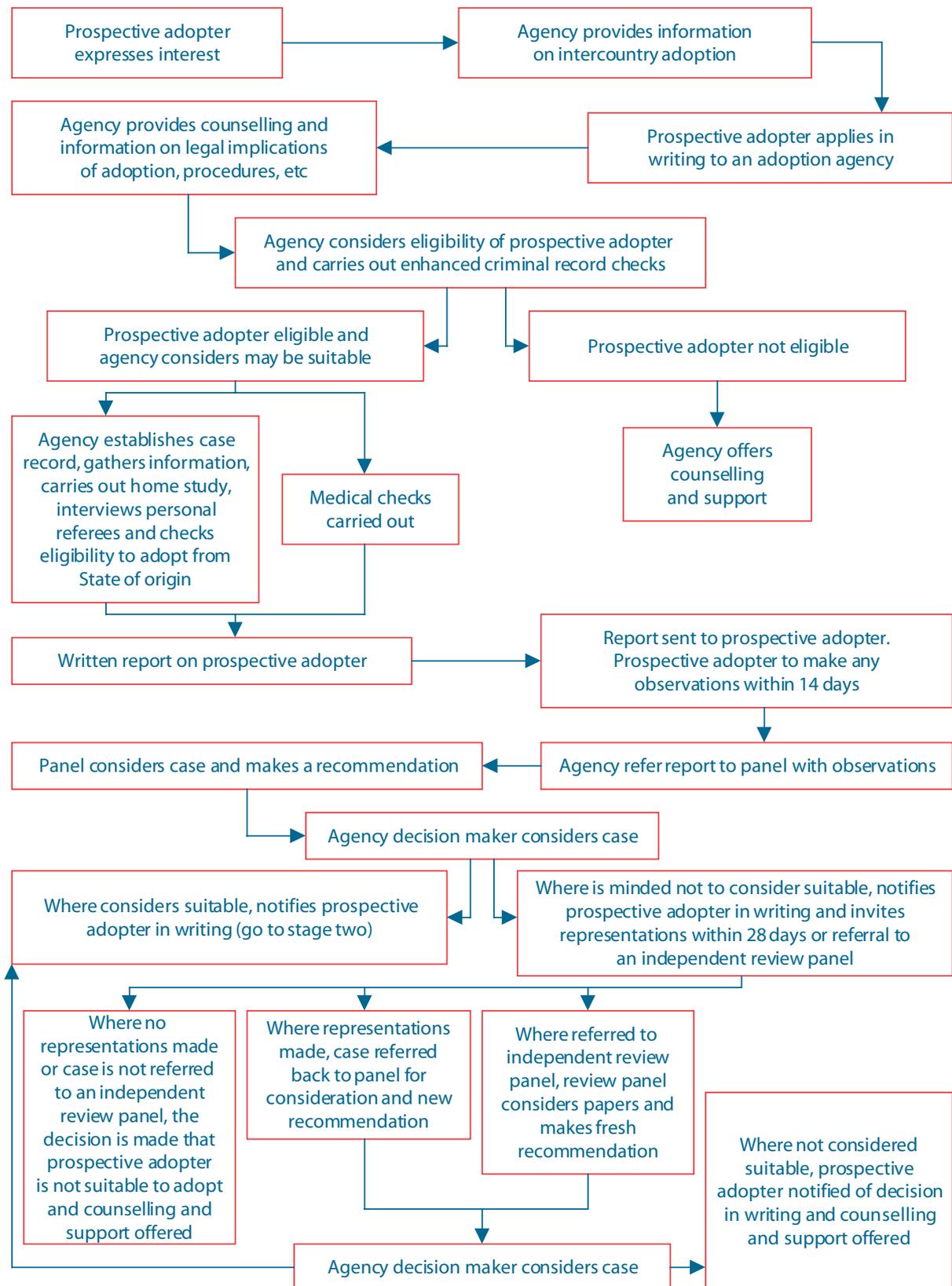
- To have their adoption orders recognised as an overseas adoption countries must meet the criteria set out in the Adoptions with a Foreign Element Regulations XXXX. By virtue of the Order made under section 87 of the Adoption and Children Act, adoption orders made in these countries are recognised in the UK

*Non-Convention, Non-Overseas Adoptions (formerly known as the designated list)*

- Adoption orders that are not recognised as overseas adoptions and adoption orders that have not been made under the Hague Convention are not recognised in the UK. For an adoptive parent-child relationship to be recognised in the UK, an adoption order will need to be made in a UK Court

**ENGLAND/WALES AS THE RECEIVING STATE**

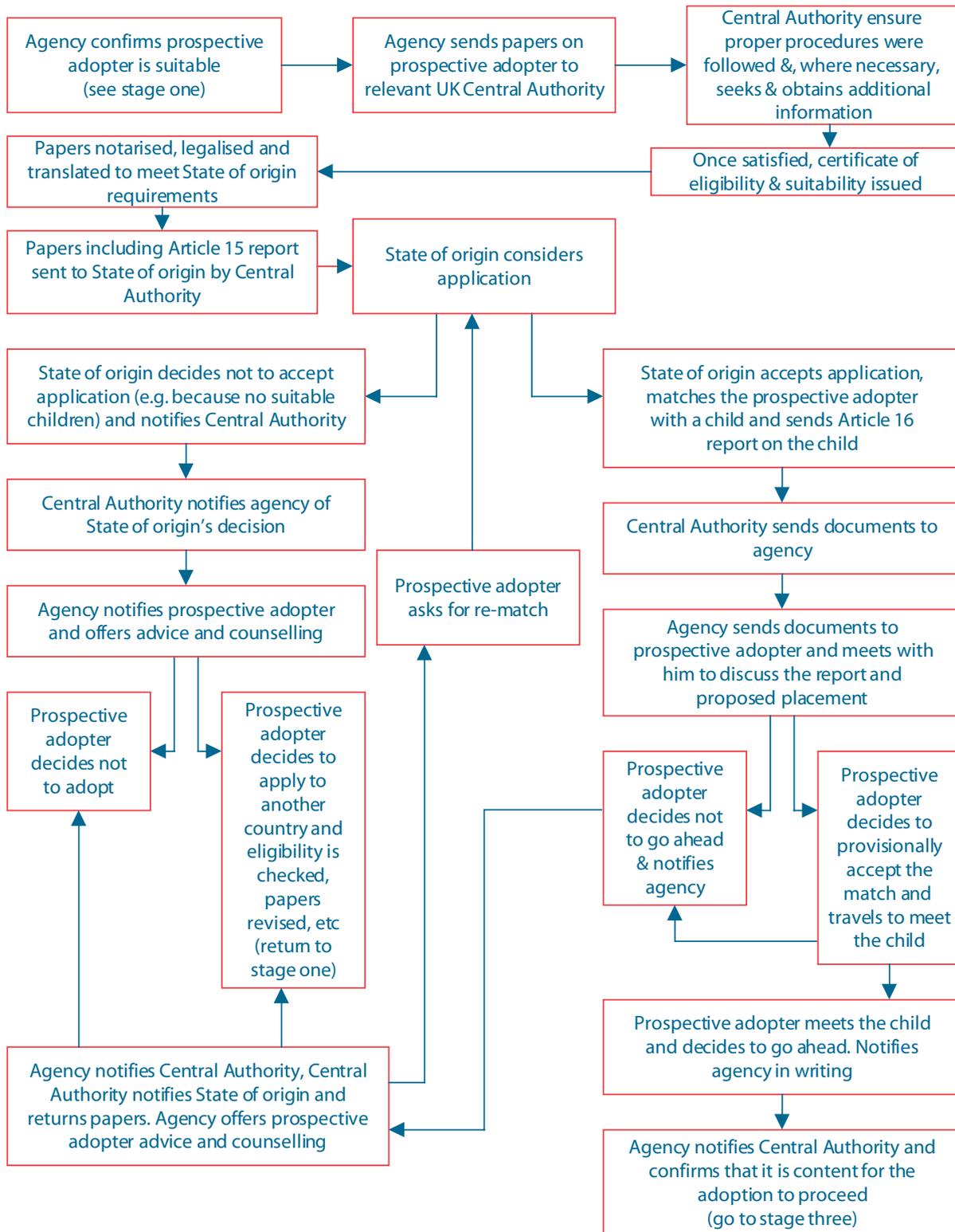
**Stage One – Expression of Interest to Decision on Suitability (all countries)**



This flowchart has been produced purely as an aide and is not a statement of the law

**ENGLAND/WALES AS THE RECEIVING STATE**

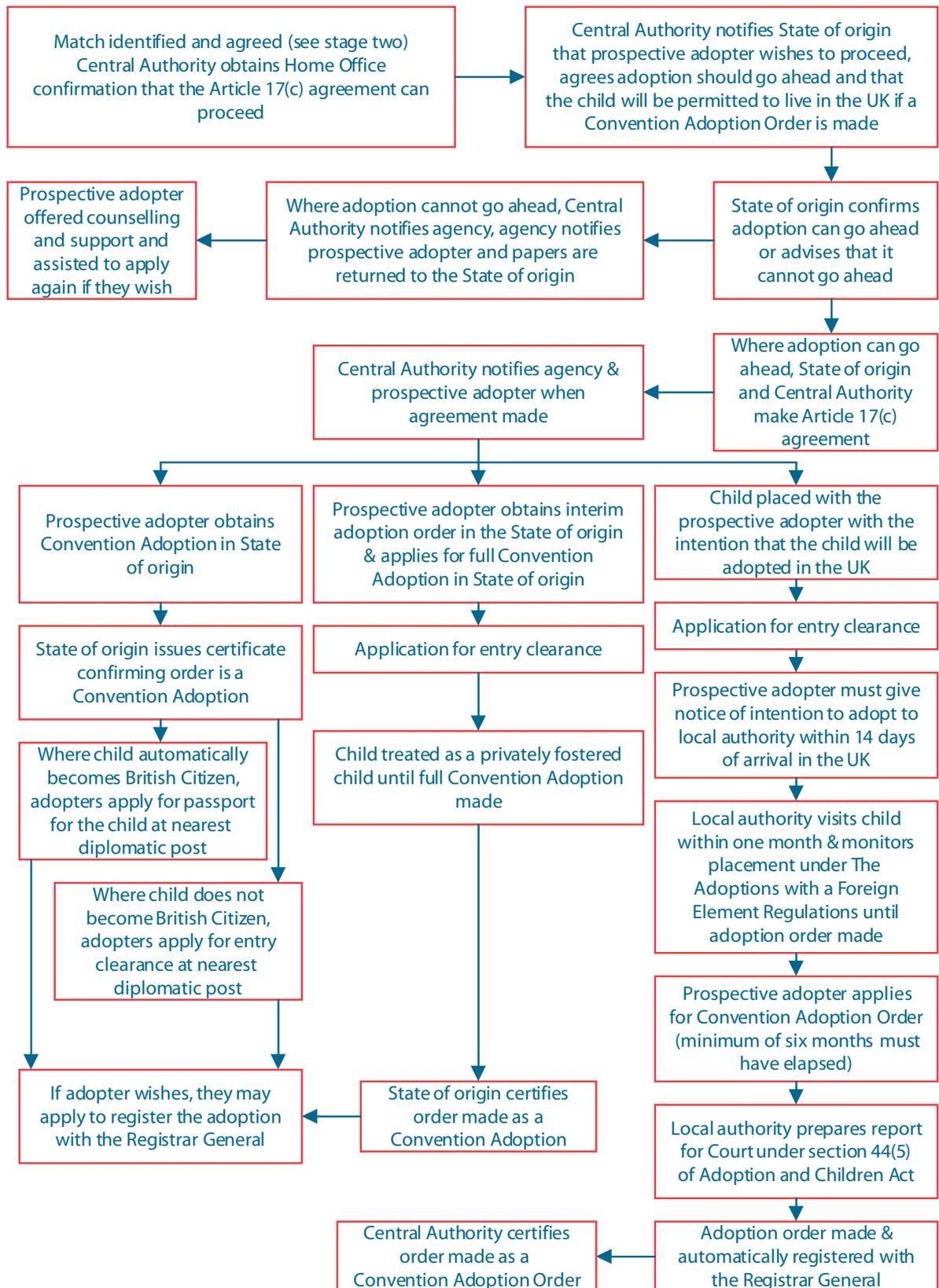
**Stage Two – Suitability to Agreed Match (Hague Convention cases)**



This flowchart has been produced purely as an aide and is not a statement of the law

**ENGLAND/WALES AS THE RECEIVING STATE**

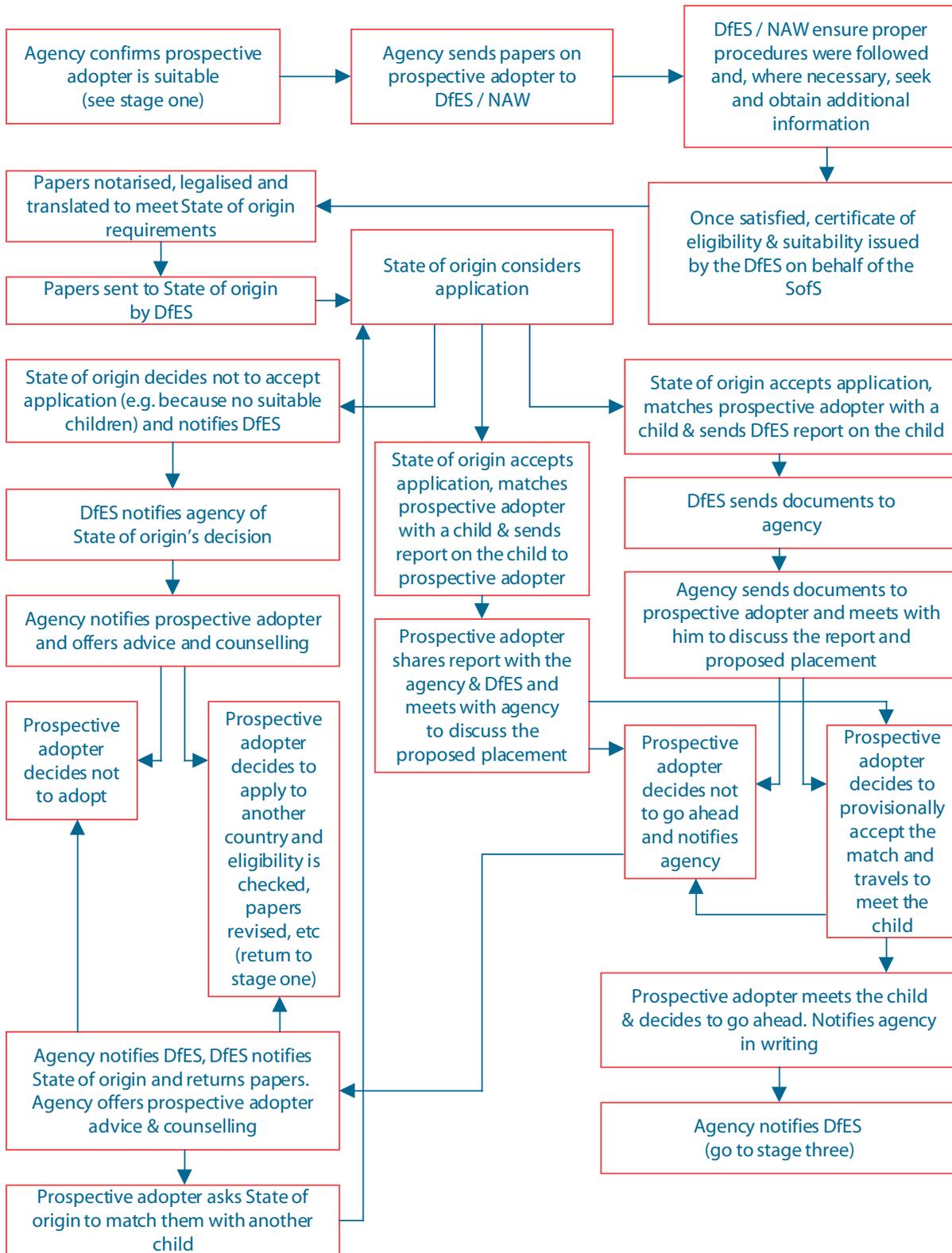
**Stage Three – Agreed Match to Adoption (Hague Convention cases)**



This flowchart has been produced purely as an aide and is not a statement of the law

**ENGLAND/WALES AS THE RECEIVING STATE**

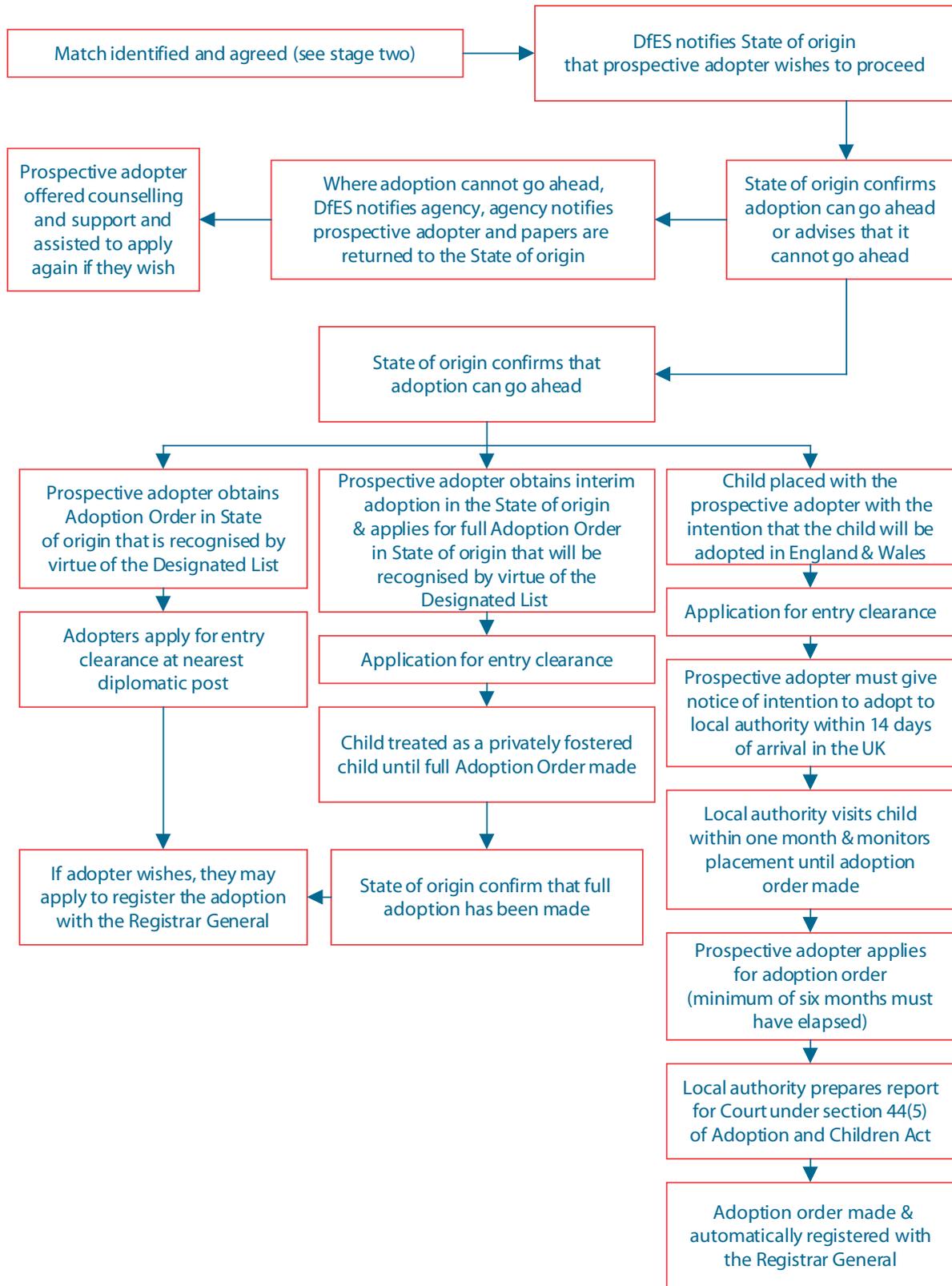
**Stage Two – Suitability to Agreed Match (non-Hague Convention cases)**



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ENGLAND/WALES AS A STATE OF ORIGIN

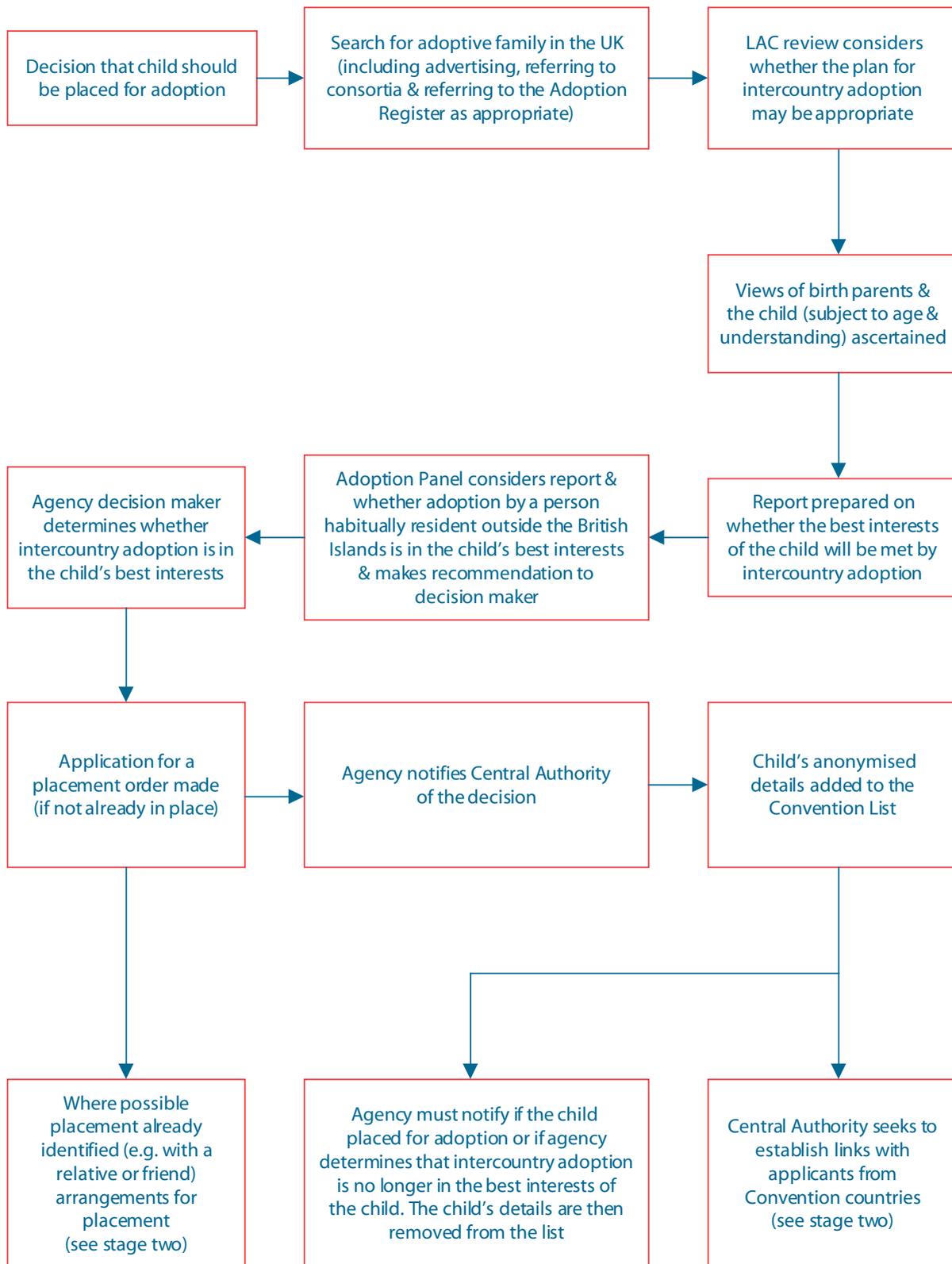
Stage Three – Agreed Match to Adoption (non-Hague Convention cases)



This flowchart has been produced purely as an aide and is not a statement of the law

ENGLAND/WALES AS A STATE OF ORIGIN

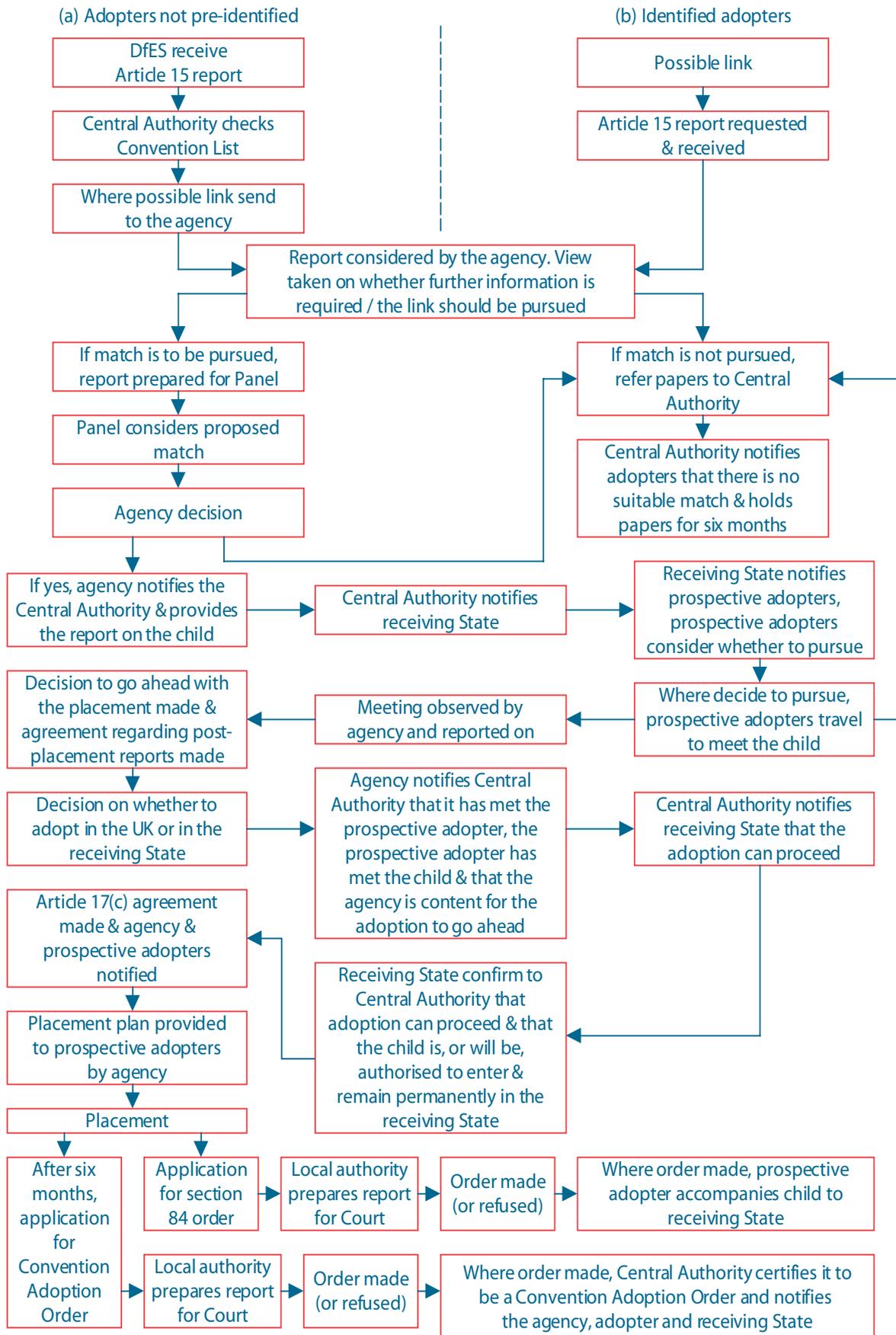
Stage One – Decision that intercountry adoption is in the child’s best interest



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**ENGLAND/WALES AS THE RECEIVING STATE**

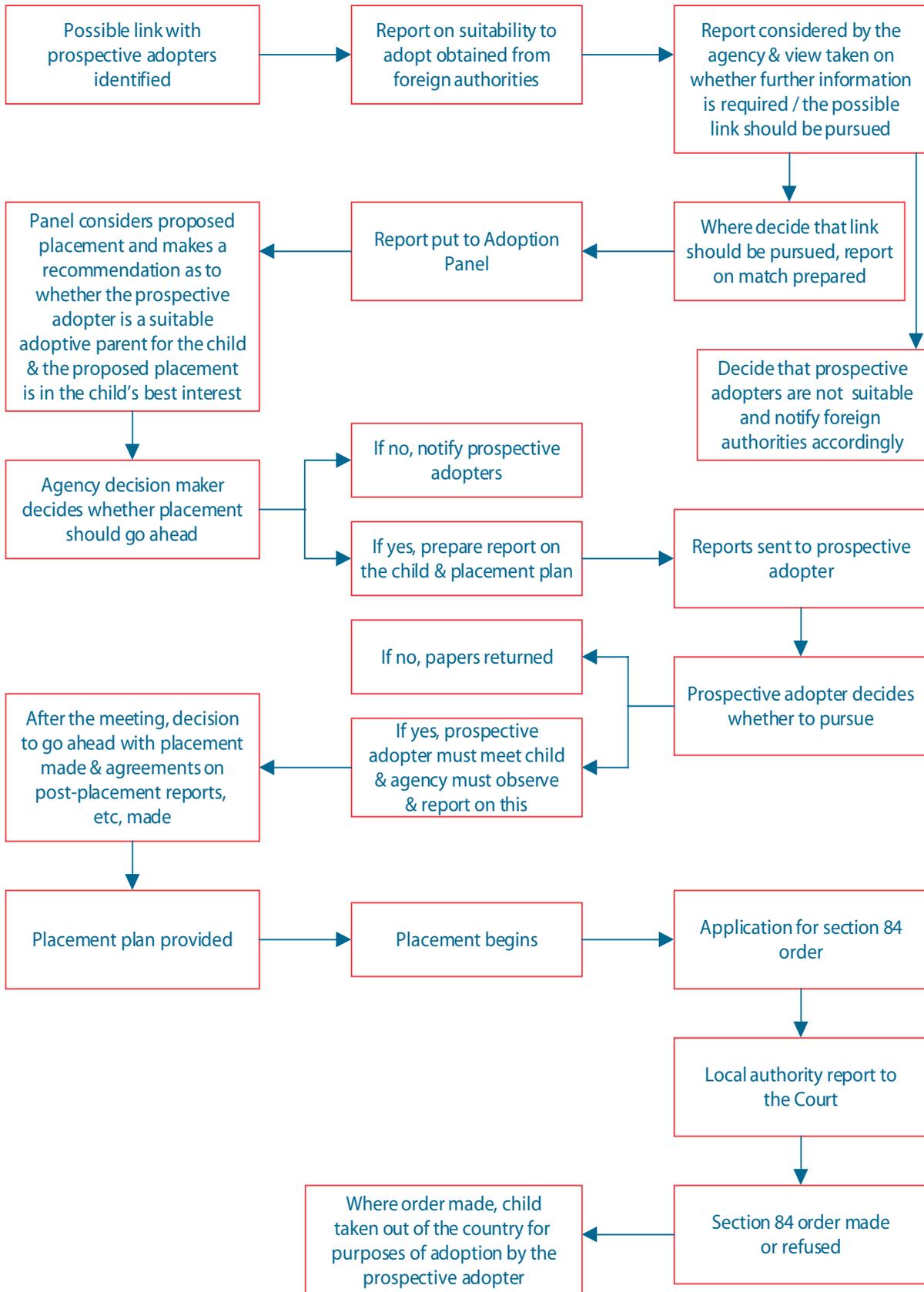
**Stage Two – Matching and placement (Hague Convention cases)**



This flowchart has been produced purely as an aide and is not a statement of the law

**ENGLAND/WALES AS A STATE OF ORIGIN**

**Stage Two – Matching and placement (non-Hague Convention cases)**



This flowchart has been produced purely as an aide and is not a statement of the law

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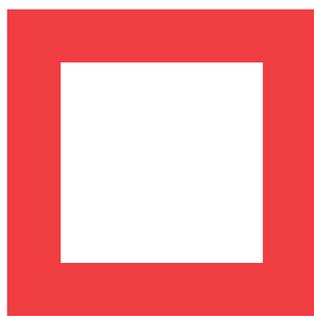
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# Chapter One: Introduction

## PURPOSE OF THIS GUIDE

1. This Guide is designed to assist local authorities and voluntary adoption agencies in their understanding of the law as it applies to adoptions with a foreign element in England. It is written for use by professionals working on intercountry adoption.
2. The document includes background on the policy and legal context, advice on the roles and responsibilities of the key players, information on the procedures which should be followed during the adoption process and a glossary of useful terms. It assumes at least a basic knowledge of the adoption process.
3. The Guide and the Adoptions with a Foreign Element Regulations XXXX are founded on the following values, which were first set out in the National Adoption Standards:
  - Children are entitled to grow up as part of a loving family which can meet their needs during childhood and beyond
  - Where possible it is best for children to be brought up by their own family
  - The child's welfare, safety and needs will be at the centre of the adoption process
  - The child's wishes and feelings will be actively sought and fully taken into account at all stages
  - Delays in adoption can have a severe impact on the health and development of children and will be avoided wherever possible
  - Children's ethnic origin, cultural background, religion and language will be fully recognised and positively valued and promoted when decisions are made
  - The particular needs of disabled children will be fully recognised and taken into account when decisions are made

- The role of adoptive parents in offering a permanent family to a child who cannot live with their birth family will be valued and respected
  - Adoption has lifelong implications for all involved and requires lifelong commitment from many different organisations, professions and individuals who have to work together to meet the needs for services of those affected by adoption
4. This Guide replaces the previous Intercountry Adoption Guide published by the Department of Health in May 2003. It should be read in conjunction with the relevant primary and secondary legislation and alongside other guidance on adoption and other children's services issued by the Department for Education and Skills and Department of Health.

#### USING THE GUIDE

5. An aide memoire and flow charts showing the intercountry adoption process can be found on cards inserted at the front of this document. These are designed to give a brief overview of the intercountry adoption system and are a quick reference point for those working on intercountry adoption and their managers.
6. The main body of the Guide is broken down into three parts. The first deals with the procedures when the UK is the receiving State, the second with the procedures to be followed when the UK is the State of origin and the third with underpinning issues (such as circumstances where a named child has been identified and fees/ charges).
7. A number of annexes can be found at the back of this document. They include the text of the Hague Convention (which came into effect in the UK from 1 June 2003) and a glossary of useful terms.
8. The Guide provides a summary of the law and the practices and procedures that need to be put into place when implementing the law. However, it has no status in law and does not provide an authoritative statement of the law. Therefore it should always be read in conjunction with the relevant primary and secondary legislation including:
- The Adoption (Intercountry Aspects) Act 1999
  - The Adoption and Children Act 2002
  - The Adoption Agencies Regulations XXXX
  - The Suitability of Adopters Regulations XXXX
  - The Adoptions with a Foreign Element Regulations XXXX
  - The Restrictions on the Preparation of Adoption Reports Regulations XXXX
  - The Adoption Rules XXXX
  - The Registration of Foreign Adoptions Regulations XXXX

9. It should also be read in conjunction with other Government guidance issued on adoption, particularly the guidance supporting the Adoption Agencies Regulations XXXX and the Suitability of Adopters Regulations XXXX.

#### **FURTHER INFORMATION**

10. The Department for Education and Skills adoption website at [www.doh.gov.uk/adoption](http://www.doh.gov.uk/adoption) contains information on both domestic and intercountry adoption. It is updated regularly and holds a range of information on individual countries in addition to the most up to date position on intercountry adoption in general. Further information may also be obtained from the Department for Education and Skills on 020 7972 4014.

11. Information and guidance to local authorities, Boards and voluntary adoption agencies in Wales, Scotland and Northern Ireland is provided by the National Assembly for Wales, the Scottish Executive, and the Department of Health, Social Services and Public Safety in Northern Ireland respectively (see Annex G for contact details).

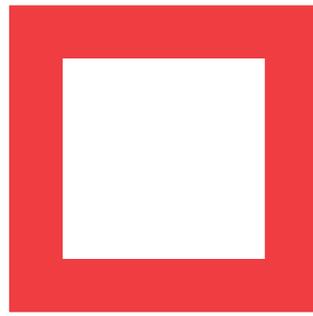
#### Information for the Public

12. A leaflet has been published for the general public. This provides basic information on intercountry adoption and the law. It can be found together with a more detailed factsheet on adopting from outside the British Islands on the Department for Education and Skills website ([www.doh.gov.uk/adoption](http://www.doh.gov.uk/adoption)). A copy of the leaflet can be found at Annex B.

13. The Home Office leaflet "Intercountry Adoption" provides information on the immigration requirements in relation to intercountry adoption. It can be found on [www.ind.homeoffice.gov.uk](http://www.ind.homeoffice.gov.uk).



# Part



## Chapter Two – Context

### INTERNATIONAL LAW

1. A number of international instruments provide a framework for the operation of intercountry adoption that keeps the interest of the child central to the process and any decisions that are made. These include:

- The UN Declaration on Social Legal Principles relating to the Protection and Welfare of Children, with special reference to Foster Placements and Adoption nationally and internationally, adopted by General Assembly Resolution 41/85 of 3rd December 1983
- The UN Convention on the Rights of the Child 1989
- The Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption 1993
- Recommendation 1443(2000) *International adoption: respecting children's rights* adopted by the Parliamentary Assembly of the Council of Europe on 26th January 2000
- The European Parliament's Resolution on improving the law and co-operation between the member States on the adoption of minors of 12th December 1996

2. They provide that:

- Children who cannot live with their birth parents should be either found a placement with a family member or given the opportunity to live with a family within his or her State of origin
- Intercountry adoption may be considered as an alternative means of providing a permanent family for a child who cannot be cared for in a suitable family in his or her own country
- Intercountry adoption should take place in the best interests of the child and with respect for his or her fundamental rights

- Safeguards and standards equivalent to those which apply in domestic adoption should be applied in intercountry adoption to protect the welfare of the child.
- Profit should not be made from the process

### **Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption**

3. The UK ratified the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption with effect from 1 June 2003. The Convention aims to establish safeguards to protect the best interests of the child and put in place a system of co-operation between countries to prevent the abduction of, the sale of, or traffic in children. Key requirements are:

- The child's home country must ensure that the child has been freely given up for adoption and that this has not been induced by payment or compensation of any kind
- Attempts must be made to place the child in a family in their home country. If this is not possible, it must be confirmed that intercountry adoption is in the child's best interests
- An adoption can only take place if the adopters have been approved as suitable to become adopters in the receiving State (i.e. in their home country) and the receiving country confirms that the child will be allowed to reside permanently in that country
- All appropriate measures must be taken by the States to prevent improper financial or other gain in connection with adoption and to deter all practices contrary to the objects of the Convention
- The State must accredit bodies to work as adoption agencies. These bodies must be non-profit making
- Adoptions made in countries which have ratified the Convention are recognised in other Hague Convention contracting States

### **DOMESTIC LAW**

#### **Primary Legislation**

4. The Adoption and Children Act 2002 provides the framework for adoption in England and Wales. The Adoption (Intercountry Aspects) Act 1999 provides for the regulation of intercountry adoption involving Hague Convention contracting States in England, Wales and Scotland.

#### **Secondary Legislation**

5. The key pieces of secondary legislation are:

- *The Adoption Agencies Regulations XXXX* – These set out the process that must be followed when assessing the eligibility and suitability of a prospective adopter
- *The Suitability of Adopters Regulations XXXX* – These set out the matters that must be taken into account when assessing the suitability of prospective adopters

- *The Adoptions with a Foreign Element Regulations XXXX* – These set out the process that must be followed by those habitually resident in the UK wishing to adopt a child from outside the British Islands. They also set out the process for identifying children suitable for intercountry adoption and matching them with prospective adopters from outside the UK
- *The Restrictions on the Preparation of Adoption Reports Regulations XXXX* – These set out who may prepare adoption reports
- *The Adoption Support Services Regulations XXXX* – These set out the adoption support arrangements local authorities must put into place locally
- *The Registration of Foreign Adoptions Regulations XXXX* – These set out the procedures for enabling either Convention Adoptions or overseas adoptions (formerly known as the designated list) to be registered by the Registrar General for England and Wales

#### **Consultation Question:**

- Is the guidance clear how the Adoption Agencies Regulations XXXX and Suitability of Adopters Regulations XXXX inter-relate with the requirements in the Adoptions with a Foreign Element Regulations?
- What improvements could be made?

Please use the enclosed feedback form to give us your views.

#### **DUTIES OF LOCAL AUTHORITIES**

##### **UK as a receiving State**

6. The law requires that the same adoption practice and professional standards be applied to intercountry and domestic adoptions. Local authorities are required to establish and maintain an adoption service that includes intercountry adoption. The intercountry adoption service should include:

- Providing information about foreign adoption procedures
- Offering counselling to those wishing to adopt a child from a foreign country and to people adopted from outside the British Islands
- Assessing applicants' eligibility and suitability to be adoptive parents (to the same standards as for domestic adoptions)

7. Only local authorities, voluntary adoption agencies registered to work on intercountry adoption and those acting in accordance with an order made by the High Court may "make arrangements" for adoption. Section 92 of the 2002 Act makes it clear that any assessment of a person's eligibility and suitability to adopt a child is considered to be making arrangements for adoption. In addition, section 94 makes it clear that only those specified in the Restrictions on the Preparation of Adoption Reports Regulations XXXX may prepare reports dealing with the assessment of prospective adopters.

8. The effect of the above is that home study assessments, updates to home study assessments or any report commenting on the suitability of a person to be an adoptive parent may only be arranged and produced by a local authority or voluntary adoption agency (VAA) registered with the Commission for Social Care Inspection (CSCI) to work on intercountry adoption.

9. However, services do not have to be provided directly. Local authorities may commission an independent social worker to undertake an assessment of prospective adopters if they supervise their work and refer assessments of eligibility and suitability to their Adoption Panel and the agency decision maker. They may also commission voluntary adoption agencies to provide an intercountry adoption service in their area if they choose to do so and the agency's conditions of registration with the CSCI permit this.

10. In addition to having a duty to establish and maintain an adoption service, local authorities with social services responsibilities must:

- Monitor placements for adoption once they have been notified of a prospective adopter's intention to adopt a child previously habitually resident outside the British Islands
- Treat as a private foster child any child adopted on an interim adoption order that will be recognised once it is made a full adoption order under UK law
- Prepare reports for Courts considering applications for adoption when asked to do so
- Make arrangements for the provision of adoption support services in their area

11. Their standard duties in relation to child protection and family support also apply to families who have adopted from outside the British Islands.

12. Finally, as a public authority, local authorities have a duty to report any breach, or suspected breach, of the legal requirements to the Police for investigation as soon as possible.

### **UK as a State of origin**

13. Where a local authority has determined that adoption outside the British Islands is in the best interests of a looked after child and wish to pursue an adoption under the Convention they must provide details to the Department for Education and Skills for inclusion on the Convention List.

14. Where the Department for Education and Skills receives an application from prospective adopters living outside the British Islands that may match the requirements for a child included on the Convention List they will send the local authority a copy of the application. The local authority must consider the application and either return the papers to the Department for Education and Skills or refer a possible match to their Adoption Panel for a recommendation prior to the local authority decision maker making a decision.

## **VOLUNTARY ADOPTION AGENCIES**

**15.** The CSCI inspects and registers VAAs. Not all VAAs will be registered to provide an intercountry adoption service. Only those whose conditions of registration permit involvement in intercountry adoption (either working independently or under contract to local authorities) may become involved in intercountry adoption cases.

## **RESTRICTIONS ON INTERCOUNTRY ADOPTION**

### **The UK as a receiving State – Non-Convention Adoptions**

**16.** Section 83 of the Adoption and Children Act 2002 requires anyone habitually resident in the UK (*including* parents, guardians, step-parents and relatives) to comply with the requirements and conditions specified in Part 2 of the Adoptions with a Foreign Element Regulations XXXX prior to adopting a child habitually resident outside the British Islands unless they intend to adopt under the Hague Convention.

**17.** The requirements and conditions are:

- All prospective adopters must apply to be assessed as eligible and suitable to adopt by a local authority or VAA registered to work on intercountry adoption and provide the information and assistance required for the assessment by the agency
- The Secretary of State must issue a certificate confirming that the prospective adopter has been assessed as eligible and suitable to adopt by a local authority or VAA registered to work on intercountry adoption
- The adopter must give notice of their intention to adopt or not to give the child a home within 14 days of their return to the UK unless they have a recognised adoption order (i.e. an overseas adoption, formerly known as the designated list)

**18.** Failure to meet the requirements or comply with the conditions is punishable by:

- On summary conviction up to 6 months imprisonment, or a fine not exceeding the statutory maximum (currently £5,000), or both, or
- On conviction on indictment up to 12 months imprisonment, or an unlimited fine, or both.

### **The UK as the receiving State – Convention Adoptions**

**19.** Those intending to adopt from a Hague Convention contracting State must comply with Part 4 of the Adoptions with a Foreign Element Regulations XXXX. An adoption may not be made under the Hague Convention unless there is compliance with the Regulations and the procedures in the other contracting State. Failure to proceed in accordance with the Regulations and the procedure in the other contracting State may prevent a Convention Adoption or Convention Adoption Order being made.

**20.** A person who contravenes or fails to comply with the following requirements without reasonable excuse is guilty of an offence and liable on summary conviction to up to 3 months imprisonment or a fine not exceeding the statutory maximum, or both. The requirements are:

- The prospective adopter must give notice of their intention to adopt or not to give the child a home within 14 days of their return to the UK
- Where the prospective adopter is given notice by the local authority that the child should be returned to them, the prospective adopter must return the child to the local authority within 7 days
- Where a parent or guardian of the child may remove the child requests the return of the child, the child must be returned at once
- Where an application for a Convention Adoption Order is refused by the court or withdrawn, the prospective adopter must return the child to the local authority within the period determined by the court

**21.** In a case where a person intends to adopt a child who is habitually resident in a Hague Convention Contracting State but the Hague Convention procedure is not followed or complied with, that person will then fall within the requirements of section 83 of the Adoption and Children Act 2002. They will be required to comply with all the requirements and conditions set out in Part 2 of the Adoptions with a Foreign Element Regulations XXXX. Failure to do so will be subject to a maximum penalty of 12 months imprisonment and/or an unlimited fine upon conviction.

### **The UK as a State of origin**

**22.** Section 85 of the Adoption and Children Act 2002 requires anyone (including parents, guardians, step-parents and relatives) wishing to take a child who is a Commonwealth citizen or habitually resident in the UK outside of the British Islands with a view to adoption in a foreign country must first apply for and receive a Court Order authorising a proposed foreign adoption and conferring parental responsibility upon them.

**23.** Failure to comply with the provisions is punishable by:

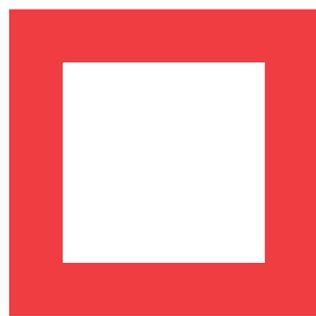
- On summary conviction up to 6 months imprisonment, or a fine not exceeding the statutory maximum (currently £5,000), or both, or
- On conviction on indictment up to 12 months imprisonment, or an unlimited fine, or both

### **Consultation Question:**

- Have we succeeded in replicating the current regulations on intercountry adoption while taking the context of the 2002 Act into account?

Please use the enclosed feedback form to give us your views.

Part I:



# UK as a Receiving State

## *A. The Assessment and Approval Process*

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## *B. Matching, Adopting and Bringing the Child into the UK*

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<b>Chapter Nine</b> – Adoptions from Other Countries	93

## *C. Post Adoption*

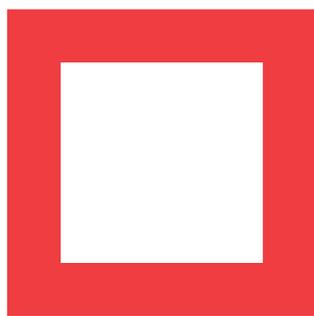
### **Chapter Ten – Post Adoption Reports, Adoption Support and Registering Foreign Adoptions**

99

#### **Consultation Question:**

- These Regulations largely replicate the new arrangements implemented on 1 June 2003. Have these arrangements been successfully implemented in your experience?
- Are there any lessons that need to be taken into account when finalising the new Regulations and guidance?
- If yes, please specify and indicate whether they need to be reflected in the Regulations or guidance

Please use the enclosed feedback form to give us your views.



# A. The Assessment and Approval Process

## Chapter Three: Initial Contact with Prospective Adopters

### RESPONDING TO REQUESTS FOR INFORMATION

1. The Government has made clear that local authorities and VAAs (collectively referred to as 'adoption agencies') should respond promptly and courteously to requests for information about all types of adoption. When approached about intercountry adoption they should always provide information on both domestic and intercountry adoption to give the enquirers enough background information to allow them to make an informed choice about their preferred route.
2. If a VAA that does not work on intercountry adoption is asked for information about intercountry adoption, they should offer general information on domestic adoption and provide the enquirer with details of the relevant local authority and/or a VAA that is registered to work on intercountry adoption.

3. In addition to providing written information, adoption agencies may find it useful to offer enquirers the opportunity to have an informal discussion about the options so that their initial questions can be answered.

4. When asked for information about intercountry adoption adoption agencies should:

- Explain the legal implications of adoption
- Provide a picture of what intercountry adoption involves, including the children who may be available for adoption (based on previous experience)
- Provide information on the groups of countries from which children may be adopted from and the processes that will be followed when adopting from a Convention Contracting State, a country whose adoptions are recognised as overseas adoptions (formerly known as the designated list) and a country that is neither a Convention Contracting State nor whose adoptions are recognised as overseas adoptions (formerly known as the designated list)
- Provide information on the relevant habitual residence and domicile tests and encourage them to seek independent legal advice if there is any uncertainty over their status in relation to these tests
- Provide information summarising the legal position, making clear that only adoption agencies may assess the suitability of adoptive applicants and that anyone circumventing the usual procedures may be guilty of an offence
- Offer information on the adoption agency's approach to preparing adopters
- Cover all aspects of the assessment process, including an indication of the likely timescales involved and a breakdown of the fees charged
- Explain the role of the Department for Education and Skills
- Set out how the matching process will take place
- Explain the entry clearance process
- Ensure prospective adopters are aware of the need to notify the local authority of their intention to adopt within 14 days of their arrival in the UK with a child if they do not have an adoption order recognised under UK law
- Ensure prospective adopters understand that children will be considered to be private foster children when they are brought into the UK with interim adoption orders that will be recognised under UK law once they are finalised
- Give details of contact points (including websites) for additional information
- Provide information about adoption agency's complaints procedures

## PREPARING PROSPECTIVE ADOPTERS

5. It is a statutory requirement that adoption agencies provide prospective adopters with written information about the law relating to adoption and are offered a counselling service. They should also be assisted to obtain information on the adoption laws and regulations in respect of the country from which they intend to adopt (the Department for Education and Skills will be able to assist with this).

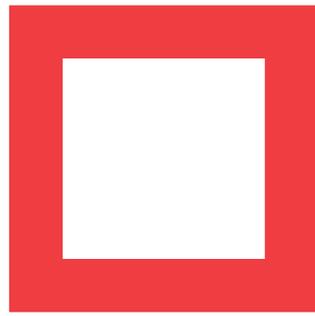
6. It is good practice for adoption agencies to offer prospective intercountry adopters the opportunity to prepare for, and understand, the adoption process. This preparation should be similar to that for domestic adoptions but with extra elements covering the particular challenges of adopting a child from outside the British Islands.

7. The information set out in paragraph 8 below should normally be offered. Prospective intercountry adopters should be offered places on adoption preparation and training courses in the same way as domestic adopters. Where specific individual issues arise, prospective adopters should be given the opportunity to avail themselves of sound professional advice and counselling.

8. In addition to being provided with the information set out in paragraph 3 above, applicants should be:

- Assisted to understand the law as it applies to intercountry adoption
- Provided with information about the eligibility criteria under UK law
- Helped to find out and understand the eligibility criteria applied in the countries from which they are interested in adopting (the Department for Education and Skills may be able to assist with this)
- Made aware of the roles and responsibilities of all the key players in the adoption process
- Informed what they will need to do if during the assessment process they decide to change from an intercountry to a domestic application
- Informed about all stages of the adoption process and made aware of likely timescales
- Made aware that they may have to make decisions about whether they wish to adopt a particular child having little or no information about the child's social background or medical history
- Made aware of the importance of discussing proposed matches with the agency before agreeing to the match, so that they have the opportunity to consider whether the child is right for them
- Made aware that some non-Convention countries may send matching details directly to them and that in such circumstances they should notify the adoption agency and Department for Education and Skills

- Told that they will need to travel to meet the child before bringing the child back to the UK (joint adopters will both have to travel, preferably together)
- Given the opportunity to consider what it means for a child to be adopted by a person from another country, having a different culture and possibly a different racial and religious background
- Encouraged to think about and discuss what adopting a child from outside the British Islands will mean for them, in both the short and longer term
- Where appropriate, helped to consider what offering a home to a child who shares few or none of the racial, cultural or linguistic inheritance of the family and who may have suffered considerable early disadvantage will involve
- Encouraged to consider and discuss what, if any, adoption support they may need after adopting
- Encouraged to consider the importance of adopting through approved adoption agencies/charitable organisations overseas and not using unauthorised intermediaries (which is illegal and can also lead to immigration difficulties) as well as the protections offered by adopting under the Hague Convention



# Chapter Four: Checking Eligibility of Prospective Adopters

## APPLICATIONS

1. Individuals are required to submit a written application to have their eligibility and suitability to become an adoptive parent assessed. They may do this at any time. However, their right to submit an application does not equate to a right to be assessed, a right to be assessed within a particular time period or a right to be approved to adopt. The adoption agency may establish reasonable arrangements that allow them to make the best use of their available resources, for example prioritising the assessment of people who can meet the needs of children waiting for adoption in the area. Agencies are advised to consult their own legal advisers in respect of putting in place any such arrangements.

## ELIGIBILITY – DOMESTIC LAW

2. Prior to carrying out an assessment adoption agencies must check that prospective adopters are eligible to adopt under domestic law. The most basic of these tests is verifying that the prospective adopters are aged over 21 (to meet the requirements of sections 50 and 51 of the 2002 Act). In the same way as for domestic adoption, documentary evidence must be produced by the applicant and checked by the adoption agency.

3. The adoption agency must also establish whether or not the applicant meets the relevant domicile/ habitual residence tests (see below). In particular:

- Section 83 of the 2002 Act makes clear that the restrictions on bringing children into the UK apply only to those who are habitually resident in the British Islands

- Section 49 of the 2002 Act makes clear that only those domiciled in the UK can apply to a Court in England and Wales for an adoption order. Anyone planning to bring a child into the UK who is not the subject of an adoption order recognised under UK law will therefore need to be domiciled in the UK if they are to be in a position to secure a recognisable adoption
- Section 49 of the 2002 Act makes clear that only those who have been habitually resident in the British Islands for at least one year may apply for an adoption order.
- 4. Once it has been confirmed that the basic eligibility criteria have been satisfied, the adoption agency must carry out police checks on the applicant and any other member of the applicant's household aged 18 or over. They should apply to the Criminal Records Bureau (CRB) for an enhanced criminal record certificate. If the applicant or any adult member of the household has been cautioned or convicted of an offence specified in regulation 21 of the Adoption Agencies Regulations XXXX the applicant will be deemed unsuitable to become a prospective adopter.

#### IDENTIFYING THE STATUS OF THE PROSPECTIVE ADOPTER

##### Habitual Residence

- 5. Habitual Residence is a legal concept. Its interpretation is subject to caselaw. Chapter 13 includes some indications as to whether or not an individual can be considered habitually resident in the UK.
- 6. However, it is impossible to give a definitive explanation of the concept. The habitual residence of any individual will depend upon the facts of their individual case. If there is any doubt as to the habitual residence of a prospective adopter they should be advised to seek independent legal advice prior to proceeding with the assessment process. If adoption agencies remain concerned they should seek their own legal advice. The Department for Education and Skills cannot advise prospective adopters or adoption agencies on habitual residence.

##### Domicile

- 7. Domicile is also a legal concept. Essentially the country in which a person is deemed to be domiciled is the country where the person has their permanent home and to which they have their closest legal ties.
- 8. In the same way as it is impossible to fully define habitual residence, it is impossible to give a definitive checklist of the items required for an individual to be considered domiciled in the UK. An individual's country of domicile will be determined by the facts of their particular case. If there is any doubt as to the country of domicile of a prospective adopter they should be advised to seek independent legal advice prior to proceeding with the assessment process. If adoption agencies remain concerned they should seek their own legal advice. The Department for Education and Skills cannot advise prospective adopters or adoption agencies on domicile.

## Immigration Issues

9. Chapter 13 includes some pointers to the immigration issues that should be taken into account by prospective adopters. Of particular relevance here is the requirement that prior to any adoption under the Hague Convention the Home Office will be required to confirm that the child will be permitted to reside in the UK permanently if a Convention Adoption or Convention Adoption Order is made (and any entry clearance, leave to enter or leave to remain required by UK immigration law is granted and not subsequently revoked or cancelled). This is to meet the requirements of Articles 5 and 17 of the Convention. Please refer to the glossary at Annex F for information about the difference between a Convention Adoption and a Convention Adoption Order.

10. *Where the prospective adopter is a British citizen (or in the case of a joint adoption, one of the adopters is a British citizen) and is habitually resident in the UK (or in the case of a joint adoption, both of the adopters are habitually resident in the UK) the child will automatically receive British Citizenship when a Convention Adoption or Convention Adoption Order is made. This will mean that the child will not be subject to immigration control and so the required confirmation from the Home Office should be reasonably simple to obtain (subject to them being satisfied that the adoption is a genuine adoption and not taking place to avoid immigration control).*

11. *Where the prospective adopter is not a British citizen it will be necessary to establish their immigration status. Anyone who is settled in the UK (i.e. has indefinite leave to remain and is ordinarily resident in the UK) will be capable of securing the required confirmation that a child adopted under a Convention Adoption or Convention Adoption Order will be permitted to reside permanently in the UK with his/ her adopters. This will be subject to the Home Office being satisfied that the adoption is genuine and not motivated by a wish to avoid immigration control. Any confirmation will also be subject to the granting and non-revocation or non-cancellation of entry clearance and leave to enter and/or remain in the usual way.*

12. *Where the prospective adopter is not a British Citizen and does not have settled status, it is extremely unlikely that the Home Office will be able to make the assurances required under the Hague Convention. This is because the child cannot be allowed to reside permanently in the UK when the adopter cannot. Before proceeding with an assessment the prospective adopter should be advised to seek advice from the Home Office. It is possible that they may be entitled to apply for indefinite leave to remain in certain circumstances (for example, if they have been resident in the UK for four years). It is also possible that, if the prospective adopter is a national of a country from within the European Economic Area (EEA) and the child would automatically receive the prospective adopter's nationality upon the making of the adoption, the child might be entitled to reside in the UK by exercising Treaty Rights.*

**13.** *In the very small number of cases where an individual is considered to be habitually resident in the UK but does not have indefinite leave to remain or settled status, they should be advised to seek independent legal advice. They will not be able to adopt from a non-Convention country whose adoptions are not recognised as overseas adoptions (formerly known as the designated list) as they will not meet the domicile tests required to adopt in the UK. Nor will they be able to adopt from a Hague Convention Contracting States due to the inability of the Home Office to make the assurances in relation to entry and leave to remain required by the Convention.*

**14.** They may like to consider adopting from a country whose adoptions are recognised as overseas adoptions as the adoption would then be recognised under UK law and they would be able to apply for entry clearance for the child on the same basis as their own residency in the UK. However, prior to beginning the home study assessment they will wish to seek advice from the Home Office on the likelihood of the child receiving entry clearance to join them in the UK (clearly without pre-judging any subsequent entry clearance application).

#### **NOTIFYING PROSPECTIVE ADOPTERS**

**15.** Where the adoption agency finds that the prospective adopter is not eligible under the law of England and Wales they should notify them in writing as soon as reasonably possible. They should offer the prospective adopter the opportunity to discuss the reasons for finding them ineligible and offer as much information as they can (without breaching confidentiality or data protection protocols). They should offer counselling and support as necessary.

**16.** Where the adoption agency finds that the prospective adopter is eligible under the law of England and Wales they should make sure that they make the prospective adopter aware of this decision and the timings for the next stages of the process.

#### **ELIGIBILITY – FOREIGN REQUIREMENTS**

**17.** When the adoption agency has confirmed that the eligibility tests under the domestic law have been met and that the immigration status of the individual is satisfactory it must also be confirmed that the prospective adopter is eligible to adopt from the country to which they wish to apply.

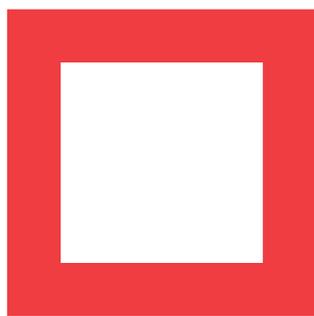
**18.** The Department for Education and Skills should, with the help of British Diplomatic Posts overseas, be able to assist with information on any explicit eligibility requirements of foreign countries (for example, age limits or a requirement that joint applicants be married). They may also be able to give a view, based on past experience, of any other issues that could have a bearing on the acceptability or otherwise of a particular case (for example, some countries may accept applications from single adopters but it might be rare for those adopters to be matched with a child).

**19.** It is recommended that the prospective adopter is encouraged to choose the country from which s/he wishes to apply to adopt from as early as possible in the process. This will allow the preparation and assessment to be tailored to the individual case and ensure that the adoption agency works within the correct statutory provisions.

**20.** The adoption agency should establish the prospective adopter's ability to meet the foreign country's eligibility requirements as early as possible in the process. Any issues (in particular issues identified from past cases but which are not explicitly stated by foreign authorities) should be discussed with the prospective adopters so that they are fully aware of them and the options available. This should mean that any decision to apply to a different country from that originally intended is taken early in the process and can be taken into account during the assessment and preparation process.

**21.** It is essential that, before submitting papers to the Adoption Panel, the agency has confirmed that the prospective adopter meets the eligibility criteria for the country being applied to, and that such additional information as may be required by the foreign authority has been obtained and recorded.





# Chapter Five – Assessing the Suitability of Prospective Adopters

## INTRODUCTION

1. This part of the Guide should be read in conjunction with the guidance issued to support the Adoption Agencies Regulations XXXX and Suitability of Adopters Regulations XXXX and the Practice Guidance on the assessment of prospective adopters.
2. Assessments should not usually begin until counselling and discussion with professionals has taken place and the individual's eligibility to adopt under UK law has been established.
3. Adoption agencies are not obliged to assess anyone who they have reason to believe *will not be able to be approved as suitable* to adopt. However, they will need to be able to justify any decision not to start or complete an assessment of suitability, to discuss this with the prospective adopter and to record carefully the reasons for this on the case record. This "counselling out" process, which is often criticised by prospective adopters, should be handled carefully and the decision countersigned by a manager of the agency.

## THE ASSESSMENT

4. The assessment process for intercountry adoption should be as close as possible to that for domestic adoption. It must be carried out in accordance with the Adoption Agencies Regulations XXXX and the Suitability of Adopters Regulations XXXX. As for domestic adoption, regulation 23 of the Adoption Agencies Regulations requires an assessment of the suitability of a prospective adopter to include:
  - information from the counselling process
  - information from the enhanced Criminal Records Bureau certificate(s)
  - written report from a registered medical practitioner

- written report about the premises where the prospective adopter intends to live with any child adopted
  - written report of each of the interviews with the personal referees
  - written report from the local authority/voluntary adoption agency
5. The agency must prepare a written report for the Adoption Panel to include:
- details of the prospective adopter
  - a summary of his home and neighbourhood
  - a summary of his state of health
  - the agency's assessment of his suitability to be an adoptive parent
  - any observations about information obtained from the counselling process or Criminal Records Bureau certificate
6. The Practice Guidance suggests other matters which the adoption agency may like to include as good practice. Any assessment of the suitability of a prospective adopter for intercountry adoption will focus throughout on his ability to parent a child who, as well as having suffered early disadvantage, will be from a different country and may be of a different culture, ethnic background, religion and language.
7. During the assessment prospective adopters should be assisted with decisions about the age range and, where applicable, the gender of the child they wish to adopt.

### **Age of applicants**

8. There are no restrictions on the age of adopters and arbitrary rules regarding the age of adopters should not be applied. The important thing is to ensure that the prospective adopters will be able to provide a secure and stable home for the child through childhood and beyond. However, some sending countries do apply age restrictions and this may be a relevant factor for some prospective adopters as they consider their options.

### **Health considerations**

9. The agency medical adviser plays an important role in the assessment process both in considering medical reports on individual prospective adopters and in advising and contributing to the work of the Adoption Panel. A medical report received in the Department for Education and Skills which has not been completed by the agency medical adviser will be returned to the adoption agency for comment and signature. This will result in the application being unnecessarily delayed.

10. Investigation of each prospective adopter's health and consideration of any health risks, including those associated with lifestyle, should follow domestic adoption practice. Involvement of the medical adviser is essential, both in considering individual medical reports and in contributing to Panel discussions on the completed home study report.

## Financial status

**11.** The financial status of a prospective adopter should be established and referred to in the report. This should cover both current financial status and likely status after placement if there is likely to be a change. Some countries require prospective adopters to provide documentary evidence of income, savings and property value. The Practice Guidance recommends that where the prospective adopter is currently employed, the agency should verify this fact with the current employer.

**12.** It should be remembered that, where the child will be subject to UK immigration control, one of the immigration conditions is that the prospective adoptive child will be maintained and accommodated adequately without recourse to public funds by the adoptive parents. Therefore prospective adopters in receipt of public funds can only be considered for intercountry adoption if they will not have to rely on further additional public funds to support their child. See Annex F for a definition of 'public funds'.

## Adoption of more than one child

**13.** Children coming to this country from abroad for adoption will require a tremendous amount of time, energy and commitment, particularly in the early stages of placement. For this reason it is appropriate in most cases for prospective adopters to be encouraged to apply to be approved to adopt one single child at a time. Where they are minded to apply to be approved for more than one child, the adoption agency will wish to discuss with them the implications of this for them as adoptive parents and for the best interests of any children who may be placed.

**14.** Some prospective adopters have sought to adopt more than one unrelated child from outside the British Islands at the same time. However, this should only take place in very exceptional circumstances and where it appears to be in the best interests of the children concerned. It is therefore important that if a prospective adopter has been approved to adopt siblings, the home study and the agency decision maker's approval should clearly state "blood related siblings" unless, exceptionally, the approval is specifically for known siblings who are not blood related (such as "social siblings" or "adoptive siblings").

## Subsequent adoptions

**15.** Where prospective adopters wish to adopt a second or third child they will need to be reassessed. Good practice suggests that reassessment should not commence until the adoption order or Convention Adoption Order of the first child has been made in the UK. Where a Convention Adoption or overseas adoption has been made in the child's State of origin good practice suggests that reassessment should not commence until at least 12 months has elapsed since the first child began to live with the adopters.

## THE REPORT

**16.** Wherever an assessment is carried out the adoption agency must establish a case record in the same way as for any domestic adoption. For detailed guidance on the content of the report and the assessment of suitability that must be contained within it adoption agencies are referred to the guidance published to support the Adoption Agencies Regulations XXXX and the Suitability of Adopters Regulations XXXX. In all cases the law requires that this must include:

- Confirmation that the prospective adopter is eligible to adopt under UK law together with the details outlined in paragraphs 4 and 5 above.
- The medical report on the prospective adopter
- A report on the prospective adopter's home
- A written record of the interviews conducted with personal referees
- The agency's assessment of the adopter's suitability (including reasons for adoption and their ability to parent a child from a foreign country)
- The agency's observations on the various reports obtained

**17.** To meet the requirements of the Hague Convention, when an application is to be made to a Hague Convention contracting State, the law also requires the report to include information and observations regarding the prospective adopter's:

- Identity
- Background
- Family and medical history
- Social environment
- Reasons for adoption
- Ability to undertake an intercountry adoption
- Any other information that may be relevant

**18.** In addition to the statutory requirements the report should also in all cases:

- State from which country the prospective adopter wishes to adopt
- Confirm s/he is eligible to adopt under the law of that country
- Spell out the characteristics of the children for whom s/he would be qualified to care and any areas in which the assessment indicates that the prospective adopter is likely to have difficulty
- Highlight the strengths and areas for development of the prospective adopter in relation to the task of parenting a child for adoption

- Include any other information that the country to which the adopter is applying requires (the Department for Education and Skills will be able to assist with identifying this information)

**19.** Clearly the home study is very important as it is the only opportunity for adoption agencies to advise on the type of child to be matched to the prospective adopters. Hopefully, information and insights gained from attendance at training and preparation classes will also assist in this. It is usual to consider the home study valid for two years without being updated. However, significant changes in circumstances will usually mean that the home study will need to be updated sooner than this (see chapter 13).

**20.** When completing reports agencies should be careful not to include jargon or unexplained abbreviations as this may cause confusion overseas. For example instead of writing "AID by donor" write "Artificial Insemination by Donor" as authorities overseas have been known to interpret this to mean "Acquired Immune Deficiency".

#### SHARING THE REPORT WITH PROSPECTIVE ADOPTERS

**21.** Prospective intercountry adopters, like prospective domestic adopters, have a right to see the agency's assessment of their suitability to become an adoptive parent. However, this does not include all papers on the case record such as reports from referees.

**22.** In accordance with the Adoption Agencies Regulations XXXX, before the adoption agency refers the case to the Adoption Panel the agency must share their assessment report with the prospective adopter and allow them to send any observations in writing to the agency on the report within 14 days.

**23.** Each page of the report should be clearly marked 'Draft/Copy – not to be used for the purposes of adoption'. *Original documents must not be given to the prospective adopters*, as these could, potentially, be used to persuade a foreign court to grant an adoption order without the adopters having gone through the proper approval procedures in the UK.

**24.** Good practice suggests that prospective adopters should be prepared for the content of the report in advance of it being sent to them. They should be made aware as their assessment progresses of their strengths and areas needing development and any concerns the agency has should be shared with them as soon as they are identified.

#### THE ADOPTION PANEL

**25.** As for domestic adoptions, all assessments must be referred to the agency Adoption Panel. In accordance with the Adoption Agencies Regulations XXXX, the Panel must consider the information and reports passed to it by the adoption agency plus any observations made by the prospective adopter. They may also request the adoption agency to obtain any other relevant information and any legal advice they consider necessary in relation to the case.

**26.** Once the Panel has considered the case they must make a recommendation as to whether or not the prospective adopter is suitable to be an adoptive parent. Where they recommend that the adoption agency should approve the prospective adopter to adopt a child from another country they should also specify the:

- Number of children they believe the prospective adopter should be approved to adopt
- Age range, gender and characteristics (health and social) of the child/ren they believe the prospective adopter would be suitable to adopt

This will ensure that their views are taken into account by the decision maker. The recommendation should also specify the country from which the prospective adopter wishes to adopt.

#### **MAKING A DECISION**

**27.** The agency decision maker must be someone who has not been involved in the direct management or assessment of any applicant involved nor a member of the Adoption Panel. The decision maker should understand the adoption process (both domestic and intercountry) and have sufficient standing in the adoption agency to endorse or challenge a Panel's recommendation.

#### **When Minded to Find Prospective Adopter Unsuitable**

**28.** Where the agency decision maker is minded to find that the prospective adopter is not suitable to adopt s/he must notify the prospective adopter in writing that this is the case, state why, and provide the recommendation of the Adoption Panel where that was different. S/he must also inform the prospective adopter that they may:

- Make representations within 28 days, or
- Apply to refer their case to an independent review panel within 28 days

**29.** If representations are received within 28 days the adoption agency can refer the case together with the relevant information to the Adoption Panel for further consideration. Prior to a decision being made the decision maker must take into account any recommendation made by the Adoption Panel after this further consideration.

**30.** If the prospective adopter applies for their case to be referred to an independent review panel the adoption agency must supply all the relevant papers to that panel within 10 working days. Prior to a decision being made the decision maker must take into account any recommendation made by the independent review panel.

#### **Where the Prospective Adopter is Found to be Unsuitable**

**31.** Once a decision has been made that a prospective adopter is unsuitable to adopt the adoption agency must write to the applicant informing them of its decision and its reasons for making this decision. The agency must also notify the applicant of the Adoption Panel's recommendations where this is different to the agency's decision.

**32.** Counselling, advice and support should be offered to the applicants as necessary.

### **Where the Prospective Adopter is Found to be Suitable**

**33.** If the agency decision maker considers the Panel's recommendations and decides that the prospective adopter is suitable to become an adoptive parent s/he must notify the prospective adopter in writing as soon as possible. To allow the Department for Education and Skills to process the application, the letter should specify the number of children and the age range, gender and characteristics (health and social) of the child/ren which the prospective adopter might be suitable to adopt, as well as the country from which they wish to adopt.

**34.** Prospective adopters have also indicated that they find it helpful for the agency decision letter to:

- Tell them what the next stages of the process will be (including the need for the Department for Education and Skills to confirm all the procedures have been satisfactorily completed prior to the documents being sent overseas)
- Indicate the length of time for which the assessment report is valid (usually two years)
- Set out examples of the circumstances in which an update report will be required and the need to report a change of circumstances (see chapter 13)
- Remind them that being assessed as eligible and suitable to adopt does not guarantee that a child will be considered suitable for them by the foreign authority

### **DUTY OF AN ADOPTION AGENCY FOLLOWING APPROVAL**

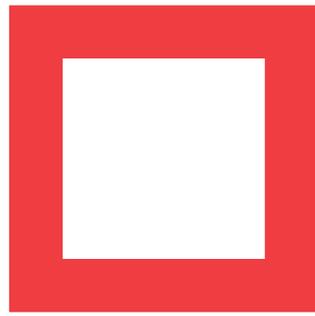
**35.** Where the adoption agency approves the prospective adopters they are required to send all the papers sent to the Adoption Panel, the Panel's recommendation and the agency decision maker's letter to the Department. The adoption agency should ensure that all of the required documents are included. Incomplete documents may cause significant and unnecessary delays in processing the application. A list of the required documents can be found in chapter six.

**36.** The documents should be sent to:

Intercountry Adoption Caseworker  
The Department for Education and Skills  
Looked After Children Division  
Room 105, Wellington House  
133-155 Waterloo Road  
London, SE1 8UG.

**37.** Due to the sensitivity of the documents involved adoption agencies are advised to send the documents by special delivery.





# Chapter Six: Obtaining a Certificate of Eligibility and Sending Papers Overseas

## CHECKING OF APPLICATIONS

1. On receipt of an application the intercountry adoption caseworker in the Department for Education and Skills will check that the statutory requirements have been met and the statutory procedures have been followed. They will also check that all the information required by domestic legislation and by the country to which the prospective adopter wishes to apply has been provided.
2. The caseworker's checks will ensure that the information requirements of the Adoption Agencies Regulations XXXX and the Adoptions with a Foreign Element Regulations XXXX have been met.
3. In summary the caseworker will generally check that prior to processing an application:
  - The report states the country from which the prospective adopter wishes to adopt
  - The report includes the age, gender and characteristics of the children the prospective adopter has been approved as suitable to adopt
  - The report confirms the prospective adopter is eligible to adopt under domestic law and under the law of the country to which they are applying
  - The report meets the requirements set out in Regulations
  - The report has been signed as appropriate by the prospective adopter, social worker, team manager and the agency's decision maker

- The medical report on each prospective adopter is attached and has been seen and signed by the agency medical adviser
- The original Criminal Record Bureau certificate is attached for each prospective adopter
- References have been obtained in accordance with the requirements set out in the Adoption Agencies Regulations XXXX
- The Adoption Panel recommendation is recorded and the panel minutes attached.
- A written record of the agency decision maker's decision is included
- Applications have taken account of the Immigration Rules and the requirements of the Home Office

NB. In all cases signatures must be originals and must not be signed by one person on behalf of another.

4. Beyond checking that the legislative requirements and procedures have been followed, the Department for Education and Skills will not check the content of the home study or the supporting documents.

5. The caseworker will contact the adoption agency if there is anything missing or the procedures do not appear to have been followed. If the papers are incomplete the application will be delayed.

#### **ISSUING A CERTIFICATE OF ELIGIBILITY AND SUITABILITY**

6. Once it has been confirmed that the documentation is in order and the procedures have been complied with, the Department for Education and Skills will issue a certificate ("the eligibility and suitability certificate"). This will confirm that the prospective adopter has been assessed in accordance with the statutory requirements, is approved as suitable to be an adoptive parent, and, subject to any entry clearance and immigration requirements, a child matched with them will be allowed to enter and reside in the UK.

7. The intercountry adoption caseworker will write to the adoption agency and the prospective adopter confirming that the certificate has been issued.

#### **PUTTING PAPERS INTO ORDER PRIOR TO SENDING OVERSEAS**

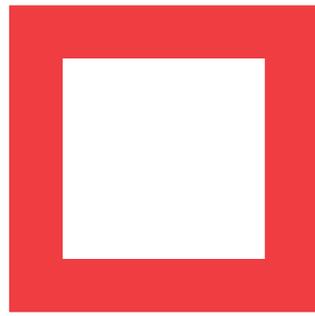
8. The Department for Education and Skills caseworker will then arrange for any additional supporting documents and fees to be supplied to them by the prospective adopter. The caseworker will also advise the prospective adopter if there is a need for the documents to be translated, notarised or legalised (these requirements vary from country to country) and how to secure these services.

### SENDING PAPERS OVERSEAS

**9.** Once the papers have been notarised/legalised as necessary and translated as required, the Department for Education and Skills will forward them to the relevant authority/agency in the specified country. The caseworker will confirm in writing to the adoption agency and the prospective adopter that the papers have been sent overseas.

**10.** The Department for Education and Skills will copy the correspondence with the foreign authority to the adoption agency.





# B. Matching, Adopting and Bringing the Child into the UK

## Chapter Seven: Adoptions from Convention Countries

**1.** This chapter details the process for adoptions from countries that have ratified or acceded to the Hague Convention once the prospective adopter's papers have been submitted to the foreign authorities. An up to date list of Contracting States can be found on the Hague Convention website (at [www.hcch.net/e/status/adoshte.html](http://www.hcch.net/e/status/adoshte.html)).

### **MATCHING**

**2.** The authorities in the State of origin will consider the application and if the application is approved, the prospective adopter will be added to the waiting list of approved adopters living overseas until the authorities can match them with a child.

3. Prospective adopters should be made aware that it can take some time to know what decision has been made by the Central Authority of the State of origin. In some countries it is unlikely a decision will be made until the case comes to the top of the waiting list.

#### **Prospective adopter is not matched**

4. Where the application is not accepted, or it is accepted but there are no suitable children with whom to match the prospective adopter at that time, the Central Authority of the State of origin will notify the Central Authority of the receiving State (i.e. the Department for Education and Skills) and they will in turn notify the adoption agency.

5. The adoption agency should arrange to discuss the outcome with the prospective adopter, provide counselling and support and assist them in deciding what they would like to do. If they decide to apply to another country see chapter 13 for the steps that need to be taken.

#### **Prospective adopter is matched**

6. Where the Central Authority of the State of origin accepts the application they will consider the reports on the prospective adopter prior to making a match with a child. They will then send a report about the child with whom a match is proposed to the Department for Education and Skills. On receipt of the report the Department for Education and Skills will send this to the adoption agency that approved the prospective adopter.

7. Article 16 of the Hague Convention requires that the report include "information about his or her identity, adoptability, background, social environment, family history, medical history including that of the child's family, and any special needs of the child". However, in accordance with the Hague Convention, the report may not reveal the identities of the birth parents if in the State of origin disclosure is not usual.

8. The adoption agency must then make arrangements to share the report with the prospective adopter and to discuss the proposed match with them.

#### **CONSIDERING THE MATCH**

9. The prospective adopter should be given as much time and any reasonable assistance as they need to consider the match. It is important that the adoption agency explain the importance of considering the child and their circumstances carefully to ensure that the applicant is likely to meet the needs of the particular child under consideration. Wherever possible the prospective adopter should be given the opportunity to obtain the views of the agency medical advisor on the medical needs of the child.

10. They should also discuss what will happen should the prospective adopter decide that this child is not right for them. In most cases it should be possible for the prospective adopter to ask the relevant foreign authority to match them with another child. The prospective adopter will normally be expected to put their reasons for not accepting the first match in writing to the relevant foreign authority. In most cases the foreign authority will then endeavour to match the prospective adopters with another child.

**11.** The prospective adopter should be made aware that the placement can only go ahead if they meet the child, confirm in writing that they wish to proceed with the adoption, and the adoption agency confirms to the Department for Education and Skills that they are content for it to proceed. Without this confirmation it is impossible for the Central Authorities to complete the necessary formalities for the adoption to go ahead (see paragraph 24 for more information on the Article 17(c) Agreement).

**12.** After their discussions with the adoption agency the prospective adopter must decide whether or not they wish to proceed with the proposed match.

### **Prospective adopters decide not to go ahead**

**13.** Where the prospective adopter decides not to go ahead the adoption agency should:

- Notify the Department for Education and Skills of this decision
- Return all the papers to the Department for Education and Skills for return to the foreign authorities

**14.** It is good practice to offer the prospective adopter counselling, advice and support as well as discussing with them what options are now open to them and how they would like to proceed.

### **Prospective adopters decide to go ahead**

**15.** When the prospective adopter decides that they would like to proceed further with the proposed match they must make arrangements to travel to meet the child. The prospective adopter cannot formally accept the match until they have met the child or, in the case of a couple, until they have both met the child. As a couple will be parenting any child together, it is best wherever possible for them to go together and meet the child at the same time. They are then in a better position to share their views and experiences of the meeting/s and come to a considered view together of whether they feel they can meet the needs of that child. After meeting the child they must notify the adoption agency in writing of whether or not they wish to accept the match.

**16.** Prospective adopters may decide to accept a match after meeting the child and decide to remain in the child's State of origin until the process has been completed, in which case they can return home with the child. In these circumstances arrangements will need to be made to ensure that the acceptance can be sent from the State of origin (for example a faxed letter confirming that the adopter has met the child and wishes to proceed with the adoption). Alternatively the prospective adopter may decide to return home until such time as formalities are completed and they are free to return to the State of origin to collect the child and bring him/her back to the UK.

**17.** When the prospective adopter decides to go ahead with the match they must decide whether to adopt in the child's State of origin or be entrusted with the child to bring the child to the UK for the purposes of adoption in a UK Court. It is expected that this decision will largely depend upon the arrangements in the State of origin and whether this will take more or less time than an adoption process in the UK. The benefits of adopting in the Convention country will include the fact that the child may automatically receive British citizenship (if the prospective adopter is a British citizen and they are habitually resident in the UK) and that there will not be any need for further formalities in the UK as the adoption will automatically be recognised and can be registered with the Registrar General. However, it will ultimately be for the prospective adopter to decide which route is best for the child (subject to the rules in the State of origin).

**18.** Once the prospective adopter has decided that they wish to proceed with the adoption and has notified the adoption agency of this, the agency must write to the Department for Education and Skills stating:

- Whether or not the match has been accepted
- If it has been accepted, that the required processes (including meeting the child) have been followed
- If it has been accepted, that they are content for the adoption to proceed

**19.** If, after meeting the child, the prospective adopter decides not to go ahead with the match, the adoption agency must notify the Department for Education and Skills and return the relevant papers to the Department for Education and Skills for onward transmission to the foreign authorities.

#### **CHECKING IMMIGRATION STATUS**

**20.** Upon receipt of written confirmation that the prospective adopter wishes to proceed with the match and the adoption agency is content for the adoption to proceed, the Department for Education and Skills will refer the case to the Home Office for advice on the immigration status of the prospective adopters and the child. This is to reduce the chances of a Hague Convention Adoption going ahead when it is clear that entry clearance would not or could not be granted due to immigration concerns.

**21.** The Home Office will consider the relevant papers and determine whether or not they are able to confirm that the child will be permitted to enter and reside permanently in the UK, if a Convention Adoption or Convention Adoption Order is made (and any entry clearance, leave to enter, or leave to remain required by UK immigration law is granted and not subsequently revoked or cancelled). The Home Office will then write to the Department for Education and Skills. This process should not usually take longer than 5 working days. However, in some (less straightforward) cases it may take longer.

**22.** Where the Home Office is unable to confirm that the child will be permitted to enter and reside permanently in the UK if a Convention Adoption or Convention Adoption Order is made (and any entry clearance, leave to enter, or leave to remain required by UK immigration law is granted and not subsequently revoked or cancelled), the adoption will not be able to proceed. If all the necessary enquiries have been made at the eligibility and assessment stages this should be extremely rare.

**23.** However, if it does occur the Department for Education and Skills will notify the adoption agency and the agency will need to notify the prospective adopter and offer such counselling, advice and support as necessary. Where it is confirmed that the adoption cannot go ahead the adoption agency must also return the relevant papers to the Department for Education and Skills for onward transmission to the foreign authorities.

#### **MAKING AN AGREEMENT UNDER ARTICLE 17(C) OF THE HAGUE CONVENTION**

**24.** Where:

- The prospective adopter has met the child and decided to go ahead with the match
- The adoption agency has confirmed that they are content for the match to go ahead, and
- The Home Office has confirmed that (subject to certain conditions being met) the child will be permitted to enter and reside permanently,

the Department for Education and Skills will advise the foreign Central Authority of the decision to go ahead with the match and confirm that the adoption may proceed.

**25.** If the Central Authority in the State of origin confirms that they are also content for the adoption to proceed, the Department for Education and Skills will make an agreement with them in line with Article 17(c) of the Hague Convention.

**26.** When the Article 17(c) Agreement has been made, the Department for Education and Skills will notify the adoption agency and the prospective adopter. The State of origin will then make arrangements for placing the child.

#### **DUTY OF ADOPTION AGENCY BEFORE THE ARRIVAL OF THE CHILD IN ENGLAND AND WALES**

**27.** Once the Article 17(c) Agreement has been made the adoption agency must, (in line with regulation 34 of the Adoptions with a Foreign Element Regulations XXXX):

- Write to the prospective adopter's GP with a report of the child's health history and current state of health so far as it is known, together with particulars of the placement
- Write to the local authority within whose area the prospective adopter has his home (if the adoption agency is not that local authority) and the Primary Care Trust in whose area the prospective adopter lives with details of the proposed placement
- Write to the local education authority within whose area the prospective adopter has his home with details of the placement (if the child is of school age, and/or the adoption agency's medical advisor considers the child to have special needs and/or to be disabled)

## PLACING CHILD WITH THE PROSPECTIVE ADOPTER

**28.** The arrangements for placing the child with the prospective adopter will vary from country to country. The Department for Education and Skills can assist with identifying the arrangements that will apply in each case.

**29.** Once the Article 17(c) agreement has been reached there are three possible routes for placing the child with the prospective adopter. The child may be:

- Entrusted to the prospective adopter and brought back to the UK for the purpose of obtaining a Convention Adoption Order in a UK Court
- Entrusted to the prospective adopter and an interim adoption order made in the State of origin (this will usually become a full Convention Adoption with automatic recognition in the UK)
- Adopted in the State of origin under a Convention Adoption which will have automatic recognition in all Convention countries including the UK

## BRINGING THE CHILD TO THE UK

### Nationality

**30.** Where the child who is not a British citizen is adopted in their State of origin and on the date the adoption is effected:

- The prospective adopter (or in the case of joint applicants, at least one of them) is a British citizen; and
- The prospective adopter is habitually resident in the UK (in the case of joint applicants, both are habitually resident in the UK)

the child will automatically acquire British citizenship on the making of the Convention Adoption.

**31.** The adopter should apply to the nearest British Diplomatic Post, where a passport will be issued for the child upon the production of the necessary documentation.

**32.** In some circumstances, when the child is adopted by someone who is not a British citizen, it is possible that the child may automatically receive citizenship of the adopter's home country. Prior to adopting the adopter should seek advice from the authorities in their country of origin.

### Immigration

**33.** Where the child has automatically acquired British Citizenship they will not be subject to immigration controls. In these circumstances the adopter may obtain a British passport for the child from the nearest British Diplomatic Post and bring the child back to the UK without seeking entry clearance.

**34.** In all other cases application for entry clearance must be made prior to bringing the child into the UK and leave to enter or remain will need to be obtained upon arrival in the UK:

- Where the child has been adopted by means of a Convention Adoption by an adopter who is not a British citizen but who is settled in the UK, the Entry Clearance Officer will need to be satisfied that the adoption is a genuine adoption and that other requirements of the Immigration Rules are satisfied prior to granting entry clearance for the child. The child will usually be granted the same rights to stay in the UK as their adopter (subject to the usual discretion of the Home Secretary)
- Where the adopter has an interim adoption order and this will become a full Convention Adoption in due course, the Entry Clearance Officer will consider the application and if satisfied that immigration requirements have been met issue an entry clearance which on entry to the UK will normally result in leave to enter being granted for a limited period. If the child automatically receives British citizenship when the Convention Adoption is made the child will no longer be subject to immigration control. If the child does not become a British citizen, the adopter will need to seek clearance for the child to reside permanently in the UK, once the full adoption has been made
- Where the child is entrusted to the adopter and he is being brought back to the UK for adoption under the Hague Convention the Entry Clearance Officer will wish to ensure that the Article 17(c) agreement has been made and that the immigration requirements have been met. If the Entry Clearance Officer is content an entry clearance will be issued which on entry to the UK will normally result in leave to enter being granted for a limited period allowing the child to come to the UK for the purposes of adoption. A child adopted by a British citizen in a UK Court will automatically receive British citizenship and will no longer be subject to immigration control. If the child is adopted by a non-British citizen considered domiciled in the UK the adopter will need to seek clearance for the child to reside in the UK on the same basis as their adopter once the adoption has been made

#### **AFTER ARRIVAL IN THE UK**

##### **Adopting in the UK**

**35.** Where the child was entrusted to the prospective adopter on the understanding that the adoption would take place in the UK, the prospective adopter must contact their local authority and either:

- Give notice of their intention to adopt to their local authority within 14 days of arriving in the UK (in accordance with regulation 36 of the Adoptions with a Foreign Element Regulations XXXX). The placement will then be monitored by the local authority who will have a duty to visit the child within one month of notification to offer such support and advice as may be needed to secure the child's welfare. The next visit must take place not more than 3 months after the first (i.e. not more than 4 months after notification) and thereafter at not more than six-monthly intervals until the adoption order is made or the visits are no longer required

- Give notice of their intention not to give the child a home. The local authority should then contact the Department for Education and Skills so that the Central Authority in the State of origin can be informed. In this circumstance the local authority must consider the child as a child in need as defined in the Children Act 1989 and make such alternative arrangements for the care and welfare of the child as it thinks appropriate. It may be that with help and support the adopters will feel that they can resume the care of the child

#### **Consultation Question:**

- The Regulations impose new duties on local authorities to monitor placements of children brought into England and Wales for the purposes of adoption. Are the requirements too many, about right or too few?
- Are the recommended visiting intervals set out in the guidance too frequent, about right or too infrequent?

Please use the enclosed feedback form to give us your views.

**36.** It is a criminal offence if the prospective adopter fails to give notice within 14 days. The maximum penalty is 3 months imprisonment and/or a £5,000 fine upon conviction.

**37.** To seek an adoption order the prospective adopter needs to lodge an application to adopt the child in a British court. Under section 42 of the 2002 Act (as modified by regulation 14 (non Convention) and regulation 44 (Convention Adoptions) of the Adoptions with a Foreign Element Regulations XXXX) the prospective adopter cannot make an application for an adoption order until the child has lived with them for at least 6 months.

**38.** Once the Court has received an application they will ask the local authority to write a report as required under section 44(5) of the Adoption and Children Act. This must include information on a range of issues including:

- The suitability of the applicant
- The needs and wishes of the child, having regard to his age and understanding
- Whether the child was placed with the applicants lawfully

#### **Interim Adoptions**

**39.** Where an interim adoption order has been made in the Convention country the adopter must notify the local authority that the child is staying in their home as soon as possible after their arrival in the UK. The local authority should treat the child as a privately fostered child under sections 66 and 67 of the Children Act 1989 and carry out regular welfare visits until the full adoption order has been made.

**40.** The adopter may be required to provide update reports to the foreign authority prior to the adoption order being finalised. The adopter may approach either a local authority or a voluntary adoption agency registered to work on intercountry adoption to produce these (please refer to the Restriction on the Preparation of Adoption Reports Regulations XXXX). No one else may produce these reports. The foreign authority will specify how the reports should be submitted to them and whether they need to be sent via the Department for Education and Skills.

**41.** Once the interim adoption becomes a full adoption no further action is necessary as the adoption is automatically recognised under UK law. The foreign authorities will issue a certificate confirming that the adoption is a Convention Adoption. This will be sent to the Department for Education and Skills. The Department for Education and Skills will provide the adoption agency and the adopters with a copy of the certificate.

**42.** Unless the child becomes a British citizen when the order is made, action will then be necessary to amend the child's immigration status, as the entry clearance will have been granted for a limited period only.

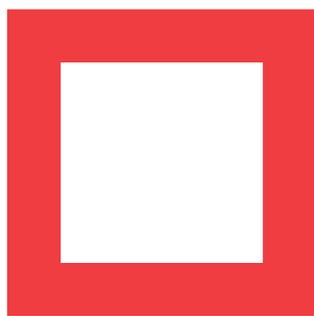
**43.** Chapter 10 explains how these adoptions can be registered with the Registrar General for England and Wales.

### **Convention Adoptions**

**44.** Where a Convention Adoption has already been made no further action is necessary as the adoption is automatically recognised in all Convention countries including the UK. The foreign authorities will issue a certificate confirming that the adoption is a Convention Adoption. This will be sent to the Department for Education and Skills. The Department for Education and Skills will provide the adoption agency and the adopters with a copy of the certificate.

**45.** Chapter 10 explains how these adoptions can be registered with the Registrar General for England and Wales.





## Chapter Eight: Overseas Adoptions (formerly known as the designated list)

1. This chapter summarises so far as is possible the process for adoptions from countries whose adoptions are recognised as overseas adoptions (formerly known as the designated list) once the prospective adopter's papers have been submitted to the overseas authorities. The Department for Education and Skills can assist in identifying the detailed process for each country.

### Consultation Question:

- We have tried to apply the spirit of the Convention to all intercountry adoptions. Do the Regulations and guidance adhere to this?
- If no, what changes need to be made?

Please use the enclosed feedback form to give us your views.

2. To have their adoption orders recognised as overseas adoptions a country's adoption system must meet the criteria set out in the Adoptions with a Foreign Element Regulations XXXX. The list is kept under constant review. See the end of this chapter for more details.

### **MATCHING**

3. The authorities in the country concerned will consider the application and if the application is approved, the prospective adopter will be added to the waiting list of approved adopters living overseas until the authorities can match them with a child.

4. Prospective adopters should be made aware that it can take some time to know what decision the overseas authority has made. In some countries it is unlikely a decision will be made until the case comes to the top of the waiting list.

#### **Prospective adopter is not matched**

5. Where the overseas authority decide they do not wish to accept the application or the application is accepted but there are not any suitable children to match with the applicant they will notify the Department for Education and Skills and the Department for Education and Skills will notify the adoption agency.

6. The adoption agency should arrange to discuss the outcome with the prospective adopter, provide counselling and support and assist them in deciding what they would like to do. If they decide to apply to another country see chapter 13 for the steps that need to be taken.

#### **Prospective adopter is matched**

7. Where the overseas authority accepts the application they will consider the characteristics of the prospective adopter and make a match.

8. The process that follows varies according to the country involved and their own practices. However, the preferred next step is for information on the match and details of the child concerned to be supplied to the Department for Education and Skills by the overseas authorities.

9. Once the papers have been received the Department for Education and Skills copies them and supplies the information simultaneously to the adoption agency and the prospective adopter.

10. Some countries will supply the details of a proposed match direct to the prospective adopter. The prospective adopter should share the information with the adoption agency that carried out the assessment as soon as possible. The agency should provide the Department for Education and Skills with copies of the relevant papers so that a full record is maintained and individual cases can be monitored.

#### **CONSIDERING THE MATCH**

11. The adoption agency is required to offer the prospective adopter the opportunity to discuss the proposed match. When discussing the match with the prospective adopter the agency should:

- Explain the importance of considering the child and their circumstances carefully to ensure that the prospective adopter is likely to meet the needs of the particular child under consideration
- Give the prospective adopters the opportunity to obtain the views of the agency medical advisor on the medical needs of the child (wherever possible)

- Consider what will happen should the prospective adopter decide that this child is not right for them

**12.** Once they have considered the match the prospective adopters should advise the adoption agency whether they wish to accept the child. The adoption agency should then write to inform the Department for Education and Skills of the decision that has been made for onward notification to the overseas authorities.

### **Adopters decide not to go ahead**

**13.** Where the adopters choose not to go ahead the papers on the child should be sent to the Department for Education and Skills so that they can be returned to the overseas authorities.

**14.** The adoption agency should also offer the prospective adopter counselling, advice and support and establish what the prospective adopter would like to do next.

### **Adopters decide to go ahead**

**15.** When the prospective adopter decides that they would like to go ahead with the match they will usually be expected to travel to the relevant country to meet the child. After meeting the child they will need to notify the overseas authorities and the adoption agency if they intend to proceed with the match. The adoption agency should notify the Department for Education and Skills of their decision.

### **PLACING CHILD WITH THE PROSPECTIVE ADOPTER**

**16.** The arrangements for placing the child with the prospective adopter will vary from country to country. The Department for Education and Skills can assist with identifying the arrangements that will apply in each case.

**17.** Once the prospective adopter has decided that they wish to go ahead with the match there are three possible routes for placing the child with the prospective adopter (depending upon the laws of the child's State of origin):

- The child is placed with the prospective adopter (usually with some sort of Court Order giving them at least some parental responsibility for the child) and the child is then brought back to the UK for the purpose of adoption in a UK Court. This will be unusual in cases where adoptions are recognised as overseas adoptions (formerly known as the designated list)
- The child is placed with the prospective adopter and some form of interim adoption order made in the child's State of origin (this will usually become a full adoption order if certain conditions are met)
- The child is adopted in their State of origin

18. Adoptions made in countries that meet the criteria set out in the Adoptions with a Foreign Element Regulations XXXX are known as overseas adoptions (formerly known as the designated list). Adoptions made in countries that meet the criteria for overseas adoptions are automatically recognised under UK law.

#### BRINGING THE CHILD TO THE UK

19. The immigration requirements are set out in the Home Office leaflet on intercountry adoption (see [www.ind.homeoffice.gov.uk](http://www.ind.homeoffice.gov.uk)). All children adopted from countries whose adoptions are recognised as overseas adoptions (formerly known as the designated list) must receive entry clearance prior to being brought into the UK (unless the child has been registered outside the UK as a British citizen):

- Where the child is being brought into the UK for the purposes of adoption the entry clearance officer will wish to check that the immigration requirements have been met and seek confirmation from the Department for Education and Skills that the paperwork is in order. If the entry clearance officer is content an entry clearance will be issued which on entry to the UK will normally result in leave to enter being granted for a limited period allowing the child to come to the UK for the purposes of adoption. A child adopted by a British citizen in a UK Court will automatically receive British citizenship and will no longer be subject to immigration control. A child adopted in a UK Court by someone who is not a British citizen will need to seek further leave to remain in the UK on the same basis as their adopter
- Where the adopter has an interim adoption order and this will become a full adoption order once certain conditions have been met, the entry clearance officer will consider the application and, if satisfied that the immigration requirements have been met will issue an entry clearance which on entry to the UK will normally result in leave to enter being granted for a limited period. They will be able to apply for British citizenship where the adopter is a British citizen, or for leave to remain in the UK on the same basis as their adopter if they are not a British citizen, when the full adoption order is made

- Where the child is adopted the adoption order will be recognised under UK law and the entry clearance officer will wish to be satisfied that the adoption is a genuine adoption and that the other requirements of the immigration rules are satisfied prior to granting entry clearance for the child, which on entry to the UK will normally result in leave to enter being granted for an unlimited period. Where the child has been adopted in a country whose adoptions are recognised as overseas adoptions (formerly known as the designated list) by one or more British citizens, their adopters may apply on the child's behalf for the child to become a British citizen. When the child receives British citizenship they will no longer be subject to immigration control. Where the child has been adopted in a country whose adoptions are recognised as overseas adoptions (formerly known as the designated list) by those resident in the UK but not British citizens, the child will usually be granted the same leave to remain in the UK as their adopter.
- 20.** Occasionally it will be necessary for the Entry Clearance Officer or immigration officer to seek advice from the UK Visas office in London prior to making a decision.

#### **AFTER ARRIVAL IN THE UK**

##### **Adopting in the UK**

- 21.** If the child was placed with the prospective adopter without an adoption order or interim adoption order being made, on arrival in the UK the prospective adopter must contact their local authority and either:
- Give notice of their intention to adopt to their local authority within 14 days of arriving in the UK. The placement will then be monitored by the local authority who will have a duty to visit the child within one month of notification to offer such support and advice as may be needed to secure the child's welfare. The next visit must take place not more than 3 months after the first (i.e. not more than 4 months after notification) and thereafter at not more than six-monthly intervals until the adoption order is made or the visits are no longer required
  - Give notice of their intention to not give the child a home. In this circumstance the local authority must consider the child as a child in need as defined in the Children Act 1989 and make such alternative arrangements for the care and welfare of the child as it thinks appropriate. It may be that with help and support the adopters will feel that they can resume the care of the child

### Consultation Question:

- The Regulations impose new duties on local authorities to monitor placements of children brought into England and Wales for the purposes of adoption. Are the requirements too many, about right or too few?
- Are the recommended visiting intervals set out in the guidance too frequent, about right or too infrequent?

Please use the enclosed feedback form to give us your views.

**22.** It is a criminal offence if the prospective adopter fails to give notice within 14 days. This is punishable by a maximum penalty of 12 months imprisonment and/or an unlimited fine.

**23.** To seek an adoption order the prospective adopter needs to lodge an application to adopt the child in a British court. Under section 42 of the 2002 Act (as modified by the Adoptions with a Foreign Element Regulations XXXX) the prospective adopter cannot apply for an adoption order until the child has lived with them for at least 6 months.

**24.** Once the Court has received an application they will ask the local authority to write a report as required under section 44(5) of the Adoption and Children Act 2002. This must include information on a range of issues including:

- The suitability of the applicant
- The needs and wishes of the child, having regard to his age and understanding
- Whether the child was placed with the applicants lawfully

### Interim Adoptions

**25.** Where an interim adoption order has been made overseas the adopter must notify the local authority that the child is staying in their home as soon as possible after their arrival in the UK. The local authority should treat the child as a privately fostered child under sections 66 and 67 of the Children Act 1989 and carry out regular welfare visits until the full adoption order has been made.

**26.** The adopter may be required to provide update reports to the overseas authority prior to the adoption order being finalised. The adopter may approach either a local authority or a voluntary adoption agency registered to work on intercountry adoption to produce these. In accordance with the Restrictions on the Production of Adoption Reports Regulations XXXX no one else may produce these reports. The overseas authority will specify how the reports should be submitted to them and whether they need to be sent via the Department for Education and Skills.

**27.** Once the interim adoption becomes a full adoption the adoption is automatically recognised under UK law. Chapter 10 explains how these adoptions can be registered with the Registrar General for England and Wales.

**28.** Adopters should be encouraged to notify their adoption agency when the order has been made so that the records are complete.

### **Overseas Adoptions**

**29.** Where an adoption has already been made in a country whose adoptions are recognised as overseas adoptions (formerly known as the designated list) the adoption is automatically recognised under UK law. Chapter 10 explains how these adoptions can be registered with the Registrar General for England and Wales.

**30.** Adopters should be encouraged to notify their adoption agency when the order has been made so that the records are complete.

### **British Citizenship**

**31.** Adoptions by British citizens in countries whose adoptions are recognised as overseas adoptions (formerly known as the designated list) do not automatically convey British Citizenship on the child. However, the adopter can apply for British Citizenship for the child. Application forms are available from:

Nationality Directorate  
3rd floor, India Buildings  
Water Street  
Liverpool  
L2 0QN

(tel: 0151 237 5200)

If the child is in the UK on the date of application the application should be sent to the address above. If the child is abroad the application should be made to the nearest British Diplomatic Post.

## Criteria for Overseas Adoptions

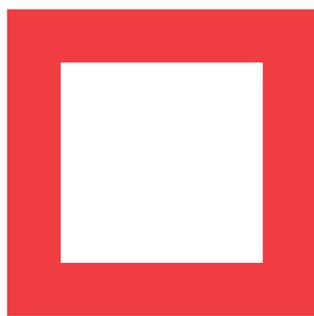
An overseas adoption will be recognised in the UK in the same way that an adoption made in a country on the designated list is at present. The draft Adoptions with a Foreign Element Regulations XXXX set out the criteria that must be met by adoption systems in other countries for adoption orders to be recognised as overseas adoptions (formerly known as the designated list).

The criteria are:

- That the child is treated as not being the child of any person other than the adopter
- That measures are in place to prevent the abduction of, sale of, or traffic in children and to prevent improper financial or other gain
- That the adoption procedures are arranged by accredited bodies who pursue only non-profit objectives, are staffed by persons qualified by training or experience to work on adoption and are supervised by competent authorities of the State
- That informed consent is given by those with parental responsibility and that the consent of the mother is given not less than six weeks after the child's birth
- That the prospective adopter has been assessed and found to be eligible and suitable to adopt

### Consultation Question:

- In developing the criteria we have attempted to produce something that will safeguard and protect children while being consistent with the Hague Convention principles and domestic requirements while also being something that adoption systems can be measured against. Has this been achieved in relation to principles and measurability?



## Chapter Nine: Adoptions from Other Countries

1. This chapter summarises as far as is possible the process for adoptions from countries that are not Hague Convention contracting States and whose adoptions are not recognised as overseas adoptions (formerly known as the designated list) once the applicant's papers have been submitted to the foreign authorities.

### Consultation Question:

- We have tried to apply the principles of the Convention to all intercountry adoptions. Do the Regulations and guidance adhere to this?
- If no, what changes need to be made?

Please use the enclosed feedback form to give us your views.

### MATCHING

2. The authorities in the country concerned will usually consider the application and if the application is approved, the applicant will be added to the waiting list of approved adopters living overseas until the authorities can match them with a child.
3. Prospective adopters should be made aware that it can take some time to know what decision the foreign authorities have made. In some countries it is unlikely a decision will be made until the case comes to the top of the waiting list.

### **Prospective adopter is not matched**

4. Where the foreign authorities decide that they do not wish to accept the application or the application is accepted but there are no suitable children with whom to match the prospective adopter they will usually notify the Department for Education and Skills and the Department for Education and Skills will notify the adoption agency.
5. The adoption agency should arrange to discuss the outcome with the prospective adopter, provide counselling and support and assist them in deciding what they would like to do. If they decide to apply to another country see chapter 13 for the steps that need to be taken.
6. Occasionally the foreign authorities will contact the prospective adopter directly. In these circumstances the prospective adopter should be encouraged to notify the adoption agency and the agency should notify the Department for Education and Skills. The adoption agency should arrange to discuss the outcome with the prospective adopter, provide counselling and support and assist them in deciding what they would like to do.

### **Prospective adopter is matched**

7. Where the foreign authorities accept the application they will consider the characteristics of the prospective adopter and make a match.
8. The process that follow varies according to the country involved and their own practices. However, the preferred next step is for information on the match and details of the child concerned to be supplied to the Department for Education and Skills by the foreign authorities.
9. Once the papers have been received the Department for Education and Skills copies them and supplies the information simultaneously to the adoption agency and the prospective adopter.
10. Some countries will supply the details of a proposed match direct to the prospective adopter. The prospective adopter should share the information with the adoption agency that carried out the assessment as soon as possible. And the agency should provide the Department for Education and Skills with copies of the relevant papers so that a full record is maintained and individual cases can be monitored.

### **CONSIDERING THE MATCH**

11. Once they have been notified of a match the adoption agency is required to offer the prospective adopter the opportunity to discuss the proposed match. When discussing the match with the prospective adopter the agency should:
  - Explain the importance of considering the child and their circumstances carefully to ensure that the applicant is likely to meet the needs of the particular child under consideration
  - Give the prospective adopters the opportunity to obtain the views of the agency medical advisor on the medical needs of the child (wherever possible)

- Consider what will happen should the prospective adopter decide that this child is not right for them

**12.** Once they have considered the match the prospective adopters should advise the adoption agency whether they wish to accept the child. The adoption agency should then write to inform the Department for Education and Skills of the decision that has been made for onward notification to the foreign authorities.

#### **Adopters decide not to go ahead**

**13.** Where the adopters choose not to go ahead the papers on the child should be sent to the Department for Education and Skills so that they can be returned to the foreign authorities.

**14.** The adoption agency should also offer the prospective adopter counselling, advice and support and establish what the prospective adopter would like to do next.

#### **Adopters decide to go ahead**

**15.** When the prospective adopter decides that they would like to go ahead with the match they must both travel together to the relevant country to meet the child. After meeting the child they will need to notify the foreign authorities and the adoption agency if they intend to proceed with the match. The adoption agency should notify the Department for Education and Skills of their decision.

#### **PLACING CHILD WITH THE PROSPECTIVE ADOPTER**

**16.** The arrangements for placing the child with the prospective adopter will vary from country to country. The Department for Education and Skills can assist with identifying the arrangements that will apply in each case.

**17.** Once the prospective adopter has decided that they wish to go ahead with the match they may adopt them under the laws of the child's State of origin or simply have the child placed with them (possibly with some sort of order granting them some parental responsibility). Any adoption order that is made will not be recognised under UK law.

#### **BRINGING THE CHILD TO THE UK**

**18.** The immigration requirements are set out in the Home Office leaflet on intercountry adoption (see [www.ind.homeoffice.gov.uk](http://www.ind.homeoffice.gov.uk)). All children adopted from countries that are neither Hague Convention Contracting States, nor whose adoption are recognised as overseas adoptions (formerly known as the designated list) must receive entry clearance for the purposes of adoption in the UK Courts prior to being brought into the UK (unless the child has been registered outside the UK as a British citizen).

**19.** The entry clearance officer will wish to check that the immigration requirements have been met and seek confirmation from the Department for Education and Skills that the paperwork is in order. If the entry clearance officer is content a time limited visa will be issued allowing the child to come to the UK for the purposes of adoption.

**20.** Occasionally it will be necessary for the entry clearance officer to seek advice from the UK Visas office in London prior to making a decision. All applications for registration as a British citizen are first referred to the UK for determination.

**AFTER ARRIVAL IN THE UK**

**21.** On arrival in the UK the prospective adopter must contact their local authority and, in accordance with the Adoptions with a Foreign Element Regulations XXXX either:

- Give notice of their intention to adopt to their local authority within 14 days of arriving in the UK. The child's placement will then be monitored by the local authority in accordance with the Adoptions with a Foreign Element Regulations XXXX. It is considered good practice for the local authority to commission and pay for the agency that carried out the Home Study assessment of the prospective adopters to monitor the placement on their behalf
- Give notice of their intention to not give the child a home. In this circumstance the local authority must consider the child as a child in need as defined in the Children Act 1989 and make such alternative arrangements for the care and welfare of the child as it thinks appropriate. It may be that with help and support the adopters will feel that they can resume the care of the child

**22.** It is a criminal offence if the prospective adopter fails to give notice within 14 days. This is punishable by a maximum penalty of 12 months imprisonment and/or an unlimited fine upon conviction.

**Consultation Question:**

- The Regulations impose new duties on local authorities to monitor placements of children brought into England and Wales for the purposes of adoption. Are the requirements too many, about right or too few?
- Are the recommended visiting intervals set out in the guidance too frequent, about right or too infrequent?

Please use the enclosed feedback form to give us your views.

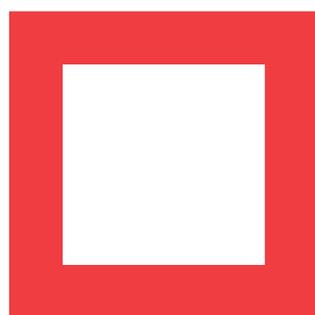
**23.** To seek an adoption order the prospective adopter needs to lodge an application to adopt the child in a British court. Under section 42 of the 2002 Act, as modified by the Adoptions with a Foreign Element Regulations XXXX, the prospective adopter cannot make an application for an adoption order until the child has lived with them for a minimum of 6 months. Where the Regulations have not been complied with the order cannot be made until the child has lived with the adopters for at least 3 years.

**24.** Once the Court has received an application they will ask the local authority to write a report as required under section 44(5) of the Adoption and Children Act 2002. This must include information on a range of issues including:

- The suitability of the applicant
- The needs and wishes of the child, having regard to his age and understanding
- Whether the child was placed with the applicants lawfully

**25.** A child adopted by a British citizen in a UK Court will automatically receive British citizenship and will no longer be subject to immigration control. A child adopted in a UK Court by someone who is not a British citizen will need to seek clearance for the child to reside in the UK on the same basis as their adopter.





# Chapter Ten: Post Adoption Reports, Adoption Support and Registering Foreign Adoptions

## POST ADOPTION REPORTS

1. Many countries expect to receive progress reports on the child to be sent to them at regular intervals. This is a private arrangement between the adopter and the foreign authority and may run only for the length of the placement (i.e. until the adoption order is made) or until the child reaches 18. It is for the adoptive family to commission (and pay the expenses of) either a local authority or a VAA registered to work on intercountry adoption to produce a report that meets the requirements of the foreign authority. No one else can prepare these “update” reports by virtue of section 94 of the 2002 Act (The Restriction on the Preparation of Adoption Reports Regulations XXXX).
2. Once the report is completed the adoptive family may forward the report to the relevant foreign authority in most cases. However, some countries, including the Philippines, Thailand and China, require that the reports be sent to the Department for Education and Skills for onward transmission.

## ADOPTION SUPPORT

3. Adopters should be made aware that they will be able to approach the local authority Adoption Support Services Adviser for advice and assistance and that they will have a right to request an assessment of their needs for adoption support services.
4. While there is no automatic entitlement to adoption support, local authorities must act reasonably in deciding whether to provide adoption support services following an assessment of needs.

5. Where adoptive families approach their local authority for support or help to maintain their adoption, they should be offered the chance to talk through the issues of concern and to be offered advice and support by the local authority. It may be that the family need adoption specific services provided under the Adoption and Children Act 2002, or that they will require help in accessing appropriate mainstream services, e.g. health and education.

6. There is an expectation that individuals will only adopt children from outside the British Islands where they are able to support them financially. However, circumstances may change at a later date, and intercountry adopters will be able to request an assessment of their needs for financial support in the same way as other adopters.

#### **ADOPTION AND PATERNITY LEAVE**

7. From 6 April 2003 all eligible employees who adopt (domestic and intercountry) are entitled to receive adoption and paternity leave.

8. Adoption leave and pay are available to:

- Individuals who adopt
- One member of a couple where a couple adopt jointly (the couple must choose which partner takes adoption leave)

9. Paternity leave and pay are available to:

- The other member of a couple who are adopting jointly
- The partner of an individual who adopts

10. To qualify for leave and pay an employee who adopts from outside the UK (whether from a Convention, overseas adoption or other country) must have received an official notification. For adopters habitually resident in England, the official notification is the letter from the Department for Education and Skills confirming that a certificate of eligibility and suitability has been issued.

11. They must also satisfy eligibility requirements regarding how long they have worked for their employer and (for pay) their level of earnings.

#### **Start dates**

12. Both adoptive leave and pay and paternity leave and pay are available to eligible employees where the child enters Great Britain on or after 6 April 2003.

13. Further details can be found in the guidance produced by the Department of Trade and Industry entitled "Adoptive Parents – rights to leave and pay when a child is adopted from overseas". This can be found at [www.dti.gov.uk](http://www.dti.gov.uk).

## REGISTERING FOREIGN ADOPTIONS

Please note that the arrangements set out below represent the existing procedures. The Office for National Statistics will be reviewing the procedure and this will be reflected in the final version of this Guide so the arrangements set out below may be subject to change.

**14.** From 1 June 2003 adoptions made outside the UK but recognised under UK law may be registered in the Adopted Children Register by the relevant Registrar General.

### Applications

**15.** The Registrar General for England and Wales is able to register any adoption made under the Hague Convention or in a country whose adoptions are recognised as overseas adoptions where the adopters were habitually resident in England and Wales at the time of the adoption. This applies to all recognised foreign adoptions, regardless of when they were made. (NB. Equivalent Regulations are in place for Scotland and Northern Ireland).

**16.** An application to register a foreign adoption may be made by:

- The adoptive parent (or in the case of a joint adoption, one of the adoptive parents)
- Any other person who has parental responsibility for the adopted child (within the meaning of section 3 of the Children Act 1989)
- An adopted person aged 18 or over

**17.** Applications must be:

- Made in writing
- Signed by the applicant
- Submitted with evidence of the adoption and a range of background information

**18.** Applications may be made in any language but must include a translation into English if they are not made in English or Welsh.

### Evidence

**19.** The application must be supported by:

- In the case of an overseas adoption (i.e. an adoption from a designated country) – either a certified copy of an entry into a public register recording adoptions or a certified copy of an adoption certificate. Adopters will also be required to present a copy of the letter they obtained from the Department for Education and Skills informing them that the Secretary of State had issued a Certificate of Eligibility and Suitability to Adopt

- In the case of a Convention Adoption (i.e. an adoption made in a Hague Convention Contracting State after an Article 17(c) Agreement was made by the two Central Authorities) – a copy of the certificate confirming that an adoption had been made as a Convention Adoption (in accordance with Article 23 of the Hague Convention). Adopters will also be required to present a copy of the letter they obtained from the Department for Education and Skills informing them that the Secretary of State had issued a Certificate of Eligibility and Suitability to Adopt

### **Particulars Required in the Application**

**20.** The applicant should provide as much of the following information as possible:

- Date of birth of the adopted child
- Place and country of birth of the adopted child
- Gender of the adopted child
- Full name and any previous names of the adopted child
- Full name and any previous names of the natural father and natural mother
- Full name, previous names, address and occupation of the adopter(s)
- The date on which the adoption was made

### **Registration**

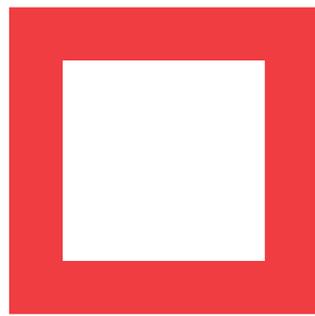
**21.** Where the Registrar General is satisfied he has sufficient evidence and background information on a foreign adoption he will make an entry in the Adopted Children's Register. A certified copy of the entry will be made available to the adoptive family.

**22.** Please note that the registration of a foreign adoption will not confer British citizenship on a child. Where a child is not a registered British citizen and has not had British citizenship conferred automatically by the making of a Convention Adoption, applications for British citizenship will still need to be made to the Nationality Directorate of the Home Office.

### **Further Information**

**23.** Further information is available from the Registrar General on 0151 471 4830.

## PART II:



# UK as a State of Origin

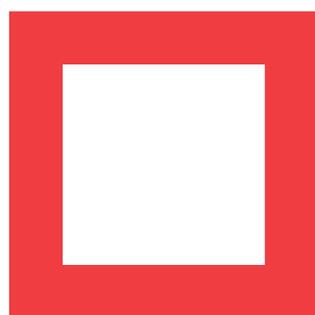
<b>Chapter Eleven</b> – Identifying Children Suited to Inter-country Adoption	105
<b>Chapter Twelve</b> – Handling applications and making matches	111

### Consultation Question:

- These Regulations largely replicate the new arrangements implemented on 1 June 2003. Have these arrangements been successfully implemented in your experience?
- Are there any lessons that need to be taken into account when finalising the new Regulations and guidance?
- If yes, please specify and indicate whether they need to be reflected in the Regulations or guidance

Please use the enclosed feedback form to give us your views.





# Chapter Eleven – Identifying Children Suited to Intercountry Adoption

1. The UK can be a State of origin as well as a receiving State. Although adoption outside the British Islands is expected to continue to be reasonably limited, under the Hague Convention local authorities are required to put in place the arrangements necessary to allow those who cannot be found a family placement in the UK the chance to be adopted by someone from another country.

## CONSIDERING A CHILD FOR INTERCOUNTRY ADOPTION

2. A child should only be considered for intercountry adoption where:

- A decision has already been made that the child should be placed for adoption in accordance with the Adoption Agencies Regulations XXXX, and
- The local authority has already considered the possibilities for placing the child within the British Islands

3. Usually local authorities will be expected to have made every effort to place the child with a family in the UK, including following up links suggested by the Adoption Register, for 12 months prior to considering intercountry adoption. However, in some cases including potential adoptions by relatives, it might be appropriate to consider intercountry adoption at an earlier stage.

4. Where the child's social worker believes that intercountry adoption might be appropriate for the child they should first discuss the matter with their line manager. Where a potential adopter (e.g. relative) has not been identified they may also wish to contact the Department for Education and Skills to establish what level of interest has been shown by prospective adopters from outside the British Islands.

5. Where intercountry adoption appears to be a viable option the local authority should consider the possibility of intercountry adoption at the next review of the child's care plan. If the next review is not due for some time it might be appropriate to arrange an earlier review to consider the possibility of intercountry adoption. The review should also consider the child's needs for adoption support services.

### **Identifying the child's views**

6. Where the child is of sufficient age and understanding the child's social worker should discuss the possibility of intercountry adoption with them. The child should be given the opportunity to discuss what intercountry adoption would mean and the potential for obtaining a placement in a foreign country. This discussion, which will constitute formal counselling of the child as required by regulation 13 of the Adoption Agencies Regulations XXXX, should be carried out in line with the guidance to that regulation.

### **Preparing a Report**

7. A record should be kept of all discussions. Where it is believed that the possibility of intercountry adoption should be pursued further the child's social worker should produce a report to include:

- a revised care plan
- the reasons why adoption outside the British Islands might be in the best interests of the child
- the child's views and wishes in relation to adoption in general and intercountry adoption in particular
- the views of the birth parents in relation to adoption in general and intercountry adoption in particular
- what are the child's needs for ongoing contact with members of their birth family at present, after adoption and what would be the implications for contact of an intercountry placement
- what steps have been taken to find the child an adoptive home in England

## Consulting the Adoption Panel

8. Prior to deciding whether or not to proceed with the option of intercountry adoption the case may be referred to the Adoption Panel. They will then be able to consider the relevant papers and give an informal opinion on whether or not the best interests of the child would be served by intercountry adoption.

### PURSUING INTERCOUNTRY ADOPTION – HAGUE CONVENTION

#### Placement Orders

9. When it has been decided that the option of intercountry adoption should be pursued for an individual child the local authority must make arrangements for a placement order to be made.

#### Making a Decision

10. Once a placement order has been made the local authority may formally refer the case to the Adoption Panel. The Panel must consider the case and make a recommendation as to whether or not adoption by someone habitually resident outside the British Islands is in the best interests of the child.

11. In considering the case the Panel should:

- Have regard to the duties imposed by section 1 of the 2002 Act
- Take into account all the information and reports prepared for it by the local authority (including the views and wishes of the child)
- Request the local authority to obtain any other relevant information which the Adoption Panel considers necessary
- Obtain such legal advice as may be necessary

12. The agency decision maker must consider the recommendation of the Adoption Panel prior to making a decision.

13. Where the decision is that intercountry adoption would be in the best interests of the child this does not preclude the child being adopted domestically in the future if a suitable placement became available. Indeed, the child's details should remain on the Adoption Register and attempts should continue to be made to find a match within the British Islands.

### NOTIFYING THE DEPARTMENT FOR EDUCATION AND SKILLS

14. Where the local authority decides that intercountry adoption in a Convention country would be in the best interests of the child they must notify the Department for Education and Skills of the following:

- A file reference number
- The name of the child
- The age of the child (including month and year of birth)

- The gender of the child
- The reasons why they believe the child may be suitable for adoption outside the British Islands
- The date the placement order was made

#### **LIST OF CHILDREN AWAITING INTERCOUNTRY ADOPTION**

##### **Role of the Department for Education and Skills**

**15.** The Department for Education and Skills will maintain a list of children available for intercountry adoption. The list will be held in a database format but will hold only anonymised information (with the file reference used as the identifier).

**16.** The list of anonymised information in relation to Hague Convention Adoptions will be made available for consultation by other Central Authorities within the British Islands.

##### **Duty of Local Authority**

**17.** If, after a child has been referred for inclusion upon the list:

- The child is placed for adoption with a family within the British Islands, or
- The local authority decides that intercountry adoption is no longer in the best interests of the child, or
- The local authority identifies prospective adopters living in a foreign country but not in a Convention contracting State

the local authority must notify the Department for Education and Skills so that the child's details can be removed from the list.

#### **PURSUING INTERCOUNTRY ADOPTION – NON-CONVENTION**

**18.** In the case where an Agency has decided that intercountry adoption should be pursued for a child the local authority must make arrangements for a placement order to be made.

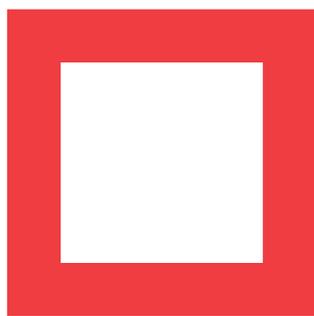
**19.** Once a placement order has been made the local authority may formally refer the case to the Adoption Panel. The Panel must consider the case and make a recommendation as to whether or not adoption by someone habitually resident outside the British Islands is in the best interests of the child.

**20.** In considering the case the Panel should:

- Have regard to the duties imposed by section 1 of the 2002 Act
- Take into account all the information and reports prepared for it by the local authority (including the views and wishes of the child)
- Request the local authority to obtain any other relevant information which the Adoption Panel considers necessary
- Obtain such legal advice as may be necessary

- 21.** The agency decision maker must consider the recommendation of the Adoption Panel prior to making a decision.
- 22.** Where the decision is that intercountry adoption would be in the best interests of the child this does not preclude the child being adopted domestically in the future if a suitable placement became available. Indeed, the child's details should remain on the Adoption Register and attempts should continue to be made to find a match within the British Islands.
- 23.** If a decision has yet to be made about whether or not the child should be adopted in a Hague Convention country or a non-Hague Convention country, then we would recommend that the child's details are still referred to the Convention List held by the Department for Education and Skills. This way, checks can be made to find out whether there is a family already available who might be able to meet the needs of the child. At the same time the local authority may make its own enquiries with any contacts it may have in the adoption field in other countries to see whether they may have a suitable family who may be able to adopt the child.
- 24.** If prospective adopters are identified in another country the local authority should satisfy itself that they meet the requirements of age and marital status under UK law. The local authority should also satisfy itself that the adopters have been assessed as suitable to adopt the child – either by completing a home study assessment on the prospective adopters themselves, or by arranging for the relevant foreign authorities to assess and approve the applicants.
- 25.** The Department for Education and Skills does not need to be notified of the adoption unless the child's details had previously been referred to the Convention List.





# Chapter Twelve: Handling Applications and Making Matches

## HAGUE CONVENTION

### RECEIVING AND CONSIDERING APPLICATIONS

1. Where a prospective adopter living in a Convention Contracting State outside the British Islands wishes to adopt a child from the UK their application will be forwarded to the Department for Education and Skills by the foreign authority.
2. Applications must meet the requirements of Article 15 of the Hague Convention plus include the information that would be required if the adopter were in the UK (including personal referees, a medical report, police checks etc).

### Role of the Department for Education and Skills

3. Where an application is received from a foreign authority the Department for Education and Skills will check that:
  - The prospective adopter meets the requirements of age and marital status under UK law
  - The authorities in the prospective adopters' State of origin have confirmed that they have been assessed and approved as eligible and suitable to adopt a child
4. The Department for Education and Skills will then consult the list of children available for intercountry adoption.
5. When consulting the list the Department for Education and Skills will look at the age and gender of the child and whether the child is part of a sibling group. The Department for Education and Skills will not be able to consider any additional details.

6. If there are any children available for adoption who appear, at face value, to link with the characteristics of the child the prospective adopters are approved to adopt, the Department for Education and Skills will copy the papers and send them to the local authority looking after the child on the list.

7. If there are no children available for intercountry adoption the Department for Education and Skills will write immediately to the foreign authorities advising them that this is the case. Where the prospective adopters wish to adopt a very young child they will also be advised that it is extremely unlikely that such a child will be available for intercountry adoption (due to the small numbers involved and the high levels of demand from domestic adopters).

8. The Department for Education and Skills will hold applications from foreign countries for 6 months. If the prospective adopters are not matched within that period their papers will be returned to the foreign authorities. Prospective adopters will be permitted to resubmit their applications if they wish.

### **Role of the Local Authority**

9. Upon receipt of the papers of a prospective adopter, the local authority must consider the papers in the same way as they would consider any other potential match.

10. The local authority should initially consider whether or not the prospective adopters would be able to meet the particular needs of the child in their care. If they require additional information they should pass this request to the Department for Education and Skills who will pass on the request to the foreign authorities.

11. Once they have the necessary information, the local authority must decide whether or not to pursue the match:

- If they decide that the prospective adopter is not suitable they must return the papers to the Department for Education and Skills
- If they decide that the prospective adopter may be suitable they must immediately advise the Department for Education and Skills and then refer the proposed match to their Adoption Panel

### **MAKING A MATCH**

12. Where a local authority considers that it may be appropriate to place a child for adoption with a prospective adopter from outside the British Islands the case must be considered by the Adoption Panel in the same way as any other potential match. The Panel must be sent:

- The report on the adopter by the foreign authorities
- The report on the child sent to the Adoption Panel when they first recommended that adoption was in the child's best interests
- The report on the child sent to the Adoption Panel when they considered whether or not adoption outside the British Islands was in the child's best interests

- A report containing observations on the proposed placement
- Any other relevant information

**13.** The Panel must consider the case and the adoption agency must obtain, as far as is practicable, any other relevant information that might be requested by the Panel. Where additional information is requested on the prospective adopter this request must be passed to the Department for Education and Skills. The Department for Education and Skills will then seek this from the foreign authority.

**14.** The Panel must make a recommendation on the suitability of the proposed match and the agency decision maker must take this into account prior to deciding whether to approve the proposed match or not. On making a decision the local authority must write to the Department for Education and Skills.

### **Notifying the Prospective Adopter**

**15.** Where the decision is not to pursue the match the Department for Education and Skills will write to the foreign authorities advising them that it has not been possible to identify a suitable match for the prospective adopter but that the papers will be held for 6 months.

**16.** Where the decision is that the match should go ahead (subject to the prospective adopter(s) meeting the child) the local authority must prepare a report that includes information about the child's:

- Identity
- Suitability for adoption
- Background
- Social environment
- Family history
- Medical history (including that of the child's family)
- Special needs (if any)

**17.** The report should also set out the reasons for their decision.

**18.** The report must be sent to the Department for Education and Skills together with:

- Evidence that a placement order has been made
- Observations on the child's upbringing and his or her ethnic, religious and cultural background
- The report on the child's views and wishes in relation to adoption
- A recent photo of the child

**19.** The Department for Education and Skills will then send the information to the foreign authorities for onward transmission to the prospective adopter.

## **AGREEING A MATCH**

- 20.** The suggested match and the report on the child will be considered by the prospective adopter(s). Where they decide to go ahead, the prospective adopters will then be required to travel to meet the child.
- 21.** When the prospective adopters meet the child the local authority should offer such advice, support and counselling as necessary to both the child and the prospective adopters.
- 22.** The local authority should discuss the proposed placement with the prospective adopters and establish what, if any, reporting arrangements are to be put into place up to the making of a Convention Adoption. Although this is a private arrangement between the local authority and the prospective adopters, it is usually expected that the local authority will seek regular reports from foreign authorities on the progress of the placement.
- 23.** If the local authority is content for the adoption to go ahead and the prospective adopter confirms that they would like the adoption to go ahead, the local authority must notify the Department for Education and Skills accordingly.
- 24.** The Department for Education and Skills will then contact the foreign authorities and, if they are content for the adoption to go ahead (and can confirm that the child will be permitted to enter and reside permanently), an Article 17(c) Agreement will be made.
- 25.** Once the Department for Education and Skills has confirmed that an Article 17(c) Agreement has been made, the local authority should consider the need to make appropriate arrangements for introductions to the child before placing the child with the prospective adopter.

## **TAKING THE CHILD OUT OF THE UK**

### **Adopting in the UK**

- 26.** Arrangements are in place for prospective adopters to seek a Convention Adoption Order in the UK Courts if they live with the child for a minimum of 6 months first. We do not anticipate many adopters from foreign countries will wish to follow this route. However, if they do, local authorities must meet their legal responsibility to monitor the placement until the adoption order is made in the same way as for any other placement.
- 27.** If a Convention Adoption Order is made in the UK the relevant Central Authority will issue a certificate confirming that the adoption order has been made in accordance with the Convention. A copy of the certificate will be sent to the Central Authority of the receiving State and the local authority.

## Adopting Outside the UK

The making of section 84 (parental responsibility) orders prior to a child being adopted outside the British Islands will need to be considered further. When considering this issue the Government is committed to working with key interest groups and sharing the revised draft before the final Regulations and Court Rules are made.

If you would like to make any comments on this issue please use the enclosed feedback form.

**28.** We expect most prospective adopters to wish to adopt to take the child and adopt them overseas. In these circumstances the prospective adopters will need to apply to the High Court for an Order made under section 84 of the 2002 Act.

**29.** The Order will give the prospective adopter parental responsibility for the child and allow the prospective adopter to take the child out of the UK for the purposes of adoption.

**30.** The prospective adopters will need to arrange for the foreign authorities to carry out the monitoring of the placement required by the local authority.

**31.** When a Convention Adoption is made in the receiving State a certificate will be issued by the Central Authority in the receiving State in accordance with the Hague Convention. A copy of this will be sent to the Department for Education and Skills by the foreign authorities. The Department for Education and Skills will provide the local authority with a copy of this as soon as possible after receipt.

### NON-HAGUE CONVENTION

#### MAKING A MATCH

**32.** Where a local authority considers that it may be appropriate to place a child for adoption with a prospective adopter from outside the British Islands the case must be considered by the Adoption Panel in the same way as any other potential match. The Panel must be sent:

- The report on the adopter by the foreign authorities
- The report on the child sent to the Adoption Panel when they first recommended that adoption was in the child's best interests
- The report on the child sent to the Adoption Panel when they considered whether or not adoption outside the British Islands was in the child's best interests
- A report containing observations on the proposed placement
- Any other relevant information

**33.** The Panel must consider the case and the adoption agency must obtain, as far as is practicable, any other relevant information that might be requested by the Panel.

**34.** The Panel must make a recommendation on the suitability of the proposed match and the agency decision maker must take this into account prior to deciding whether to approve the proposed match or not.

#### **AGREEING A MATCH**

**35.** Where they decide to go ahead, the prospective adopters will then be required to travel to meet the child.

**36.** When the prospective adopters meet the child the local authority should offer such advice, support and counselling as necessary to both the child and the prospective adopters.

**37.** The local authority should discuss the proposed placement with the prospective adopters and establish what, if any, reporting arrangements are to be put into place up to the making of an adoption. Although this is a private arrangement between the local authority and the prospective adopters, it is usually expected that the local authority will seek regular reports from foreign authorities on the progress of the placement.

**38.** The local authority should consider the need to make appropriate arrangements for introductions to the child before placing the child with the prospective adopter.

#### **TAKING THE CHILD OUT OF THE UK**

The making of section 84 (parental responsibility) orders prior to a child being adopted outside the British Islands will need to be considered further. When considering this issue the Government is committed to working with key interest groups and sharing the revised draft before the final Regulations and Court Rules are made.

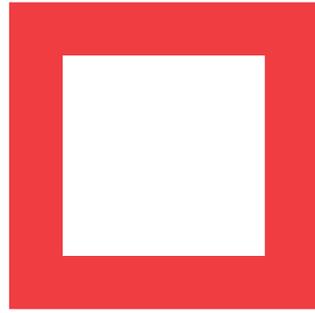
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**39.** The prospective adopters will need to apply to the High Court for an Order made under section 84 of the 2002 Act.

**40.** The Order will give the prospective adopter parental responsibility for the child and allow the prospective adopter to take the child out of the UK for the purposes of adoption.

**41.** The prospective adopters will need to arrange for the foreign authorities to carry out the monitoring of the placement required by the local authority.

PART III

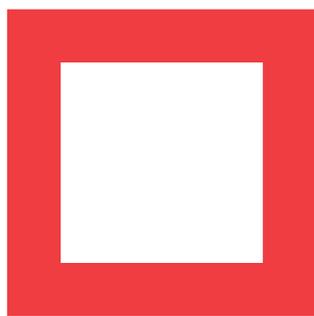


# Other Issues

**Chapter Thirteen – Underpinning Issues**

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# Chapter Thirteen: Underpinning Issues

## MONITORING PLACEMENTS AFTER RECEIVING NOTICE

1. After receiving notice of a prospective adopter's intention to adopt a child brought into England and Wales for the purposes of adoption, local authorities are placed under a duty to monitor the child's placement.
2. This duty is set out in regulation 8 of the Adoptions with a Foreign Element Regulations XXXX. The local authority is under a duty to:
  - visit the child within one month of receiving notice and on such other occasions as the authority considers necessary to secure the child's well being
  - provide advice on the availability of adoption support services, and
  - provide advice as to the care and maintenance of the child
3. Although the frequency of visits after the initial visit is left to the discretion of the local authority, good practice suggests that as a minimum the local authority should arrange for a social worker to visit the child within 3 months of the initial visit and then not less than every 6 months. However, if there are any concerns about the child's welfare more frequent visits should be made. More frequent visits are also likely to be necessary once an application has been made to the Court (so that the local authority can prepare the report required by section 44(5) of the 2002 Act) as section 42(7) makes clear that an adoption order can only be made if the Court is satisfied that the local authority has had sufficient opportunities to see the child with the prospective adopters in the home environment.

4. By virtue of a modification to section 44 in the Adoptions with a Foreign Element Regulations XXXX, notice of intention to adopt given in respect of children brought into England and Wales for the purposes of adoption does not expire. It is only dispensed with when:

- An adoption order is made
- An adoption order is refused
- The child is removed from the home of the prospective adopters after they have given notice that they no longer wish to give the child a home
- A residence order, special guardianship order, a care order or a supervision order is made in respect of the child under the Children Act 1989 (but not an interim care order or an interim supervision order)
- A guardian is appointed under the Children Act 1989
- The child reaches 18
- The child enters into marriage

5. Until that time the local authority are under a duty to monitor the placement. However, when the prospective adopter moves into another local authority area the local authority must notify the new local authority of the details of the case within 14 days of receiving information of the move and the duties will transfer to the new authority.

6. Where the prospective adopter has not made an application to a Court for an adoption order within two years of giving notice of their intention to adopt, regulation 8(2) requires the local authority to review the placement of the child. Regulation 8(3) makes clear that the review must consider:

- The child's needs, welfare, progress and development, and whether any changes are necessary to meet those needs or to assist his development
- The arrangements, if any, in relation to the exercise of parental responsibility for the child
- The immigration status of the child
- The existing arrangements for the provision of adoption support services
- The arrangements for meeting the child's health care needs and educational needs

7. When carrying out the review the local authority should also consider the reasons why no application has yet been made to the Court and the options for the future. As it is clearly undesirable for the child to remain indefinitely without permanent legal status, a plan should be discussed with the prospective adopters with a timescale for moving towards an application to the court or for steps to be taken to secure permanence for the child in some other way. The plan should also set out the action required to secure the child's immigration status until such a time as permanence is secured. The Home Office will be able to offer advice on this.

8. The local authority will be required to continue to monitor the placement and offer such support and advice as necessary until the child's future is secured.

#### **Consultation Question:**

- The Regulations impose new duties on local authorities to monitor placements of children brought into England and Wales for the purposes of adoption. Are the requirements too many, about right or too few?
- Are the recommended visiting intervals set out in the guidance too frequent, about right or too infrequent?

Please use the enclosed feedback form to give us your views.

#### **CIRCUMSTANCES WHERE A CHILD HAS ALREADY BEEN IDENTIFIED BY PROSPECTIVE ADOPTERS**

##### **Prospective Adopters in the UK**

9. In some circumstances a child will already have been identified by the prospective adopters applying to be assessed as eligible and suitable to be adopted. This will usually be where the prospective adopters are guardians or relatives of the child concerned or when the prospective adopters have met the child when travelling or living abroad.

10. It will usually be useful for the prospective adopter to demonstrate that the child is available for intercountry adoption and that the foreign authorities are content for them to proceed with an application to adopt prior to beginning a home study assessment.

11. It is also highly recommended that immigration checks are made as early as possible in the process where a named child is concerned, preferably prior to beginning a home study assessment. This is because the realisation that the adopter is ineligible to bring a child into the UK might occur after the adoption process abroad has been completed. This would be very distressing and costly for all involved. The child's circumstances will need to meet certain criteria if they are to be granted entry clearance and leave to enter or remain. In particular, children who can still be cared for by their parents but who have been "gifted" or "given" to a relative in the UK are very unlikely to gain an entry clearance to enter and reside in the UK. The Home Office can provide information and advice on this (see Annex G for contact details).

**12.** Where these checks have been satisfactorily completed, it is very important for the adoption agency to attempt to obtain the maximum amount of information on the characteristics of the child. Then, in the same way as for a domestic adoption of a named child, the assessment will be focussed on the ability of the prospective adopter to meet the needs of the child concerned.

**13.** Where a prospective adopter is approved to adopt a specific child the home study assessment and the agency decision maker's letter should clearly state the child's full name and date of birth.

### **Prospective Adopters Outside the UK**

**14.** Where a local authority decides that a looked after child's best interests may be served by being adopted by a known person in another country (for example, a relative) they must satisfy themselves of the individual's suitability to adopt the child. The assessment should usually be carried out in the individual's State of origin and be sent to the agency for consideration in the same way as for any other prospective adopter.

**15.** Prior to the child being taken outside the UK, the prospective adopter must apply to the High Court for permission to take the child out of the country in accordance with sections 84 and 85 of the 2002 Act.

### **PROSPECTIVE ADOPTERS EXPERIENCE A CHANGE OF CIRCUMSTANCES**

**16.** Prospective adopters should notify the adoption agency if their circumstances change. Agencies should consider whether this change impacts on their eligibility or suitability to adopt. If they believe that it does they should investigate the changes further and, where necessary, refer the case back to the Adoption Panel and the agency decision maker. Where the decision is referred back to the Adoption Panel the Department for Education and Skills should be notified of this.

**17.** The Department for Education and Skills should always be notified of any change of circumstances which may have a bearing on whether the applicants continue to meet the foreign authority's specific eligibility criteria. In addition, any update reports, including notification of a new address, should be submitted to the relevant Department for Education and Skills intercountry adoption caseworker.

**18.** Please note that if prospective adopters move from one local authority to another after being assessed by the local authority rather than by a VAA, the new local authority should prepare the addendum report and send it to the Department for Education and Skills.

### **PROSPECTIVE ADOPTERS WISH TO CHANGE COUNTRY TO WHICH THEY ARE APPLYING**

**19.** When prospective adopters are found eligible and suitable to adopt the report prepared will relate to a specific country. If the applicant wishes to change the country from which they wish to adopt after they have been approved, they should discuss this with the adoption agency.

**20.** The applicant will need to demonstrate that they fully understand the cultural and other needs of a child from the 'new' country, plus the fact that they meet the eligibility criteria of that country. An addendum report should be produced and returned to the Adoption Panel and agency decision maker to obtain a new approval. This should then be forwarded to the relevant intercountry adoption caseworker in the Department for Education and Skills.

**21.** Please note that the Department for Education and Skills should be informed at the earliest opportunity if the prospective adopter decides on a change of country so that the authorities in the country concerned can be notified and the original application can be withdrawn.

**22.** Prospective adopters should be advised that where an application has already been sent to the original country of choice before the Department for Education and Skills has received notice of a change of country, they will be required to meet expenses incurred to date. This will be in addition to the costs incurred by the adoption agency in undertaking the work needed to update the report and re-present the application to the Adoption Panel and decision maker.

#### **BRITISH CITIZENS AND OTHERS WITH RIGHTS TO LIVE IN THE UK – LIVING AND ADOPTING ABROAD**

##### **Adoptions through assessment procedures outside the British Islands**

**23.** British citizens and others with rights to live in the UK (European Economic Area nationals and those holding settled status in the UK) who are living and working abroad may be able to adopt a child according to the laws of that country. In such cases they should ensure that they follow the requirements and laws of the country in which they are living.

**24.** If those with rights to live in the UK are able to apply to adopt a child in the country in which they are living they will be assessed and approved to adopt according to the procedures of that country. Once the adoption order is granted the relevant authorities in that country will monitor the progress of the adoption placement according to their laws.

**25.** Where a person with rights to live in the UK is resident abroad and wishes to adopt under the law of that country, the Department for Education and Skills has no authority in the matter. However, some countries require a general statement from the UK government that the child to be adopted is likely to be permitted to enter the UK. The Home Office Immigration and Nationality Directorate (address in Annex G) will issue a letter on request, stating that if the immigration criteria are met, the adoptive child will be given leave to enter the UK with the adoptive parents, once they decide to return home. Other countries will require a letter from the Department for Education and Skills confirming that they are content for the adoption to go ahead. The Department for Education and Skills is unable to do this because the full facts of the case will not be known and the Department has no authority in this matter. However, the Department for Education and Skills can provide a letter stating that they have no objections to the adoption going ahead.

**26.** When the adopters wish to return to the UK they must, where necessary, seek the agreement of the foreign authorities for the child to leave the country. They must then apply to the British Embassy for an entry clearance for their child. There are a number of possible grounds for the issuing of entry clearance (see section on Immigration Rules below).

#### **Adoptions by British Citizens living abroad – through UK assessment procedures**

**27.** Where British citizens are living abroad they should usually go through the approval procedures of the country in which they are living if they are eligible to do so under the jurisdiction they are resident within. However, if a particular country requires a home study assessment from the UK, it may be possible for an applicant to be assessed in the UK if they (or in the case of a couple, at least one of them) is domiciled in the United Kingdom, or in the Channel Islands or the Isle of Man. The decision in such cases will need to be made on the individual facts of the case.

**28.** In such cases the applicant should approach their local authority or VAA registered to work on intercountry adoption to discuss undertaking an assessment of eligibility and suitability. The adoption agency would need to decide whether or not it is possible to agree to undertake the assessment in “bite-size chunks” to fit in with the applicants’ visits to the UK. They would also need to determine whether or not it would be possible to secure satisfactory police checks if the applicant has been abroad for some time and how the agency would be able to meet the good practice requirement that all prospective adopters undertake appropriate training and preparation for the adoption task.

**29.** Where the adoption agency agree to go ahead, the home study assessment includes a number of meetings between the social worker and the prospective adopter in the space of a few months. Usually the adoption agency will also wish to commission a suitable overseas social worker to produce a report on the home environment overseas. International Social Services may be able to deliver this requirement.

**30.** Once the adoption agency has carried out the assessment the case is passed to the Adoption Panel and agency decision maker in the usual way. The papers are then sent to the Department for Education and Skills for the usual checks prior to being sent overseas.

#### **IMMIGRATION RULES**

**31.** The full Immigration Rules can be obtained from the Home Office’s Immigration and Nationality Directorate (and found on their website).

#### **Immigration Status of Adopters**

**32.** It is recommended that prospective adopters check their immigration status prior to considering intercountry adoption (see chapter five). The main possibilities are:

- British citizens – British citizens are not subject to immigration control. If a British citizen adopts in a Convention country under the Hague Convention, and is habitually resident in the UK, the child will automatically receive British citizenship. If they adopt from a country whose adoptions are recognised as overseas adoptions (formerly known as the designated list) they will need to obtain entry clearance prior to bringing the child into the UK and apply for their child to be registered as a British citizen. If they bring a child into the UK for the purposes of adoption the child will automatically receive British citizenship upon the making of an adoption order in a UK Court
- Settled – If an individual has settled status (i.e. they have indefinite leave to remain in the UK and are ordinarily resident in the UK) they are permitted to remain indefinitely in the UK. They will be able to apply for entry clearance for a child adopted in a foreign country by them to enter indefinitely in the UK. They will only be able to adopt the child in a UK Court if they are domiciled in the UK. If they are not domiciled they should seek to adopt overseas from a Hague Convention country or a country whose adoptions are recognised as overseas adoptions (formerly known as the designated list) so that the adoption order is recognised in the UK
- European Economic Area (EEA) nationals – EEA nationals are able to exercise Treaty Rights to reside in the UK. Once they have lived in the UK for four years they are able to apply for indefinite leave to remain if they wish to do so. They are unlikely to be domiciled in the UK and so would not be able to adopt a child in a UK Court. If they were habitually resident in the UK they would be entitled to apply for an assessment of their eligibility and suitability to adopt. However, it is unlikely that the Home Office would be able to issue confirmation that the child would be permitted to reside permanently in the UK if they wished to adopt under the Hague Convention (although they should seek advice from the Home Office and their own independent legal advisor as this is a complex area). But if they adopted from a country whose adoptions are recognised as overseas adoptions (formerly known as the designated list) then that adoption would be recognised and they would be able to apply for entry clearance for the child to join them
- Working Visa – Someone in the UK on a short term working visa is unlikely to be domiciled in the UK or considered habitually resident in the UK. However, if they were habitually resident in the UK they would be able to apply for an assessment of eligibility and suitability to adopt. The Home Office would be unable to give the assurances that the child would be permitted to reside permanently in the UK (as the adopters would not be) so they would not be able to adopt from a Hague Convention State. Nor would they be able to adopt from a non-Convention and non-overseas adoption country as they would not be in a position to adopt in a UK Court. They would therefore wish to consider adopting from a country whose adoptions are recognised as overseas adoptions.

## Applications to Bring a Child into the UK

**33.** Where a child has been adopted or entrusted to an individual in a foreign country, unless the child has automatically received British citizenship on the making of a Convention Adoption (see chapter seven), the adopter must apply for entry clearance or, if at least one adopter is a British citizen, for the child to be registered as a British citizen. There are three possible options:

- Bringing the Child into the UK for the Purposes of Adoption – Those who have adopted outside the British Islands but whose adoption orders are not recognised in the UK are likely to want to adopt in the UK so that their relationship with the child is recognised under UK law. Individuals may only adopt in the UK if they are domiciled in the UK. Where the applicant is domiciled in the UK and the entry clearance officer is content that the adoption is a genuine adoption and the paperwork is in order, a time limited visa may be issued which will allow the child to be brought into the UK for the purposes of adoption. Alternatively, an application can be made by a British citizen for the child to be registered as a British citizen prior to bringing the child into the UK. Decisions will be made on a case by case basis
- Bringing an Adopted Child into the UK – Where a child has been adopted overseas and that adoption is recognised under UK law (either because it is a Convention Adoption or because it is an adoption made in a country whose adoptions are recognised as overseas adoptions) and the entry clearance officer is satisfied that it is a genuine adoption and other immigration requirements have been met, the child will usually be granted entry clearance to reside with their adoptive parent. Alternatively, an application can be made by a British citizen for the child to be registered as a British citizen prior to bringing the child into the UK. Decisions will be made on a case by case basis
- De Facto Dependants – Where the child has not been adopted in a way recognised under UK law. If the child has been integrated into the family for so long that s/he can be considered to be an adopted child for immigration purposes (although the relationship will not be recognised legally) the child may be granted entry clearance as a *de facto* dependant on the same basis as their “adoptive parent”. This is an immigration provision and exists to allow the entry of a child who has been fully integrated into a family whilst they were residing abroad for a long period of time. It is not a provision which will apply to anyone who has resided in the UK throughout the previous 18 months. Further details of the requirements of this provision may be seen on the Home Office website at [www.ind.homeoffice.gov.uk](http://www.ind.homeoffice.gov.uk) under Law and Policy. It should be noted that if the adopter could be considered as habitually resident in the UK they should seek independent legal advice on whether or not they will be committing an offence under section 83 of the Adoption and Children Act 2002 by bringing the child into the UK on this basis

## Domicile and Habitual Residence

**34.** It is essential that prospective adopters determine their domicile and habitual residence status as early as possible in the adoption process. This is because:

- Domicile – Only those domiciled in the UK can adopt in a UK Court. It is therefore essential that anyone who is not domiciled in the UK is aware of this as early as possible. If they are not domiciled in the UK they should only consider adopting from either a Convention country (if they have British citizenship or are settled or have indefinite leave to remain in the UK) or a country whose adoptions are recognised as overseas adoptions where they can adopt in the child's State of origin (and therefore do not need to adopt in a UK Court)
- Habitual Residence – The restrictions on intercountry adoption apply to anyone habitually resident in the UK. Individuals must be habitually resident in the UK to apply for an assessment of their eligibility and suitability to adopt. They must also have been habitually resident for at least a year to apply for an adoption order

## Establishing Domicile and Habitual Residence Status

**35.** Domicile and habitual residence are legal concepts which are subject to case law. There is no definition of either term. Whether someone is domiciled or habitually resident in the UK will depend upon all the circumstances and facts of an individual case.

**36.** Wherever there is an issue about the domicile and habitual residence status of an individual they should be advised to seek independent legal advice. The adoption agency may also wish to seek their own legal advice.

## Habitual Residence

**37.** The question of habitual residence is one of fact. All the circumstances of a particular case must be considered. The term indicates the quality of residence rather than mere duration and requires an element of intention. The term suggests personal presence must continue for some time. Bringing possessions, doing everything necessary to establish residence before coming, having a right of abode, seeking to bring family, "durable ties" with the country and many other factors must be taken into account.

**38.** There is no requisite period of residence. It may be longer where there are doubts but it may also be shorter (see: *Nessa v Chief Adjudication Officer* 1999 4 All ER 677; and *Re S (a minor) (custody; habitual residence)* 1998 AC 750).

**39.** It is also possible to be habitually resident in two countries. Factors such as location of the home, employment, financial arrangements and location of bank accounts, and local connections are just some of the many factors that may be relevant to any question relating to habitual residence.

## **Domicile**

**40.** Domicile can be described as the legal relationship between an individual and a territory with a distinctive legal system which invokes that system as that individual's personal law. A person is domiciled in the country in which he either has or is deemed to have his permanent home. Every person must have a personal law, and accordingly, everyone must have a domicile. A person receives at birth a domicile of origin which remains his domicile, wherever he goes, unless and until he acquires a new domicile (a domicile of choice). A person may acquire a domicile of choice by the fact of residing in a country other than that of his domicile of origin with the intention of continuing to reside there indefinitely. The intention which must be shown is as to the quality of residence. An intention to reside in a country for a fixed period of time, or until some clearly foreseen and reasonably anticipated event happens, will not be sufficient.

## **CHILD HEALTH AND DEVELOPMENTAL ISSUES**

### **Availability of Information**

**41.** It is essential that prospective adopters are given as much information as possible about the health and development of children and any significant birth or early life experience that may affect the physical, emotional or mental development of any child with whom they have been matched.

**42.** However, prospective adopters should be informed at an early stage that although most children will be physically healthy:

- Many children available for intercountry adoption will have been abandoned or given up for adoption by parents who provide little background or medical information about themselves or the child
- Much of the information that is available on the health and development of the child will be of a poor quality
- The Department for Education and Skills is in no position to verify the quality of any medical information received from foreign countries
- Where medical reports identify substantial growth and developmental delays or other conditions it is unlikely that there will be good quality information on their severity
- Many children available for intercountry adoption will have unrecognised health and developmental problems. Some of these will be treatable but others are not and will involve a long term (and possibly life-long) need for a high level of care and nurture in the adoptive home
- Many children who have been abandoned or have not had good attachments to those taking care of them in their early years will find it difficult to attach to adoptive parents and to return love given to them

## Medical History

**43.** The Department for Education and Skills will pass information it receives on the health of a child to the adoption agency that assessed the prospective adopter. Hague Convention Contracting States are obliged to provide as much information as they have available on the child's medical history and their family's medical history. The provision of such information from non-Contracting States may not be detailed or reliable.

**44.** Prospective adopters may request additional information from overseas if they wish to (although it will not always be possible to obtain this). Any request should be sent to the Department for Education and Skills by the adoption agency. The request will then be passed to the foreign authorities.

## Medical Assessments

**45.** Where the requested information is not available it is often possible for the prospective adopter to pay for a medical assessment on the child to be carried out.

**46.** The prospective adopter will need to decide what they would like the medical assessment to include. The Department for Education and Skills will be able to assist by providing information on which medical conditions are endemic in the child's country of origin (based on past dealings with the country and the limited research evidence available).

**47.** Prior to deciding what tests to seek they should be made aware that:

- The accuracy of tests performed in some countries from which children may be adopted may be questionable and could give rise to a false sense of security
- In some cases it has been suggested that the child could be put at risk of acquiring an infection merely by being tested in their own country

**48.** Some current health problems that the adoption agency may like to discuss with the prospective adopter are:

- HIV – this is likely to be more of a concern if the child is to be adopted from Romania or some parts of Africa. Prospective adopters should be made aware that HIV tests in infants may give a flawed result. Infants with an HIV negative test result may actually be developing antibodies and could become HIV positive later. Other infants with positive tests may be carrying maternal antibodies which are later shed. In other cases false positive and negative test results have occurred from some laboratories in some countries. Prospective adopters also need to understand that positive blood tests may not occur until 3 months after initial infection due to the long latent phase of the HIV virus

- Hepatitis B and C – these are viral illnesses that affect the liver and can lead to chronic liver disease. They are spread in similar ways to HIV but are more infectious. Hepatitis B is more common than Hepatitis C. They are most likely to be of concern if the child is to be adopted from Eastern Europe. Where prospective adopters decide to accept a child who is infected with Hepatitis B, they are likely to be advised to arrange for a course of immunisation for themselves and their families. The course takes up to 6 months to complete so arrangements need to be made as soon as possible
- Tuberculosis – diagnosis is difficult in children because the symptoms often mimic other conditions. If the child does have undiagnosed TB the family will be at risk of contracting the disease
- Iodine Deficiency – iodine deficiency can impair brain development. Unlike the UK, screening at birth is not widely practised in some countries. If the deficiency is identified and corrected later, any impairment that has happened in the meantime cannot be reversed. This is most likely to be of concern if the child is to be adopted from China, Africa and some parts of South America
- Lead Poisoning – lead poisoning can cause learning disabilities and behavioural problems. It is likely to be of concern in countries where health and safety legislation is not in place or is not well enforced and there is heavy pollution
- Malnutrition – malnourished children are likely to succumb to more infections than well nourished children and may also grow more slowly. These effects may later be reversed by good nutrition. However, it has been suggested that long term developmental and learning problems may be linked to under nutrition in early life
- Parasites – children may have a range of parasites (from head lice to scabies) which are generally treatable once identified but which should be treated as swiftly as possible due to the risk of transmission to the adoptive family

### Considering Information

**49.** Adoption agencies should offer the prospective adopter the opportunity to discuss the medical report with them when they are considering the match. Wherever possible the agency medical advisor should consider the report and share their views with, and offer advice to, the prospective adopter. The prospective adopter may also wish to discuss the report with their General Practitioner (GP).

### On Return to the UK

**50.** On returning to the UK the adopter should ensure that the child is registered with their GP. It is recommended that they arrange to discuss the child's health (including the background medical report) with their GP. The GP may need to refer the child to a community paediatrician, the local consultant on communicable disease control, or other specialists.

**51.** If no particular health issues have been identified in advance of the child arriving in the UK it is still recommended that the child visit the GP for a check-up and a chance to review their immunisation record. Where there have been concerns about the quality of record keeping or the proper storage and administration of vaccinations in the child's State of origin it may be recommended that the child has a full course of immunisations in the UK.

### **Further Reading**

**52.** There are a range of useful articles and pieces of work on the health of children adopted from foreign countries. The most recent of these: Mary Mather and Marko Kerac (2002) – Caring for the health of children brought into the UK from abroad [Adoption and Fostering, Volume 26, Number 4] has informed the text above and includes pointers to a number of other documents.

### **WHEN PLACEMENTS DISRUPT**

#### **Protection Issues**

**53.** Local authorities have the same child protection and other duties under the Children Act 1989 in relation to children brought into the UK from outside the British Islands for adoption as they do for any other child living in their area.

**54.** In addition, when children are brought into the UK for the purposes of adoption, and notice is given in accordance with section 44 of the 2002 Act, the local authority must monitor the placement in accordance with the Adoptions with a Foreign Element Regulations XXXX. They must take action to remove the child if they believe that the continued placement of the child with the prospective adopter is not in the best interest of the child and the child should not remain with the prospective adopter.

**55.** Where an application has been made to adopt the child and the emergency protections in the Children Act 1989 are not triggered, the local authority may only remove the child from the prospective adopters if they can secure a Court Order.

#### **Placement Disruption**

**56.** If the prospective adopter decides not to proceed with the adoption, a Convention Adoption Order is refused, or a Convention Adoption Order is annulled the local authority must receive the child within 7 days unless it can provide enough support to enable the child to continue to live with the family and it is in the child's best interests to remain with the family.

#### **Looking after the Child**

**57.** When a placement disrupts or the child is removed from the prospective adopter the local authority must look after the child and notify the Department for Education and Skills of the change in circumstances.

**58.** The local authority must review the child's case and determine whether or not it is in the best interests of the child to remain in the UK and to be placed for adoption with an alternative family.

**59.** Where it is not in the best interests of the child to be placed for adoption with an alternative family in the UK the local authority must notify the Department for Education and Skills. The Department for Education and Skills will notify the foreign authorities accordingly and arrangements will be made for the return of the child.

**60.** It is more likely that it will be found that it is in the best interests of the child to remain in the UK. If this is the case, the local authority must make a new care plan for the child which will secure permanence in the most appropriate way. This will probably, but not always, involve seeking to identify a suitable alternative adoptive parent for the child and making any application(s) which may be necessary to amend the child's immigration status.

**61.** Where an alternative adoptive parent is found the local authority must write to the Department for Education and Skills confirming that another prospective adopter who has been assessed and approved as eligible and suitable to adopt has been identified. The Department for Education and Skills will then notify the Central Authority of the child's State of origin and, when appropriate, an Article 17(c) agreement will be reached.

#### **FEES/CHARGES**

**62.** Sections 95 and 96 of the 2002 Act allows adoption agencies to charge prospective adopters a fee to cover the cost of preparation and assessment work, update reports and the report to the court which may be required under section 44(5) of the Adoption and Children Act. No profit may be derived from this work and adoption agencies should provide the applicants with a written statement detailing what is included in the fee. VAT is not chargeable on the fee.

**63.** There are no guidelines on what may or may not be charged. Agencies must identify what their costs are and demonstrate that the fees charged cover these costs only.

**64.** Adoption agencies may consider charging fees in instalments. This would help to ensure that the right amount of fee was paid by those who pull out half-way through the process and may also allow those unable to pay the full sum up-front to apply.

#### **COMPLAINTS**

**65.** As users of the local authority's services, prospective adopters have the right to access the Social Services Complaints procedure. They should be provided with information on the complaints procedure as soon as reasonably practicable.

## HANDLING CASES THAT HAVE NOT BEEN THROUGH THE PROPER PROCEDURES

**66.** As a public authority a local authority has a duty to notify the Police and provide them with such information as they may require if:

- An application is made to adopt a child who was brought into the UK in contravention of the provisions on intercountry adoption in the Adoption and Children Act 2002, or
- They are made aware of a child who was brought into the UK without complying with the conditions or requirements included in the Adoptions with a Foreign Element Regulations XXXX, or
- They are made aware of the presence of a child who was brought into the UK with the immigration status of a visitor but with the actual intention of adopting the child/of settlement

**67.** The Police will investigate the case and refer it to the Crown Prosecution Service for them to determine whether or not to take the case to Court.

**68.** Anyone who fails to comply with the statutory provisions may not apply to a court in England and Wales to adopt a child until that child has lived with them for a minimum of 3 years (as opposed to 6 months for all other intercountry adopters). When requested to produce a report under section 44(5) of the Act for the Court the local authority will need to carry out detailed and stringent checks on the adopters as they will not have had any dealings with them before. This may mean that the report will take longer to complete than any other such report carried out in accordance with section 44(5). The Court will take account of any non-compliance with the statutory requirements and conditions when determining whether or not the adoption should be made.

### Consultation Question:

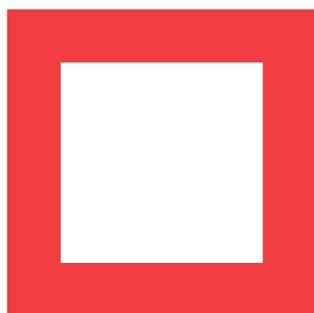
- Overall, is the level of detail provided by the Regulations and guidance too much, about right or not enough?
- What, if any, additional issues need to be covered?

### Consultation Question:

- Overall, in assisting you in interpreting the requirements set out in the Regulations do you find the guidance very helpful, helpful, not very helpful or not at all helpful?
- How could we make the guidance more helpful and accessible?

Please use the enclosed feedback form to give us your views.

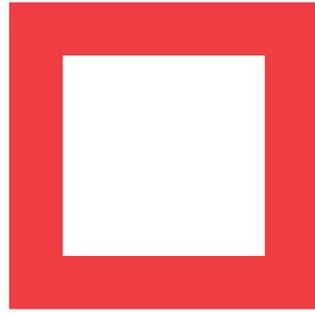




# Annexes

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# Annex A – Articles of the Convention

## CONVENTION ON PROTECTION OF CHILDREN AND CO-OPERATION IN RESPECT OF INTERCOUNTRY ADOPTION

*(Concluded 29 May 1993)*

The States signatory to the present Convention,

Recognising that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Recalling that each State should take, as a matter of priority, appropriate measures to enable the child to remain in the care of his or her family of origin,

Recognising that intercountry adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her State of origin,

Convinced of the necessity to take measures to ensure that intercountry adoptions are made in the best interests of the child and with respect for his or her fundamental rights, and to prevent the abduction, the sale of, or traffic in children,

Desiring to establish common provisions to this effect, taking into account the principles set forth in international instruments, in particular the United Nations Convention on the Rights of the Child, of 20 November 1989, and the United Nations Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally (General Assembly Resolution 41/85, of 3 December 1986),

Have agreed upon the following provisions –

## CHAPTER I – SCOPE OF THE CONVENTION

### Article 1

The objects of the present Convention are –

- a) to establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognised in international law;
- b) to establish a system of co-operation amongst Contracting States to ensure that those safeguards are respected and thereby prevent the abduction, the sale of, or traffic in children;
- c) to secure the recognition in Contracting States of adoptions made in accordance with the Convention.

### Article 2

(1) The Convention shall apply where a child habitually resident in one Contracting State (“the State of origin”) has been, is being, or is to be moved to another Contracting State (“the receiving State”) either after his or her adoption in the State of origin by spouses or a person habitually resident in the receiving State, or for the purposes of such an adoption in the receiving State or in the State of origin.

(2) The Convention covers only adoptions which create a permanent parent-child relationship.

### Article 3

The Convention ceases to apply if the agreements mentioned in Article 17, sub-paragraph c, have not been given before the child attains the age of eighteen years.

## CHAPTER II – REQUIREMENTS FOR INTERCOUNTRY ADOPTIONS

### Article 4

An adoption within the scope of the Convention shall take place only if the competent authorities of the State of origin -

- a) have established that the child is adoptable;
- b) have determined, after possibilities for placement of the child within the State of origin have been given due consideration, that an intercountry adoption is in the child’s best interests;
- c) have ensured that

(1) the persons, institutions and authorities whose consent is necessary for adoption, have been counselled as may be necessary and duly informed of the effects of their consent, in particular whether or not an adoption will result in the termination of the legal relationship between the child and his or her family of origin,

(2) such persons, institutions and authorities have given their consent freely, in the required legal form, and expressed or evidenced in writing,

(3) the consents have not been induced by payment or compensation of any kind and have not been withdrawn, and

(4) the consent of the mother, where required, has been given only after the birth of the child; and

d) have ensured, having regard to the age and degree of maturity of the child, that

(1) he or she has been counselled and duly informed of the effects of the adoption and of his or her consent to the adoption, where such consent is required,

(2) consideration has been given to the child's wishes and opinions,

(3) the child's consent to the adoption, where such consent is required, has been given freely, in the required legal form, and expressed or evidenced in writing, and

(4) such consent has not been induced by payment or compensation of any kind.

#### *Article 5*

An adoption within the scope of the Convention shall take place only if the competent authorities of the receiving State -

a) have determined that the prospective adoptive parents are eligible and suited to adopt;

b) have ensured that the prospective adoptive parents have been counselled as may be necessary; and

c) have determined that the child is or will be authorised to enter and reside permanently in that State.

### **CHAPTER III – CENTRAL AUTHORITIES AND ACCREDITED BODIES**

#### *Article 6*

(1) A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities.

(2) Federal States, States with more than one system of law or States having autonomous territorial units shall be free to appoint more than one Central Authority and to specify the territorial or personal extent of their functions. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which any communication may be addressed for transmission to the appropriate Central Authority within that State.

#### *Article 7*

(1) Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their States to protect children and to achieve the other objects of the Convention.

(2) They shall take directly all appropriate measures to –

- a) provide information as to the laws of their States concerning adoption and other general information, such as statistics and standard forms;
- b) keep one another informed about the operation of the Convention and, as far as possible, eliminate any obstacles to its application.

*Article 8*

Central Authorities shall take, directly or through public authorities, all appropriate measures to prevent improper financial or other gain in connection with an adoption and to deter all practices contrary to the objects of the Convention.

*Article 9*

Central Authorities shall take, directly or through public authorities or other bodies duly accredited in their State, all appropriate measures, in particular to –

- a) collect, preserve and exchange information about the situation of the child and the 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;
- d) provide each other with general evaluation reports about experience with intercountry adoption;
- e) reply, in so far as is permitted by the law of their State, to justified requests from other Central Authorities or public authorities for information about a particular adoption situation.

*Article 10*

Accreditation shall only be granted to and maintained by bodies demonstrating their competence to carry out properly the tasks with which they may be entrusted.

*Article 11*

An accredited body shall –

- a) pursue only non-profit objectives according to such conditions and within such limits as may be established by the competent authorities of the State of accreditation;
- b) be directed and staffed by persons qualified by their ethical standards and by training or experience to work in the field of intercountry adoption; and
- c) be subject to supervision by competent authorities of that State as to its composition, operation and financial situation.

#### *Article 12*

A body accredited in one Contracting State may act in another Contracting State only if the competent authorities of both States have authorised it to do so.

#### *Article 13*

The designation of the Central Authorities and, where appropriate, the extent of their functions, as well as the names and addresses of the accredited bodies shall be communicated by each Contracting State to the Permanent Bureau of the Hague Conference on Private International Law.

### **CHAPTER IV – PROCEDURAL REQUIREMENTS IN INTERCOUNTRY ADOPTION**

#### *Article 14*

Persons habitually resident in a Contracting State, who wish to adopt a child habitually resident in another Contracting State, shall apply to the Central Authority in the State of their habitual residence.

#### *Article 15*

(1) If the Central Authority of the receiving State is satisfied that the applicants are eligible and suited to adopt, it shall 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 children for whom they would be qualified to care.

(2) It shall transmit the report to the Central Authority of the State of origin.

#### *Article 16*

(1) If the Central Authority of the State of origin is satisfied that the child is adoptable, it shall

- a) prepare a report including information about his or her identity, adoptability, background, social environment, family history, medical history including that of the child's family, and any special needs of the child;
- b) give due consideration to the child's upbringing and to his or her ethnic, religious and cultural background;
- c) ensure that consents have been obtained in accordance with Article 4; and
- d) determine, on the basis in particular of the reports relating to the child and the prospective adoptive parents, whether the envisaged placement is in the best interests of the child.

(2) It shall transmit to the Central Authority of the receiving State its report on the child, proof that the necessary consents have been obtained and the reasons for its determination on the placement, taking care not to reveal the identity of the mother and the father if, in the State of origin, these identities may not be disclosed.

#### *Article 17*

Any decision in the State of origin that a child should be entrusted to prospective adoptive parents may only be made if –

- a) the Central Authority of that State has ensured that the prospective adoptive parents agree;
- b) the Central Authority of the receiving State has approved such decision, where such approval is required by the law of that State or by the Central Authority of the State of origin;
- c) the Central Authorities of both States have agreed that the adoption may proceed; and
- d) it has been determined, in accordance with Article 5, that the prospective adoptive parents are eligible and suited to adopt and that the child is or will be authorised to enter and reside permanently in the receiving State.

#### *Article 18*

The Central Authorities of both States shall take all necessary steps to obtain permission for the child to leave the State of origin and to enter and reside permanently in the receiving State.

#### *Article 19*

(1) The transfer of the child to the receiving State may only be carried out if the requirements of Article 17 have been satisfied.

(2) The Central Authorities of both States shall ensure that this transfer takes place in secure and appropriate circumstances and, if possible, in the company of the adoptive or prospective adoptive parents.

(3) If the transfer of the child does not take place, the reports referred to in Articles 15 and 16 are to be sent back to the authorities who forwarded them.

#### *Article 20*

The Central Authorities shall keep each other informed about the adoption process and the measures taken to complete it, as well as about the progress of the placement if a probationary period is required.

#### *Article 21*

(1) Where the adoption is to take place after the transfer of the child to the receiving State and it appears to the Central Authority of that State that the continued placement of the child with the prospective adoptive parents is not in the child's best interests, such Central Authority shall take the measures necessary to protect the child, in particular –

- a) to cause the child to be withdrawn from the prospective adoptive parents and to arrange temporary care;
- b) in consultation with the Central Authority of the State of origin, to arrange without delay a new placement of the child with a view to adoption or, if this is not appropriate, to arrange alternative long-term care; an adoption shall not take place until the Central Authority of the State of origin has been duly informed concerning the new prospective adoptive parents;
- c) as a last resort, to arrange the return of the child, if his or her interests so require.

(2) Having regard in particular to the age and degree of maturity of the child, he or she shall be consulted and, where appropriate, his or her consent obtained in relation to measures to be taken under this Article.

#### *Article 22*

(1) The functions of a Central Authority under this Chapter may be performed by public authorities or by bodies accredited under Chapter III, to the extent permitted by the law of its State.

(2) Any Contracting State may declare to the depositary of the Convention that the functions of the Central Authority under Articles 15 to 21 may be performed in that State, to the extent permitted by the law and subject to the supervision of the competent authorities of that State, also by bodies or persons who -

- a) meet the requirements of integrity, professional competence, experience and accountability of that State; and
- b) are qualified by their ethical standards and by training or experience to work in the field of intercountry adoption.

(3) A Contracting State which makes the declaration provided for in paragraph 2 shall keep the Permanent Bureau of the Hague Conference on Private International Law informed of the names and addresses of these bodies and persons.

(4) Any Contracting State may declare to the depositary of the Convention that adoptions of children habitually resident in its territory may only take place if the functions of the Central Authorities are performed in accordance with paragraph 1.

(5) Notwithstanding any declaration made under paragraph 2, the reports provided for in Articles 15 and 16 shall, in every case, be prepared under the responsibility of the Central Authority or other authorities or bodies in accordance with paragraph 1.

## CHAPTER V – RECOGNITION AND EFFECTS OF THE ADOPTION

### *Article 23*

(1) An adoption certified by the competent authority of the State of the adoption as having been made in accordance with the Convention shall be recognised by operation of law in the other Contracting States. The certificate shall specify when and by whom the agreements under Article 17, sub-paragraph c), were given.

(2) Each Contracting State shall, at the time of signature, ratification, acceptance, approval or accession, notify the depositary of the Convention of the identity and the functions of the authority or the authorities which, in that State, are competent to make the certification. It shall also notify the depositary of any modification in the designation of these authorities.

### *Article 24*

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.

### *Article 25*

Any Contracting State may declare to the depositary of the Convention that it will not be bound under this Convention to recognise adoptions made in accordance with an agreement concluded by application of Article 39, paragraph 2.

### *Article 26*

(1) The recognition of an adoption includes recognition of

- a) the legal parent-child relationship between the child and his or her adoptive parents;
- b) parental responsibility of the adoptive parents for the child;
- c) the termination of a pre-existing legal relationship between the child and his or her mother and father, if the adoption has this effect in the Contracting State where it was made.

(2) In the case of an adoption having the effect of terminating a pre-existing legal parent-child relationship, the child shall enjoy in the receiving State, and in any other Contracting State where the adoption is recognised, rights equivalent to those resulting from adoptions having this effect in each such State.

(3) The preceding paragraphs shall not prejudice the application of any provision more favourable for the child, in force in the Contracting State which recognises the adoption.

### *Article 27*

(1) Where an adoption granted in the State of origin does not have the effect of terminating a pre-existing legal parent-child relationship, it may, in the receiving State which recognises the adoption under the Convention, be converted into an adoption having such an effect -

- a) if the law of the receiving State so permits; and

b) if the consents referred to in Article 4, sub-paragraphs c and d, have been or are given for the purpose of such an adoption.

(2) Article 23 applies to the decision converting the adoption.

## **CHAPTER VI – GENERAL PROVISIONS**

### *Article 28*

The Convention does not affect any law of a State of origin which requires that the adoption of a child habitually resident within that State take place in that State or which prohibits the child's placement in, or transfer to, the receiving State prior to adoption.

### *Article 29*

There shall be no contact between the prospective adoptive parents and the child's parents or any other person who has care of the child until the requirements of Article 4, sub-paragraphs a) to c), and Article 5, sub-paragraph a), have been met, unless the adoption takes place within a family or unless the contact is in compliance with the conditions established by the competent authority of the State of origin.

### *Article 30*

(1) The competent authorities of a Contracting State shall ensure that information held by them concerning the child's origin, in particular information concerning the identity of his or her parents, as well as the medical history, is preserved.

(2) They shall ensure that the child or his or her representative has access to such information, under appropriate guidance, in so far as is permitted by the law of that State.

### *Article 31*

Without prejudice to Article 30, personal data gathered or transmitted under the Convention, especially data referred to in Articles 15 and 16, shall be used only for the purposes for which they were gathered or transmitted.

### *Article 32*

(1) No one shall derive improper financial or other gain from an activity related to an intercountry adoption.

(2) Only costs and expenses, including reasonable professional fees of persons involved in the adoption, may be charged or paid.

(3) The directors, administrators and employees of bodies involved in an adoption shall not receive remuneration which is unreasonably high in relation to services rendered.

### *Article 33*

A competent authority which finds that any provision of the Convention has not been respected or that there is a serious risk that it may not be respected, shall immediately inform the Central Authority of its State. This Central Authority shall be responsible for ensuring that appropriate measures are taken.

### *Article 34*

If the competent authority of the State of destination of a document so requests, a translation certified as being in conformity with the original must be furnished. Unless otherwise provided, the costs of such translation are to be borne by the prospective adoptive parents.

### *Article 35*

The competent authorities of the Contracting States shall act expeditiously in the process of adoption.

### *Article 36*

In relation to a State which has two or more systems of law with regard to adoption applicable in different territorial units –

- a) any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;
- b) any reference to the law of that State shall be construed as referring to the law in force in the relevant territorial unit;
- c) any reference to the competent authorities or to the public authorities of that State shall be construed as referring to those authorised to act in the relevant territorial unit;
- d) any reference to the accredited bodies of that State shall be construed as referring to bodies accredited in the relevant territorial unit.

### *Article 37*

In relation to a State which with regard to adoption has two or more systems of law applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.

### *Article 38*

A State within which different territorial units have their own rules of law in respect of adoption shall not be bound to apply the Convention where a State with a unified system of law would not be bound to do so.

#### *Article 39*

(1) The Convention does not affect any international instrument to which Contracting States are Parties and which contains provisions on matters governed by the Convention, unless a contrary declaration is made by the States Parties to such instrument.

(2) Any Contracting State may enter into agreements with one or more other Contracting States, with a view to improving the application of the Convention in their mutual relations. These agreements may derogate only from the provisions of Articles 14 to 16 and 18 to 21. The States which have concluded such an agreement shall transmit a copy to the depositary of the Convention.

#### *Article 40*

No reservation to the Convention shall be permitted.

#### *Article 41*

The Convention shall apply in every case where an application pursuant to Article 14 has been received after the Convention has entered into force in the receiving State and the State of origin.

#### *Article 42*

The Secretary General of the Hague Conference on Private International Law shall at regular intervals convene a Special Commission in order to review the practical operation of the Convention.

### **CHAPTER VII – FINAL CLAUSES**

#### *Article 43*

(1) The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Seventeenth Session and by the other States which participated in that Session.

(2) It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention.

#### *Article 44*

(1) Any other State may accede to the Convention after it has entered into force in accordance with Article 46, paragraph 1.

(2) The instrument of accession shall be deposited with the depositary.

(3) Such accession shall have effect only as regards the relations between the acceding State and those Contracting States which have not raised an objection to its accession in the six months after the receipt of the notification referred to in sub-paragraph *b*) of Article 48. Such an objection may also be raised by States at the time when they ratify, accept or approve the Convention after an accession. Any such objection shall be notified to the depositary.

#### *Article 45*

(1) If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in the Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

(2) Any such declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.

(3) If a State makes no declaration under this Article, the Convention is to extend to all territorial units of that State.

#### *Article 46*

(1) The Convention shall enter into force on the first day of the month following the expiration of three months after the deposit of the third instrument of ratification, acceptance or approval referred to in Article 43.

(2) Thereafter the Convention shall enter into force -

*a*) for each State ratifying, accepting or approving it subsequently, or acceding to it, on the first day of the month following the expiration of three months after the deposit of its instrument of ratification, acceptance, approval or accession;

*b*) for a territorial unit to which the Convention has been extended in conformity with Article 45, on the first day of the month following the expiration of three months after the notification referred to in that Article.

#### *Article 47*

(1) A State Party to the Convention may denounce it by a notification in writing addressed to the depositary.

(2) The denunciation takes effect on the first day of the month following the expiration of twelve months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

#### *Article 48*

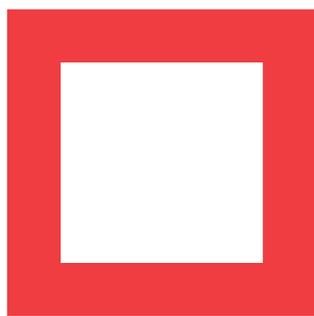
The depositary shall notify the States Members of the Hague Conference on Private International Law, the other States which participated in the Seventeenth Session and the States which have acceded in accordance with Article 44, of the following –

- a)* the signatures, ratifications, acceptances and approvals referred to in Article 43;
- b)* the accessions and objections raised to accessions referred to in Article 44;
- c)* the date on which the Convention enters into force in accordance with Article 46;
- d)* the declarations and designations referred to in Articles 22, 23, 25 and 45;
- e)* the agreements referred to in Article 39;
- f)* the denunciations referred to in Article 47.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at The Hague, on the 29th day of May 1993, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Seventeenth Session and to each of the other States which participated in that Session.





## Annex B – Suggested text for general leaflet on intercountry adoption for prospective adopters

### ADOPTING A CHILD FROM OUTSIDE THE BRITISH ISLANDS

**Please Note:** This leaflet is produced for information only. It is not an authoritative statement of the law.

### SUMMARY OF THE LAW

- The Government does not restrict the countries that may be applied to by those living in England and Wales. However, anyone habitually resident in England and Wales (including parents, guardians, step-parents, and relatives) wishing to adopt a child habitually resident outside the British Islands must comply with the requirements set out in the Adoptions with a Foreign Element Regulations XXXX. Anyone convicted of failing to comply with the Regulations could be liable to a maximum of 12 months imprisonment and/or an unlimited fine. A summary of the process that must be followed is set out below.
- Anyone adopting from another country will also be required to comply with the laws of the child's State of origin. It should be noted that some countries do not allow intercountry adoption, others will not accept applications from those living in England and Wales, and others will only accept applications from those meeting strict age or marital rules. The Department for Education and Skills (DfES) produces factsheets that explain what the requirements are in the countries applied to most often and can assist with obtaining information on the systems in place in other countries.

- The UK's Immigration Rules must be complied with if the child is to be brought into the UK to live. A leaflet that sets out the issues to be considered can be obtained from the Home Office.
- Some adoptions made outside the British Islands are automatically recognised in England and Wales either because the country concerned is a Hague Convention contracting State or because the adoptions of the country meet the criteria to be 'overseas adoptions'. Adoptions that are recognised can be registered with the Registrar General.
- Anyone bringing a child into the UK without a recognised adoption order must adopt the child in the UK if their relationship to the child is to be recognised and the child's immigration status is to be secured.

## THE PROCESS

### A. Being Assessed as Being Eligible and Suitable to Adopt

- Anyone habitually resident in the UK (including parents, guardians, step-parents and relatives) wishing to adopt a child habitually resident outside the British Islands must first be assessed and approved as eligible and suitable to adopt by a local authority or voluntary adoption agency (VAA) registered to work on intercountry adoption.
- The assessment process is the same whether you are applying to adopt a child from the UK or a child outside the UK. However, you will also need to meet the eligibility criteria of the country being applied to. The process will include police checks, medical checks, interviews with referees, and visits to your home.
- When the assessment and preparation process has been completed your papers will be sent to the agency Adoption Panel for consideration. Before they consider them you will have the opportunity to submit observations. After considering them they will make a recommendation to the agency decision maker as to whether or not you should be found suitable to adopt a child.
- The agency decision maker will then consider the Adoption Panel's recommendation. If he is minded to find you unsuitable then you will have the opportunity to either make representations and have your case reconsidered by the agency Adoption Panel or to ask for your case to be considered by an Independent Review Panel. After this the agency decision maker will notify you of his decision.

### B. Papers Processed by the DfES/ National Assembly for Wales

- Where you are found to be eligible and suitable to adopt, your papers will be sent to the DfES if you are resident in England or to the National Assembly for Wales (NAW) if you are resident in Wales. They will be checked for completeness and to ensure that the Regulations have been complied with. When they are in order a certificate of eligibility and suitability will be issued.

- To confirm the authenticity of the papers, they will then usually need to be notarised by a public notary and may also need to be legalised by the Foreign and Commonwealth Office. Some countries also require the papers to be legalised by their London Embassy. The DfES will be able to confirm what process is required.
- As soon as the papers have been notarised and legalised the papers will be sent by courier to the relevant foreign authorities.

### **C. Matching Process**

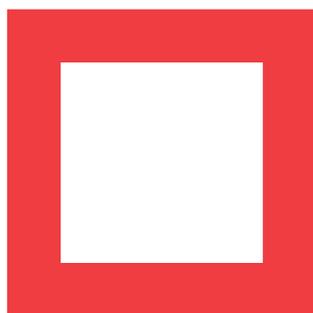
- Your papers will be considered by the relevant foreign authorities and, where they consider you to be suitable, they will match you with a child waiting for intercountry adoption. This process may take some time.
- The papers on the child will usually be sent to the DfES and they will then be sent to you and the agency that assessed you. If you receive the papers directly you must share them with the agency and the DfES.
- When you have received details of a match you must meet with the agency to discuss the child and decide whether or not to proceed. The DfES will attempt to obtain any further information you may wish to see on the child but this will not always be available.
- If you do decide to proceed you will then need to travel to meet the child. If you decide to go ahead you must then confirm in writing to the agency that you have met the child and wish to proceed with the adoption.
- The subsequent process to be followed will depend upon the country you are adopting from and you are referred to the relevant DfES factsheet.

### **D. Bringing the Child Back to the UK**

- Once you have completed the procedures required in the child's State of origin you will usually need to apply for entry clearance for the child from the nearest Diplomatic Post. However, if the child has been adopted under the Hague Convention and you meet various requirements the child will automatically become a British Citizen and you will need to apply to the nearest Diplomatic Post for a passport for the child.
- The DfES will usually be able to confirm to the Entry Clearance Officer that the papers are in order within 2 working days. Once you have Entry Clearance you will be able to bring the child back into the UK.
- If you do not have an adoption order that is recognised in the UK you must, within 14 days of returning to the UK, give notice to your local authority either of your intention to adopt the child or to not give the child a home.
- After receiving notice of your intention to adopt the child the local authority is required to visit the child within 1 month and to then monitor the placement.

- Once the child has lived with you for 6 months you are free to apply to adopt the child in a Court in England and Wales. The local authority will be required to prepare a report on the proposed adoption for the Court.
- If you do not apply to adopt the child within 2 years the local authority is under a duty to carry out a full review of the placement and discuss with you the best way to secure the child's best interests.

If you have any comments or suggestions on the draft leaflet then please use the general comments box on the enclosed feedback form to give us your comments.



## Annex C – Countries that have ratified/acceded to the Hague Convention

*As of 20 January 2004, the following States have ratified the Convention:*

		<b>Entry into force</b>
Albania	12 September 2000	1 January 2001
Australia	25 August 1998	1 December 1998
Austria	19 May 1999	1 September 1999
Belarus	17 July 2003	1 November 2003
Bolivia	12 March 2002	1 July 2002
Brazil	10 March 1999	1 July 1999
Bulgaria	15 May 2002	1 September 2002
Burkina Faso	11 January 1996	1 May 1996
Canada	19 December 1996	1 April 1997
Chile	13 July 1999	1 November 1999
Columbia	13 July 1998	1 November 1998
Costa Rica	30 October 1995	1 February 1996
Cyprus	20 February 1995	1 June 1995
Czech Republic	11 February 2000	1 June 2000
Denmark	2 July 1997	1 November 1997
Ecuador	7 September 1995	1 January 1996
El Salvador	17 November 1998	1 March 1999
Finland	27 March 1997	1 July 1997
France	30 June 1998	1 October 1998

Germany	22 November 2001	1 March 2002
India	6 June 2003	1 October 2003
Israel	3 February 1999	1 June 1999
Italy	18 January 2000	1 May 2000
Latvia	9 August 2002	1 December 2002
Luxembourg	5 July 2002	1 November 2002
Mexico	14 September 1994	1 May 1995
Netherlands	26 June 1998	1 October 1998
Norway	25 September 1997	1 January 1998
Panama	29 September 1999	1 January 2000
Peru	14 September 1995	1 January 1996
Philippines	2 July 1996	1 November 1996
Poland	12 June 1995	1 October 1995
Romania	28 December 1994	1 May 1995
Slovakia	6 June 2001	1 October 2001
Slovenia	24 January 2002	1 May 2002
Spain	11 July 1995	1 November 1995
Sri Lanka	23 January 1995	1 May 1995
Sweden	28 May 1997	1 September 1997
Switzerland	24 September 2002	1 January 2003
United Kingdom	27 February 2003	1 June 2003
(including the Isle of Man)	(1 July 2003)	(1 November 2003)
Uruguay	3 December 2003	1 April 2004
Venezuela	10 January 1997	1 May 1997

**TOTAL NUMBER OF RATIFICATIONS: 42**

As of 20 January, the following States have acceded to the Convention:

	<b>Accession</b>	<b>Entry into Force</b>	<b>Expiry date under Article 44(3)*</b>
Andorra	3 January 1997	1 May 1997	1 August 1997
Burundi	15 October 1998	1 February 1999	15 May 1999
Estonia	22 February 2002	1 June 2002	1 October 2002
Georgia	9 April 1999	1 August 1999	1 November 1999
Guatemala	26 November 2002	1 March 2003	31 July 2003
Guinea	21 October 2003	1 February 2004	1 June 2004
Iceland	17 January 2000	1 May 2000	15 August 2000
Lithuania	29 April 1998	1 August 1998	1 December 1998
Mauritius	28 September 1998	1 January 1999	15 May 1999
Moldova	10 April 1998	1 August 1998	1 November 1998
Monaco	29 June 1999	1 October 1999	15 January 2000
Mongolia	25 April 2000	1 August 2000	30 November 2000
New Zealand	18 September 1998	1 January 1999	15 April 1999
Paraguay	13 May 1998	1 September 1998	1 December 1998
South Africa	21 August 2003	1 December 2003	1 April 2004

*\*In accordance with Article 44(3) of the convention, the accession has effect only as regards the relations between the acceding State and those contracting States which have not raised an objection to its accession in the six months following the date on which the depositary gave notice of the accession. The date specified here is the expiry date of that six-month period.*

**TOTAL NUMBER OF ACCESSIONS: 15**

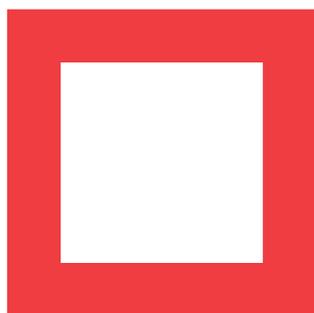
As of 20 January, the following States have signed but not ratified the Convention:

Belgium	27 January 1999
China	30 November 2000
Ireland	19 June 1996
Portugal	26 August 1999
Russian Federation	7 September 2000
Turkey	5 December 2001
United States	31 March 1994

**TOTAL NUMBER OF STATES HAVING SIGNED BUT NOT YET RATIFIED: 7**

**THE CONVENTION ENTERED INTO FORCE ON 1 MAY 1995**





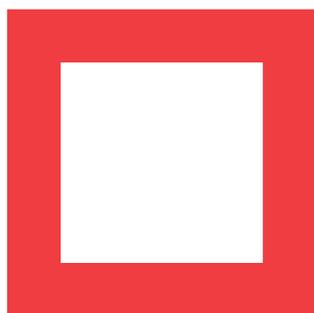
## Annex D – Designated List

### a. COMMONWEALTH COUNTRIES

Anguilla	Malaysia
Australia	Malta
Bahamas	Mauritius
Barbados	Montserrat
Belize	Namibia
Bermuda	New Zealand
Botswana	Nigeria
British Virgin Islands	Pitcairn Island
Canada	St. Christopher and Nevis
Cayman Islands	St. Vincent
Cyprus	Seychelles
Dominica	Singapore
Fiji	South Africa
Ghana	Sri Lanka
Gibraltar	Swaziland
Guyana	Tanzania
Hong Kong	Tonga
Jamaica	Trinidad and Tobago
Kenya	Uganda
Lesotho	Zambia
Malawi	Zimbabwe

## **b. FOREIGN COUNTRIES**

Austria	Israel
Belgium	Italy
China (but only where the child was adopted on or after 5 April 1993 and will be living in England or Wales or on or after 10 July 1995 and will be living in Scotland or on or after 19 February 1996 and will be living in Northern Ireland)	Luxembourg
Denmark (including Greenland and the Faroes)	Norway
Finland	Portugal (including the Azores and Madeira)
France (including Reunion, Martinique, Guadeloupe and French Guyana)	Spain (including the Balearics and Canary Islands)
Germany	Surinam
Greece	Sweden
Iceland	Switzerland
Ireland, The Republic of	The Netherlands (including the Antilles)
	Turkey
	United States of America
	Yugoslavia (but none of the states which make up the former Yugoslavia)



## Annex E – Obtaining further information on individual countries

Agencies should provide adopters with the information they need about the countries that they wish to adopt from. Agencies can obtain information from:

- Fact sheets produced by DfES and included on the DfES Adoption website
- Websites maintained by overseas authorities
- The relevant Central Authority. Officials will be able to contact British overseas diplomatic posts for information where this is not readily available.

### **Fact sheets on countries which accept adoption applications from UK residents**

The Department for Education and Skills produces free of charge fact sheets which can be copied and given to applicants. These are regularly updated and should be referred to each time a home study is to be prepared in case the criteria or circumstances have changed.

The fact sheets for the countries listed below can be found on the Department for Education and Skills website at [www.doh.gov.uk/adoption](http://www.doh.gov.uk/adoption). Information about other countries can be obtained by contacting the Department for Education and Skills on 020 7972 4014.

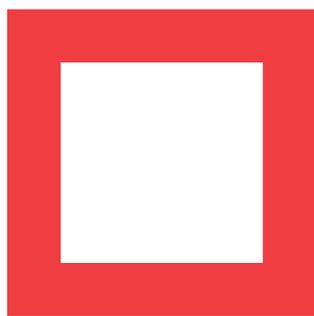
#### **Convention countries**

Bolivia	Philippines
Brazil	Poland
Bulgaria	Sri Lanka
Colombia	Ukraine
Guatemala	Vietnam
India	
Mauritius	

#### **Non-Convention countries**

Armenia	Russia
China	Singapore
Haiti	Thailand
Jamaica	
Jordan	
Kazakhstan	
Pakistan	





## Annex F – Glossary

### A.

#### **Accredited Body**

A body approved by a Central Authority to provide an intercountry adoption service which includes adoption under the Hague Convention.

#### **Accession**

In principle, ratification by a country that was not a member of the Hague Conference at the time the Hague Convention was concluded on 29 May 1993.

#### **Adoption agency**

The term “adoption agency” means a local authority and a registered voluntary adoption agency.

#### **Adoptive Parent**

An adoptive parent is someone who has adopted children either in the UK or from a country whose adoptions are recognised as overseas adoptions (formerly known as designated countries) or a Convention country (i.e. a country whose adoption orders are recognised in the UK).

#### **Annulment**

An application for annulment of a Convention Adoption or a Convention Adoption Order may be made in the UK under section 89 of the 2002 Act on the grounds that the adoption is contrary to public policy. Should another Convention country revoke a Convention Adoption or review a decision revoking or annulling a Convention Adoption, that order will be recognised and have effect in the UK.

#### **Applicant**

An adoptive applicant is someone who has applied to an adoption agency to become an adoptive parent but has not yet been approved.

## **Adopted Children Register**

An entry can be made in the Adopted Children Register as a registrable foreign adoption if the Registrar General has sufficient particulars enabling him to do so. See chapter 10 for details.

### **B.**

#### **British Nationality Act 1981 as amended by the Adoption (Intercountry Aspects) Act 1999**

The Adoption (Intercountry Aspects) Act 1999 amends section 1(5) of the British Nationality Act 1981 by providing for a child adopted under the Convention to have British citizenship conferred on him, provided that all the requirements of the Convention have been met and at least one adoptive parent is a British citizen at the time the adoption order is made and both (if a joint application) are habitually resident in the UK. This amendment does not, of course, breach any principle of sovereignty. By amending the 1981 Act, a court in another Convention country is not given authority to confer British nationality. It is the United Kingdom which is imposing an additional effect upon a Convention Adoption at the time the order is made, thus determining who receives British citizenship.

The effect of the amendment is that:

the child will have the same status on adoption as a child adopted in a UK court

it meets the requirement of Article 26(2) that 'the child shall enjoy in the receiving State and in any other Contracting State where the adoption is recognised, rights equivalent to those resulting from adoptions having this effect in each such State'

it avoids the necessity of the adoptive parents having to apply for the child to be registered as a British citizen

the child is not subject to immigration control.

#### **British Islands**

The British Islands is the term used to incorporate the United Kingdom, Channel Islands and Isle of Man.

### **C.**

#### **Central Authority**

A body identified by a contracting State under Article 6 to discharge the duties of the Convention within a specified political boundary.

All countries have central government authorities responsible for childcare. However it is common for some of them to delegate their adoption duties to national bodies, directors of children's homes or lawyers. The Hague Convention website includes a list of all the relevant authorities for each contracting State (in the list of declarations and notifications for each country).

The Department for Education and Skills is the Central Authority for England. Wales, Scotland and Northern Ireland have their own Central Authority:

Wales	The National Assembly for Wales
Scotland	The Scottish Executive
Northern Ireland	Department of Health, Social Services and Public Safety

Any communication in relation to any part of Great Britain may be sent to the Department for Education and Skills, which will forward the document as necessary to the appropriate Central Authority.

### **Commonwealth Citizen**

A commonwealth citizen is a person who is a British citizen, a British overseas territories citizen, a British National Overseas, a British subject, or a citizen of any country for the time being mentioned in Schedule 3 to the British Nationality Act 1981.

### **Competent Authority**

An administrative body, judicial or other authority determined by a Contracting State.

### **Contracting State**

A country or federal State that has either ratified or acceded to the Convention.

### **Convention Adoption**

An adoption order made under the Hague Convention in any Convention country or federal State outside the British Islands and certified as having been made in accordance with Article 23(1). This is automatically recognised in all Hague Convention contracting States.

### **Convention Adoption Order**

An adoption order made as a Convention Adoption Order in accordance with the Convention within the British Isles in respect of a child brought to the British Isles for the purposes of adoption according to the Convention or a child habitually resident in the UK who is adopted by a person habitually resident in another contracting State. This order will be automatically recognised in all contracting States.

### **Courts – foreign**

In some countries adoption orders are made by administrative procedure rather than by the courts. The foreign courts can make a range of orders including adoption orders and the applicant should be advised to seek legal advice on the effect of the order in that particular country. Foreign courts will grant an order on the basis of evidence provided. Such orders can include entrustment, an interim adoption order, a simple adoption order or a full adoption order. The courts will be aware that the child will eventually travel to the UK where a permanent home will be provided. Orders may be granted on the basis that interim welfare reports will be provided by the local authorities with social services responsibilities in the UK up to the making of an adoption order in the UK.

## Courts in England and Wales

Once the foreign court has made an order giving care of that child to the applicants and they have returned to the UK they must (1) inform their local authority of their intention to adopt in the UK and (2) make an application to an UK court. The court will give the same consideration to the application as it would in a domestic application. An important effect of an adoption order made in the UK is that the child will automatically receive British citizenship provided that at least one of the adoptive parents is a British citizen at the time the UK adoption order is made.

It is important that applicants are aware of the legal requirements in the UK from the time they begin the adoption process. They need to ensure that all necessary evidence about the adoption made in the child's country is obtained before the child comes to the UK and while contact with agents and authorities in that country is still ongoing. It is unlikely that they will be able to obtain information after the adoption process in the child's country of residence is completed.

### D.

#### ***De facto dependent***

A child who has been adopted, not necessarily legally, by a person or persons who have been ordinarily resident abroad for a substantial period of time. The child will be so integrated in the family that he can be considered to be an adopted child for immigration purposes. There is unlikely to be any legal recognition of the relationship in the UK.

#### **Designated and non-designated countries**

The effect of an overseas adoption made in country whose adoptions are recognised as overseas adoptions (formerly known as designated countries) is that the adoption order is recognised under UK law.

Countries which do not appear on the list are classified as non-designated countries which means that the effects of adoption orders made in those countries are not recognised in the UK (except in the case of Convention Adoptions).

#### **Domiciled**

See chapter 13.

## E.

### **Entry clearance**

The British Embassies/High Commissions/Consulates are responsible for considering entry clearance applications to obtain a visa and enable adopted children to settle in the UK. The Entry Clearance Officer (ECO) may wish to interview the birth parent(s) and also the child, according to their age and understanding, to ascertain their views on the proposed adoption and to be satisfied that the birth parent(s) have consented to the proposed adoption. The ECO is a civil servant working in a British Diplomatic Post overseas who also deals with immigration rules, which are the responsibility of the Home Office. The ECO will ensure that immigration requirements are met prior to issue of entry clearance. It should be noted that the issuing of entry clearance does not necessarily indicate that a grant of leave to enter the UK will be made at a port of entry by an Immigration Officer. The legal position of an Immigration Officer makes it impossible to pre-judge any decision they may make. However, the possession of a valid entry clearance, correctly issued for the intended purpose, makes it unlikely that leave to enter would not be granted on arrival at a UK port of entry.

### **Embassies – Foreign**

The foreign embassies based in the UK are involved in processing intercountry adoption applications although the extent can vary between countries. They may:

- Offer advice on their country's law and requirements
- Confirm the 'legality' of the FCO's legalisation certificate
- Arrange for the translation of adoption documents
- In some cases, forward applications direct to their home country for processing.

## F.

### **Full Adoptions**

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.

### **Foreign and Commonwealth Office – FCO**

The FCO's Legalisation Office legalises the Civil Servant's signature on the Certificate of Eligibility and embosses all the adoption application documents. Legalisation simply means confirming that a signature, seal or stamp appearing on a document is genuine. It does not confirm that a document is true and accurate. The FCO also provides the Department for Education and Skills with advice concerning changes of law, governments, etc. abroad where these might have an impact on intercountry adoption.

## H.

### **Habitual Residence**

The habitual residence of an individual will depend upon the individual facts and circumstances of their case. See chapter 13.

### **The Hague Conference on Private International Law**

The Hague Conference was founded by the Government of the Netherlands in 1893 'to work for the progressive unification of the rules of private international law'. It was made a permanent international organisation in 1951 and has its Permanent Bureau in The Hague. The principal method applied for achieving the purpose of the Conference is the preparation of multilateral treaties or conventions by the Member States. The United Kingdom became a Member State in 1925.

Hague Convention – 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 is essentially a framework setting out minimum standards for the process of intercountry adoption to work in the best interests of the children concerned and to enable countries to absorb its Articles within their own law. The Convention is underpinned by the 1989 United Nations Convention on the Rights of the Child which set out principles concerning the rights of children and included reference to adoption where a child cannot live with his or her own birth parents.

## I.

### **Interim Adoption Order**

Some countries issue an interim adoption order which will become a full adoption order after a probationary period. Usually reports on the placements will be needed prior to the full adoption order being made.

## L.

### **Legalisation**

Legalisation is the process whereby an authority confirms that a signature, seal or stamp appearing on a document is genuine. In addition to legalising the documents at the FCO many countries ask for the documents to be legalised at their Embassy in London.

## M.

### **Matching**

Identifying a suitable match between prospective adopters and child.

## N.

### **Notarised**

Foreign governments, central adoption authorities, courts etc ask for documents to be authenticated. This involves having the documents notarised by a Notary Public. A Notary Public is someone who attests documents to be original or true copies of the original. The notarised documents may then have to be legalised at the Foreign and Commonwealth Office.

## P

### **Prospective adopter**

A prospective adopter is someone who has made an application to adopt or has been approved to adopt but is waiting for a child to be matched with him/her.

### **Public Funds**

For immigration purposes, 'public funds' currently means:

- housing under the housing legislation
- attendance allowance, severe disablement allowance, invalid care allowance and disability living allowance
- income support
- Working Families tax credit
- Council tax benefit
- Disabled Person's tax credit
- housing benefit
- child benefit
- social fund payment
- Jobseeker's allowance

Please note that the list of public funds which are taken into account for immigration purposes may change.

### **Public Policy**

The Hague Convention allows an adoption order to be annulled on the grounds of public policy. The public policy test is a high level test. It is usually used in cases where it would be morally wrong for an individual to benefit from something that offends basic moral principles. For example, if there is evidence that the proper procedures have not been followed, a crime has been committed, or a child had been abused or "trafficked". It is also used in other cases, for example, to ensure that an individual does not gain financially from a wrong or a criminal offence.

## **R.**

### **Ratification**

The formal declaration by a member State that it has in place the necessary legislation and procedures to comply with the Hague Convention and that it will apply its articles from a certain date.

### **Receiving State**

A country that permits its citizens to adopt children habitually resident abroad and permits those children to live permanently with the adopters.

## **S.**

### **Simple Adoptions**

In many countries certain forms of adoption have the effect of creating a new and permanent parent-child relationship – known as ‘simple adoption’ – but which does not have the effect of totally severing all ties from the birth parents. Article 27 allows a receiving State to convert a simple adoption into a full adoption provided the parents and resultant parties referred to in Article 4 have given their consent to a full adoption. By this provision, in effect, all Convention Adoptions will be recognised as if they were full adoptions but it provides a mechanism whereby in certain cases a court may give a direction where a full adoption was not made or the original consent was not given for a full adoption. Unless such an application is made, the adoption is to be treated as a full adoption in accordance with Article 26(3).

### **State of origin**

A country that permits some of its children to be adopted by adopters residing abroad.

## **U.**

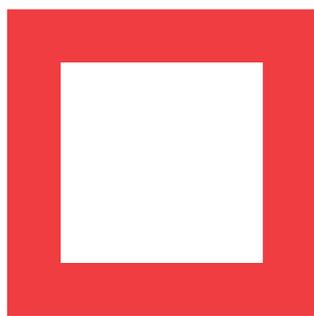
### **United Kingdom**

The term used to mean England, Wales, Scotland and Northern Ireland.

## **V.**

### **Voluntary Adoption Agencies**

Voluntary adoption agencies (VAAs) in England are registered with the Commission for Social Care Inspection. Subject to the conditions on which they are registered, they may provide an adoption service which includes the assessment of applicants as to their suitability to become adoptive parents. Six VAAs in England are currently registered to work on intercountry adoption independently. Others work under contract to local authorities.



## Annex G – Useful addresses, telephone numbers and websites

### GOVERNMENT

*NB. Government Departments cannot provide legal advice. Individuals requiring legal advice should be advised to consult an independent legal advisor. Local authorities and VAAs should likewise contact their legal advisors.*

#### Home Office

For information about  
immigration matters:

Home Office  
Immigration and Nationality  
Policy Directorate  
Apollo House  
36 Wellesley Road  
CROYDON CR9 3RR  
Tel: 0870 606 7766  
[www.ind.homeoffice.gov.uk](http://www.ind.homeoffice.gov.uk)

For information about  
nationality matters:

Home Office  
Nationality Directorate  
3rd Floor  
India Buildings  
Water Street  
LIVERPOOL L2 0QN  
Tel: 0151 237 5200  
[www.homeoffice.gov.uk](http://www.homeoffice.gov.uk)

## **Intercountry Adoption Casework Teams**

For information about adoption law and procedures:

England:

Looked After Children Division  
Department for Education and Skills  
Room 105, Wellington House  
133-155 Waterloo Road  
LONDON  
SE1 8UG

Tel: 020 7972 4014

[www.doh.gov.uk/adoption](http://www.doh.gov.uk/adoption) (NB. This website includes links to other useful websites)

Scotland:

Scottish Executive  
Young People and Looked after Children  
Area B-S, Victoria Quay  
EDINBURGH  
EH6 6QQ  
Tel: 0131 244 7137

Wales:

National Assembly for Wales  
Child Protection and Placements Team  
Children and Families Division  
Cathays Park  
CARDIFF CF10 3NQ  
Tel: 029 2082 3668

Northern Ireland:

Department of Health, Social Services  
and Public Safety  
Child Care Unit  
D1.4 Castle Buildings  
Stormont  
BELFAST BT4 3PP  
Tel: 028 9052 2610

## **Other Government Websites**

UK Visas: [www.ukvisas.gov.uk](http://www.ukvisas.gov.uk)

Foreign and Commonwealth Office: [www.fco.gov.uk](http://www.fco.gov.uk)

DTi: [www.dti.gov.uk](http://www.dti.gov.uk)

General open government website with links to local and central government:

[www.open.gov.uk](http://www.open.gov.uk).

## **B. Others**

British Association for Adoption and Fostering (BAAF)

Skyline House  
200 Union Street  
LONDON SE1 0LY  
Tel: 0207 593 2000

## Overseas Adoption Helpline

64-66 High Street

Barnet

Herts

EN5 5SJ

Tel: 0870 516 8742 (helpline)

Fax: 0208 440 5675

Email: [info@oah.org.uk](mailto:info@oah.org.uk)

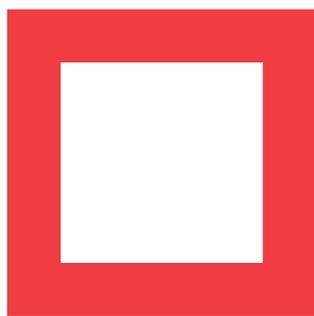
## Adoption Agencies Consultants Group on ICA

Open to managers of adoption teams dealing with intercountry adoption. Aims to share information, knowledge and experience and to promote ideas and strategies for developing child-centred intercountry adoption services.

Contact: Cherry Harnott (email: [cherry.harnott@portsmouthcc.gov.uk](mailto:cherry.harnott@portsmouthcc.gov.uk)).

NB. There are also a large number of support groups and campaign groups.





## Annex H – VAAs which currently work independently on intercountry adoption

Childlink  
10 Lion Yard  
Tremadoc Road  
Clapham North  
LONDON SW4 7NQ

Norwood Jewish Adoption Society  
Broadway House  
80-82 The Broadway  
Stanmore  
Middlesex HA7 4HB  
Tel: 020 8954 4555  
Email: [norwoodravenswood@nwrw.org](mailto:norwoodravenswood@nwrw.org)  
[www.nwrw.org](http://www.nwrw.org)

Nugent Care Society  
Blackbrook House  
Blackbrook Road  
St. Helens WA11 9RJ  
Tel: 01744 605 700

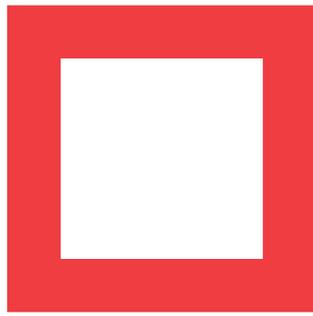
The Doncaster Adoption and Family  
Welfare Society Ltd  
Jubilee House  
1 Jubilee Road  
Wheatley  
DONCASTER DN1 2UE  
Tel: 01302 349909

Parents And Children Together  
FREEPOST (SCE6005)  
Reading RG1 4ZR  
Tel: 0800 731 1845  
email: [info@pactcharity.org](mailto:info@pactcharity.org)  
[www.pactcharity.org](http://www.pactcharity.org)

SSAFA Forces Help  
Specialist Adoption Social Worker  
SSAFA Central Office  
19 Queen Elizabeth Street  
London SE1 2LP  
Tel: 020 7463 9229



## Appendix C:



# Partial RIA for the Restrictions on the Preparation of Adoption Reports Regulations

## **PARTIAL REGULATORY IMPACT ASSESSMENT**

### **1. TITLE OF REGULATORY PROPOSAL**

The Restrictions on the Preparation of Adoption Reports Regulations.

### **2. PURPOSE AND INTENDED EFFECT**

#### **(i) The Objective**

These Regulations are to be made under section 94 of the Adoption and Children Act 2002 (the 2002 Act), which received Royal Assent in November 2002. They seek to regulate the preparation of certain reports which form an integral part of the adoption process, to ensure that only suitably skilled, professionally qualified staff or professionally supervised social work students may carry out the necessary assessments and report writing. Reports should be impartial and accurate and must not be prepared by anyone acting for financial gain. The Regulations will apply to all adoption agencies in England and Wales. This includes Voluntary Adoption Agencies (VAAs) registered with the National Care Standards Commission (NCSC) or the National Assembly for Wales as well as independent social workers.

## (ii) Background

The 2002 Act will legally underpin a number of the new policies for adoption set out in the White Paper *Adoption: a new approach*, published in December 2000 (which itself followed on from the Review of Adoption commissioned by the Prime Minister in 2000). The new measures included in the Act are set out below:

- a duty on local authorities to make arrangements to provide adoption support services, including financial support, according to a framework to be set out in regulations;
- a new right to an assessment of needs for adoption support services;
- an Independent Review Mechanism in relation to the approval of prospective adopters;
- a more consistent system for access to information for adopted people about their background and their adoption, and the disclosure of protected information by adoption agencies;
- the obligation for courts to fix and monitor timetables in adoption cases so that they are dealt with at the appropriate speed, and to support better case management;
- a new 'Special Guardianship' order to provide permanence for children for whom adoption is not a suitable option.

The 2002 Act will also:

- align adoption law with the relevant provisions of the Children Act 1989 to ensure that the child's welfare is the paramount consideration in all decisions to do with adoption;
- require adoption support agencies to register with the registration authority under Part 2 of the Care Standards Act 2000 to ensure that services are provided to a high standard;
- replace the now dated process of "freeing" children for adoption with new measures for placement for adoption with consent and Placement Orders;
- extend eligibility to apply to adopt jointly to unmarried couples
- incorporate the majority of the Adoption (Intercountry Aspects) Act 1999 with legislation on domestic adoption to create a single consolidated legal framework for adoption;
- strengthen the safeguards within the adoption system by improving the legal controls on intercountry adoption and advertising children for adoption, and making clear the steps in relation to adoption which may only be taken by adoption agencies;
- legally underpin the Adoption Register to suggest matches between children waiting to be adopted and approved adoptive families waiting to adopt.

Section 94 of the 2002 Act enables Regulations to prescribe that a person who is not within a prescribed description may not, in the prescribed circumstances, prepare a report for any person about the suitability of a child for adoption, or of a person to adopt a child or about the adoption, or placement for adoption, of a child.

The adoption reports covered by the restrictions are:

- The assessment report on a child where an adoption agency is considering adoption for him
- The assessment report on prospective adopters
- The assessment report where an agency is considering placing a child for adoption with prospective adopters
- The reports prepared for the Court considering an adoption application
- The reports which review a child's case after he has been placed for adoption or where an adoption agency is authorised to place the child for adoption but the placement has not yet taken place
- The report which may be prepared at the request of a foreign government in intercountry adoption cases, after an interim or full adoption order has been made
- The report prepared for the Court considering giving parental responsibility prior to adoption abroad.

There have been cases, in intercountry adoptions, of some couples seeking to circumnavigate the safeguards by privately commissioning social workers to write, in some cases, inaccurate and unjustifiably favourable reports to support their adoption applications. In some instances this has resulted in unsuitable placements in which the children involved subsequently had to be removed. The Government believes strongly that it is not in the interests of children who may be adopted that unqualified, unregulated individuals acting for financial gain should be able to prepare certain adoption reports.

It will be an offence to prepare or ask a report to be prepared by someone who does not meet the description in the Regulations. This will stop those who wish to circumnavigate the law and ensure that adoption reports offer an accurate reflection of the situation.

### **(iii) Risk assessment**

The preparation of reports is an important part of the adoption process since the detailed information collected provides a vital source of evidence on which key decisions are made – decisions which have a life-changing impact on vulnerable children and adoptive parents. The key risk is that without accurate reports, prepared by those with the right expertise, experience and qualifications, children can be mismatched with adoptive parents which can lead to trauma and distress for both, a lack of stability and permanence for the child, placements which disrupt and the return of children to local authority care. The restrictions provided by the Regulations will cover specified reports for all adoptions of children with the addition of post adoption order reports in intercountry adoptions where required.

There have been several cases in recent years which have highlighted the need for tighter safeguards and clarification on who may prepare adoption reports.

In the most recent case of child M<sup>1</sup> (born in Texas, USA in January 2000) a private social worker was engaged to write a home study report by prospective adopters resident in the UK. The couple (C and D) obtained a decree of adoption in respect of M in Texas in December 2000. The placement broke down after C (the adoptive mother) committed suicide in August 2001. M was placed with foster carers in September 2001 and was later freed for adoption by another adopter. In his judgment, Mr Justice Munby stated that:

“This was an adoption that should simply never have been allowed to take place. I think I can say with absolute confidence that no court in this country, armed with all the information that was available at the time the adoption order was made, would have contemplated allowing C and D to adopt M or any other child. And I cannot help thinking that my colleague in Texas would probably have been equally concerned had he not been misled by the seriously deficient reports on the basis of which he made his orders.”

In his judgment Mr Justice Munby reviews whether or not C and D were suitable to adopt a child given their personal histories:

- Both had been previously married (C – the adoptive mother – no fewer than 4 times) Social services had been involved with C for many years, in part due to concerns for her children
- C had been turned down as a prospective adopter by Barnados in 1995
- C had received psychiatric care, treatment for cancer, and had been admitted to hospital on several occasions after overdosing on analgesics and alcohol
- C and D were counselled out of making an application to adopt by a local authority adoption and fostering team in August 1999.

Mr Justice Munby notes the private social worker wrote a home study report in October 1999, a post placement report in January 2000 and a post placement update report in August 2000. He states that these reports were “positively and dangerously misleading” in that they omitted to mention C’s cancer and overdoses and says that they “display such a lack of elementary standards of professional care and competence as to render its author unfit on that ground alone ever to be involved in such work again”. Mr Justice Munby also noted the involvement of private social workers in a number of other problem intercountry adoption cases (including the Kilshaw case).

The recent ruling in *A and B v Essex County Council*<sup>2</sup> further highlights the need for professional assessment and report writing in the adoption process. The judgment in this case stressed the importance of an adoption agency providing accurate information about a child to the adoptive parents based on a careful assessment where a match has been proposed. The consequences of inappropriate matches can be devastating for both children and adopters.

1 Re: Judgment in the matter of the Adoption Act 1976 and in the matter of M (a child) between: a local authority (1) v M (by her guardian) (1) and D (2) – FD02A00059

2 HC QB Judgment by the Honourable Mr Justice Buckley, [2002] EWHC2707 (QB)

The need to improve the quality of post placement and post adoption reports in intercountry adoption cases has also been stressed in recent years. These reports in intercountry adoption cases are often prepared by local authorities or by the adopters themselves. For adoptions from China for example, Chinese authorities require 2 post placement reports on every child adopted (in 2001 there were 175 applications for adopters living in the UK to adopt a child from China, in 2002 111 applications and in 2003 104 applications.) Out of all of the reports prepared for the Chinese authorities, as many as 98% of them were completed by the adopters themselves. In 2002, the Chinese Centre for Adoption Affairs (CCAA) registered a complaint with the Department for Education and Skills regarding the poor quality of reports that had been prepared by adopters. The CCAA stated that, unless the quality of post-placement reports improved, they would stop allowing UK residents to adopt from China.

Although instances such as these are relatively rare, the consequences of poor and inaccurate reports forming the basis of important decisions in the adoption process can be disastrous for the children and families involved. Measures are therefore needed to strengthen existing legislation and clarify who may prepare adoption reports.

### 3. OPTIONS

- *Option 1* – to do nothing and rely on current arrangements.

This is effectively not an option. The Adoption Act 1976 is an outdated piece of legislation which does not address the need for adoption reports to be prepared by experienced and suitably qualified professionals. The 2002 Act has already received Royal Assent, and now needs to be implemented through regulations and guidance if the Government's commitment is to be delivered.

- *Option 2* – to issue guidance under section 7 of the Local Authorities Social Services Act 1970 specifying the qualifications and experience needed to prepare adoption reports.

The risk here is that guidance under section 7 is only binding on local authority adoption services. Although VAAs would normally work to the same standards as local authorities as a matter of good practice, neither they, nor independent social workers would be required to comply with the guidance. This would not achieve the full policy objective, in particular with regard to independent social workers, some of whom have been involved in the cases which have caused the most concern. This option would therefore effectively create a two-tier system with reports being prepared to different standards by authors with variable qualifications and experience.

- *Option 3* – to bring forward Regulations for England and Wales under the 2002 Act as drafted which restrict the preparation of reports to those who are working on behalf of an adoption agency and who have the necessary qualifications and experience.

This will deliver the Government's commitment and ensure that adoption reports are prepared by suitably qualified and experienced social workers who are working on behalf of a local authority adoption service or VAA.

#### **4(i) Benefits**

- *Option 1* – There may appear to be superficial benefits of this option to those adoptive parents who choose to engage a private social worker who may prepare an unjustifiably favourable report on their behalf. However, in the longer term it is neither in the interests of the child nor the adoptive parents for agencies and adoption panels to make their decisions based on reports which do not give a fair reflection of needs or parenting capacity.
- *Option 2* – the only benefit of this option is that those adoption agencies would retain a greater flexibility on which staff prepare adoption reports and how they meet demand. Issuing section 7 guidance would not prevent individuals from commissioning private social workers to write biased reports.
- *Option 3* – the value of this option will be seen in the improvement of the quality of adoption reports, which will in turn improve the quality of decision-making in the adoption process, which exists to safeguard the interests of children. In addition, the Regulations also respond to concerns in the adoption field and the courts about the commissioning of private social workers who have sometimes produced partial and inaccurate reports, thus putting children at risk.

Regulations will also ensure that all adoption reports, whether prepared by local authority adoption services or VAAs, or independent social workers working on behalf of an adoption agency, have been produced by social workers with the prescribed qualifications and experience.

#### **4(ii) Quantifying and valuing the benefits.**

The benefits of protecting children who may be considered suitable for adoption and of ensuring that all those who wish to adopt are assessed fairly and openly will largely not manifest themselves in monetary terms. The value will be seen in improving the quality of adoption reports and the accountability of decision-making in the adoption process thus ensuring the safety and welfare of children who are adopted.

In the longer term, there are clearly benefits to ensuring that adoptions succeed and the preparation of good quality reports which accurately assess a situation play a vital role in this. Expenditure on supporting adoptive families is likely to be significantly less than care provision which would be necessary if an adoption disrupted. As yet we are not able to provide a figure for the overall saving but the cost will depend on the cost of adoption support services provided under the framework for adoption support services, and on the numbers and types of children who are adopted. Regulations for the framework came into effect from October 2003.

## 5. COSTS

### (i) Compliance costs for business, charities and voluntary organisations

There is no impact on businesses. The proposals would impact solely on local authorities and the 31 VAAs that currently carry out adoption work.

- *Option 1* – none, but this option has been dismissed.
- *Option 2* – the costs of this option would be similar to those of option 3, however since it represents only partial implementation of the policy, this option has effectively been removed.
- *Option 3* – there is potential for increased costs for all adoption agencies due to their needing to ensure that their report writers meet the necessary standards and are registered (and have paid the annual fee) with either the General Social Care Council in England or the Care Council for Wales. In some cases, adoption agencies may wish to pay the Council's fees of approximately £30 per year on behalf of an individual social worker, although this is not likely to be common. Any such payment arrangements will however be a matter for employers and employees to agree as registration is, and will remain, something between the individual social worker and the Council. There may also be extra cost arising from the Continual Personal Development requirement to re-registration, requiring all registered social workers to complete at least 5 days training per year. However, it is the intention that in the future when the power to protect the title of 'social worker' is exercised (the proposed implementation date is currently 1 April 2005), only those qualified and registered with a UK Care Council will be able to use the title of Social Worker in England and Wales. The requirement for registration with a UK Care Council in these Regulations is therefore a pre-emptive requirement and not a new burden.

There is also potential for a greater volume of reports for agencies to write, as private or unqualified writers will be prohibited from preparing these reports. However, this issue has already been tackled on the whole via a banning of private home studies/reports from January 2000, following a clarification of the existing law. If extra work and therefore cost were to arise from the Regulations, VAAs would be able to recoup costs from local authorities via the interagency fee. The interagency fee is a payment currently made by an adoption agency (local authority) to another adoption agency (local authority or VAA) which has carried out part of the adoption process on its behalf. This serves to recompense for work undertaken. The way in which this fee is calculated is described in the information below, which illustrates how the Consortium of Voluntary Adoption Agencies (CVAA) sets the fee for its members (which constitute almost all of the VAAs):

The CVAA placement fee is set at 65% of the National Joint Council spinal column point 38 for the salary of local authority employees. It is currently £17,823 for all VAAs, payable in two parts; the first two thirds on placement and the remaining one third on the anniversary of the placement or on the making of an adoption order, whichever is sooner. The fee is increased by 10% for agencies in the London area and for sibling groups the fee is also increased by agreed amounts.

If there is any rise in VAA costs due to these Regulations, this fee may possibly need to rise to cover the extra cost (it is unlikely that VAAs would be able to use any of their voluntary funds to subsidise a rate increase that pertained to statutory work.) However we do not expect the Regulations to have a significant impact in this regard.

#### **(ii) Costs to Government**

These regulations impose new obligations on adoption agencies and therefore there will be some additional costs to local authorities (which fund their own adoption services and also reimburse VAAs for work they have done in assessing and preparing adopters via the inter-agency fee, which could increase as a result of the Regulations).

Local authorities have received an overall 41.5% increase in children's social services funding since 1997. This includes £66.5m over the three years 2001-02 to 2003-04 delivered mainly through the Quality Protects grant to secure sustained improvements in adoption services, fund the White Paper implementation agenda and meet the costs of implementing the National Adoption Standards. This funding will be mainstreamed from 2004-05.

*We will be asking specific questions during the consultation on these regulations to establish what the relative rise in costs for local authorities might be, and what knock-on effects they see this having.*

#### **(iii) Costs to others**

In the case of intercountry adoption, agencies have the discretion to charge the adopter for their services, and usually do so in practice. Therefore any rise in the cost of producing an adoption report for an intercountry adoption as a result of these Regulations is likely to be passed directly to the prospective adopter.

The Regulations will reduce business for private social workers, as the regulations specify that only suitably skilled, professionally qualified or professionally supervised persons working on behalf of local authorities or VAAs will be able to prepare and write reports. The paramount concern however must be safeguarding children through a high standard of reports with clear accountability. Private social workers can still be contracted by agencies, providing they have the required qualifications and registration and are professionally supervised and managed by the agency that has commissioned the report. Student social workers on an official social work qualification course work placement will be able to write reports under professional supervision.

## **6. IMPACT ON SMALL BUSINESS**

There is no impact on small businesses.

## **7. COMPETITION ASSESSMENT**

The restrictions provided by the Regulations will mean that only staff working on behalf of local authority adoption services and VAAs will be able to prepare adoption reports. Any element of competition is therefore limited to these establishments. However in practice, reports are likely to be written by the adoption agency dealing with a particular case, for example, where a child is in the care of a local authority it will be that local authority who will prepare a report. In the case of intercountry adoptions where adopters have been requested by a foreign authority to submit a post adoption report, it is likely that adopters will either approach the adoption agency who assessed them as adopters, or the local authority area in which they live. In this case, it is likely therefore that competition between local authority adoption services and VAAs will be minimal.

## **8. CONSULTATION**

The Department for Education and Skills has consulted with other key Government interests including the National Assembly for Wales in its development of the Regulations.

The Regulations are now being issued for full public consultation with those with an interest being given the opportunity to consider the Regulations over the next 3 months. It will be possible for those with an interest to write in with comments on the Regulations either via the internet or by post. The Regulations will be updated once comments have been received and analysed.

## **9. ENFORCEMENT, SANCTIONS, MONITORING AND REVIEW**

Local authorities and VAAs will be required to comply with these Regulations. The Care Standards Act 2000 (the 2000 Act) established the NCSC and the Welsh Assembly as the regulatory authorities. The NCSC is an independent and non-departmental public body. The registration authorities took over the regulation of social and health care services previously regulated by local councils and health authorities in April 2002. From 30 April 2003 the registration authorities assumed responsibility for the inspection and registration of VAAs and the inspection of local authority adoption services in England and Wales.

The NCSC and the Welsh Assembly will therefore inspect compliance with these Regulations. If regulations are judged to be breached, the registration authority must decide what action, if any, to take. In practice, if the Regulations were not being met in a few respects, it is likely the registration authority would note this in its inspection report and send a written warning. If the Regulations are persistently flouted and/or they were substantially or seriously disregarded, the registration authority may decide to take enforcement action either in terms of fines, cancelling registration or in terms of a criminal prosecution.

There should not be an initial peak in offences committed due to the extensive introduction period for the Regulations, which will allow sufficient time for adoption agencies to familiarise themselves with the new requirements and equip themselves to carry them out.

The 2000 Act also provides powers for Ministers to intervene in extreme circumstances; the appropriate Minister may make an order containing directions to ensure that the local authority complies with the duty within the period specified in the order.

Ministers will receive information about the failure of local authorities through a variety of routes, one of which is the NCSC. We also have a comprehensive performance assessment system for social services, the performance assessment framework, based on in-year and end-year monitoring, performance indicators and a range of inspection reports.

Section 94 of the 2002 Act specifically provides a series of offences for failure to comply with these Regulations. Anyone who commits an offence under section 94 of the 2002 Act will be liable on summary conviction to imprisonment for a term not exceeding 6 months, or a fine not exceeding level 5 on the standard scale, or both.

#### **10. SUMMARY AND RECOMMENDATION**

The Government has indicated its intention to bring forward regulations to implement the 2002 Act, of which these Regulations form part. Our recommended approach is *Option 3*. This option gives the best guarantee that the reform to the system identified as needed will be implemented.

The Regulations should not impose significant extra costs on adoption agencies, however the potential scale of any rise in costs associated with the Regulations will be investigated in detail as part of the consultation process.

#### **11. DECLARATION**

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Date:

Contact point:

Looked After Children Division

Department for Education and Skills

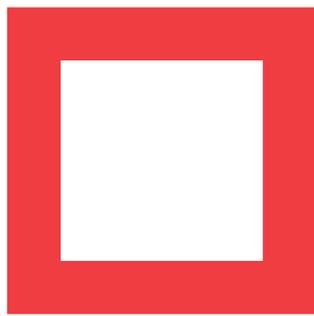
Wellington House

133-155 Waterloo Road

London SE1 8UG

020 7972 4750

Appendix D:



# Partial RIA for the Adoptions with a Foreign Element Regulations

## **PARTIAL REGULATORY IMPACT ASSESSMENT**

### **1. TITLE OF REGULATORY PROPOSAL**

The Adoptions with a Foreign Element Regulations.

### **2. PURPOSE AND INTENDED EFFECT**

#### **(i) Objective**

The aim of the Adoptions with a Foreign Element Regulations is to replicate the requirements of the current regulations, taking account of the new legal framework provided by the Adoption and Children Act 2002 and without increasing costs to local authorities and Voluntary Adoption Agencies (VAAs). The Regulations will impact on local authorities and the 6 VAAs that currently work on intercountry adoption. Implementation of the Regulations will take place at the same time as the Adoption and Children Act 2002 is implemented in full.

## (ii) Issue

The Government intends to overhaul the current legal framework for domestic and intercountry adoption by bringing the Adoption and Children Act 2002 fully into force. The 2002 Act will repeal the existing outdated Adoption Act 1976 and many of the measures of the Adoption (Intercountry Aspects) Act 1999.

When the 1976 Act and parts of the 1999 Act are repealed, the Intercountry Adoption (Hague Convention) Regulations 2003 and the Adoption (Bringing Children into the United Kingdom) Regulations 2003, which currently govern the operation of intercountry adoption in England and Wales, will need to be replaced in full. Arrangements to replace the regulations will need to take account of the new legal framework provided by the Adoption and Children Act 2002.

### *Background*

A number of international instruments provide a framework for the operation of intercountry adoption that keeps the welfare of the child central to the process and any decisions that are made.

From 1 June 2003 a range of changes were made to intercountry adoption processes and procedures to ensure that the UK's obligations under international law were delivered and children protected. These included:

- Amendments to the Adoption Act 1976 (made by the Adoption and Children Act 2002) in order to strengthen the safeguards for adoptions with a foreign element and increase the penalties for those failing to comply with the new restrictions
- The coming into force of the majority of the Adoption (Intercountry Aspects) Act 1999

The new arrangements mean that anyone habitually resident in England or Wales and wishing to adopt from overseas must first be assessed by an adoption agency and approved as eligible and suitable to adopt, regardless of their relationship to the child or the country they wish to adopt from. Likewise, before any child living in the UK can be adopted outside the British Islands, the High Court must make an order for the transfer of parental responsibility of the child to the prospective adopters.

The regulations made under the 1999 Act, together with the supporting Court Rules and the equivalent legislation put into place in Scotland and Northern Ireland, also allowed the UK to ratify the 1993 Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption. This Convention aims to establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and establishes a system of co-operation amongst those States that have ratified the Convention to help prevent the abduction, the sale of, or traffic in children.

The Government intends to overhaul the legal framework for adoption by bringing the Adoption and Children Act 2002 fully into force. This will repeal the existing outdated Adoption Act 1976 and many of the measures of the Adoption (Intercountry Adoption) Aspects Act 1999.

We intend to consult on the draft Adoptions with a Foreign Element Regulations in early 2004. Stakeholders will be requested to comment on whether the current requirements have been successfully replicated and what, if anything, needs to be addressed in the light of experience since the changes brought into force on 1 June 2003.

### (iii) Risk assessment

Recent focus on intercountry adoption has underlined the importance of appropriate assessment and approval processes to protect the welfare of children and demonstrated that some individuals still circumvent these thereby placing children at risk.

The checks on adopters include medical and police checks and an assessment of their home. While an appropriate assessment cannot guarantee a child's safety, it makes it much less likely that a child will be adopted by unsuitable people. Without the checks being carried out a child is at risk of being put in a damaging situation and at risk of abuse.

Likewise, unless England and Wales only recognise adoption orders from sending countries where proper procedures are in place children are at the risk of being bought and sold by unscrupulous individuals and abducted from their birth parents. By ensuring that England and Wales only recognise adoption orders from sending countries where proper consents are given by birth parents and that profit is not made from the adoption process it can be confirmed that intercountry adoption is truly in the best interests of the child concerned.

Compared to the total number of adoptions per year, the number of children adopted from overseas is small. However, it is likely that around 300 children are brought into the UK for the purposes of adoption every year. The Department for Education and Skills holds information on the number of intercountry adoption applications received per year. Not all applications will result in an adoption and some applications may be for more than one child. The numbers of applications are represented in the table below:

Year ending 31 March	1996	1997	1998	1999	2000	2001	2002	2003
Number of Applications	162	331	212	264	312	326	329	286

### 3. OPTIONS

- *Option 1* – to leave the system unregulated when the 2002 Act is implemented and the 1976 Act and parts of the 1999 Act are repealed.

- *Option 2* – to bring forward Regulations for England and Wales under the new legal framework of the 2002 Act that allow the arrangements currently in place to continue after the 2002 Act is implemented and the 1976 Act and parts of the 1999 Act are repealed.
- *Option 3* – to bring forward Regulations for England and Wales under the 2002 Act that extend the arrangements currently in place by making the assessment of prospective intercountry adopters more stringent and requiring adopters to meet additional requirements.

#### 4.(I) BENEFITS

- *Option 1* – no perceived benefits. It would create incentives overseas to abduct, buy and sell children and put children at risk of abuse by individuals who have not been assessed as eligible and suitable to adopt. It would also not allow the UK to meet its duties under international law. This option would therefore not meet the objective.
- *Option 2* – this option is the most effective way of meeting the objective and ensuring that children adopted from abroad are protected. It also allows the UK to meet its obligations under the UN Convention on the Rights of the Child (ratified in 1991) and 1993 Hague Convention.
- *Option 3* – this option would allow the UK to meet its international law obligations and introduce further checks and safeguards.

#### 4.(II) QUANTIFYING AND VALUING THE BENEFITS.

The benefits of preventing children from being adopted from overseas by parents who have not been through the proper assessment and approval procedures and preventing children from being abducted and bought and sold overseas will largely not manifest themselves in monetary terms. The value will be seen in improving the safety and welfare of children who are adopted from overseas and in reducing the pressure on child protection teams in local authorities that might otherwise have to take action. It is not possible to quantify the expected reduction in the workload of child protection teams.

### 5. COSTS

#### (a) Compliance costs for business, charities and voluntary organisations

There is no impact on businesses. The proposals would impact solely on local authorities and the six not-for-profit VAAs that are currently registered with the National Care Standards Commission to carry out intercountry adoption work independently. The present position whereby local authorities and VAAs may (and do) charge prospective adopters for reasonable fees will remain unchanged. We understand that at present the average fees charged are in the region of £4,000 per assessment.

- *Option 1* – none.

- *Option 2 – none.* This option would allow the existing arrangements to continue without any substantial changes. Option 2 imposes only two new minor requirements. Firstly, a new duty for local authorities and VAAs to meet with a prospective adopter to discuss the report on the child sent by the sending country. This is already required for all adoptions under the Hague Convention and the extension of this requirement is likely to result in an increase of less than one meeting per adoption agency per year. Secondly, a new requirement for local authorities to review the placement if no adoption order has been applied for after two years. This applies only where the child has been brought into the UK without a recognised adoption order. It is anticipated that the number of prospective adopters who will not have applied for an adoption order two years after bringing the child into the UK will be very small.
- *Option 3 – VAAs currently assess peoples’ suitability to be intercountry adopters, provide information on intercountry adoption and help individuals to check their eligibility to adopt from particular countries. They do not have to accept any extra requests for assessment and approval unless they wish to do so. More stringent assessments would result in an increase in the work required by local authorities and VAAs to assess prospective adopters. If additional requirements were to be placed on prospective adopters this would also result in an increased burden on local authorities and VAAs. Local authorities and VAAs may have difficulty in identifying the necessary extra capacity to deal with these greater obligations. This option is therefore unsuitable.*

#### **(b) Costs to Government**

Option 2 may impose some additional costs to local authorities to monitor placements after notice is given of intention to adopt. However, the requirements included in the Adoptions with a Foreign Element Regulations effectively replicate the duties currently placed on local authorities by the Adoption Act 1976. The new duty to carry out a review after two years if an application has not been made to adopt the child is unlikely to be required in more than a handful of cases so these costs will be negligible.

#### **Impact on small business**

There is no impact on small businesses. Due to the vulnerability of those affected by adoption and the international law that seeks to protect the rights of children and reduce the incidence of child trafficking, the primary legislation prevents any organisation making arrangements for adoption from making a profit. To be approved as a VAA the organisation must be a not-for-profit incorporated body.

However, we have considered the impact on small VAAs and anticipate that there will not be any impact beyond that seen as the result of the changes brought into force from 1 June 2003.

## **Competition Assessment**

We have considered the market for VAAs and found that there are 6 VAAs in England and Wales, in addition to the 172 local authorities with social services responsibilities who provide these services independently at present. As costs associated with this regulation are low and VAAs may (and do) charge prospective adopters for the service, competition is unlikely to be affected.

### **6. CONSULTATION**

The Department for Education and Skills and National Assembly for Wales have consulted with other key Government interests including the Department for Constitutional Affairs, the Home Office and UK Visas in its policy development of the regulations.

The Regulations are now being issued for full public consultation.

### **7. SUMMARY AND RECOMMENDATION**

We recommend Option 2. The Government has indicated its intention to bring the Adoption and Children Act 2002 fully into force. To do this and continue to meet the UK's obligations under international law, Regulations replicating the current intercountry adoption arrangements but taking account of the change to the legal context must be put into place. This will not impose significant extra obligations on VAAs.

### **8. ENFORCEMENT, SANCTIONS, MONITORING AND REVIEW**

Prospective overseas adopters, local authorities and VAAs will be required to comply with these Regulations. The maximum penalty for non-compliance is 12 months imprisonment and/or an unlimited fine upon conviction.

As now, any suspected offences will be investigated by the Police and prosecuted by the Crown Prosecution Service.

### **9. DECLARATION**

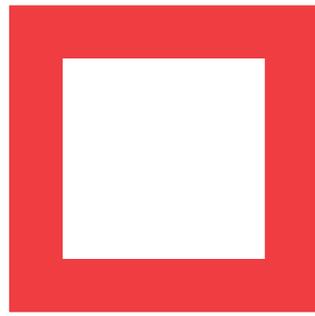
I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.

Date:

Contact point:

Looked After Children Division  
Department for Education and Skills  
Wellington House  
135-155 Waterloo Road  
London SE1 8UG  
020 7972 4014

Appendix E:



# Feedback form

## Consultation on Restrictions on the Preparation of Adoption Reports and Adoptions with a Foreign Element

### **CONSULTATION RESPONSE FORM**

The closing date for this consultation is 30/04/2004

Your comments must reach us by that date.

**Note when completing electronically:** Use: – **mouse** to access hyperlink. And to access input boxes;  
– **scroll** bar to navigate the form;

The information you send to us may need to be passed to colleagues within the Department for Education and Skills and/or published in a summary of responses received in response to this consultation. We will assume that you are content for us to do this, and that if you are replying by e-mail, your consent overrides any confidentiality disclaimer that is generated by your organisation's IT system, unless you specifically include a request to the contrary in the main text of your submission to us.

The Department may, in accordance with the Code of Practice on Access to Government Information, make available on public request, individual consultation responses. This will extend to your comments unless you inform us that you wish them to remain confidential.

**Please insert 'X' if you want us to keep your response confidential**

Name \_\_\_\_\_

Organisation (if applicable) \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Return completed forms to Consultation Unit  
Department for Education and Skills  
Area 2A, Castle View House  
East Lane  
Runcorn  
Cheshire WA7 2GJ

Telephone: 020 7972 4014

Fax: 01928 794311

email: reportsandforeign.consultation@dfes.gsi.gov.uk

Please insert 'X' in **one** of the following boxes to indicate whether you are responding:

As an individual       On behalf of an organisation

Please insert 'X' in one of the following boxes that best describes you as a respondent.

- |   |  |
|---|--|
| <input type="checkbox"/> Local Authority      | <input type="checkbox"/> Voluntary Adoption Agency |
| <input type="checkbox"/> Representative Group | <input type="checkbox"/> Social Worker             |
| <input type="checkbox"/> Adopter              | <input type="checkbox"/> Prospective Adopter       |
| <input type="checkbox"/> Academic             |  |

Other (please specify) \_\_\_\_\_

#### A. RESTRICTIONS ON THE PREPARATION OF ADOPTION REPORTS REGULATIONS & GUIDANCE

##### Question 1 – The Reports

Is the list of reports subject to the restrictions:

- Too extensive       About right       Too short       No view

Comment:

##### Question 2 – Skills and Experience

(a) Is the requirement that only those registered as a social worker or training as a social worker may prepare adoption reports:

- Too restrictive       About right       Too lenient       No view

(b) Is the requirement that anyone preparing an adoption report must have at least 3 years post-qualifying experience in adoption and family placement work or be managed and supervised by someone with this experience

- Too restrictive       About right       Too lenient       No view

(c) Overall, is the definition of who is permitted to prepare restricted reports:

- Too restrictive       About right       Too lenient       No view

Comment:

### Question 3 – Impact on Adoption Agencies

(a) Will the new burden created by these Regulations lead to a rise in costs for adoption agencies?

Yes  No

(b) If yes, what will the impact be?

Comment:

### Question 4 – Overall Detail

(a) Overall, is the level of detail provided by the Regulations and guidance:

Too much  About right  Too little

(b) What, if any, additional issues need to be covered?

Comment:

### Question 5 – Overall View of the Guidance

Overall, in assisting you in interpreting the requirements set out in the Regulations do you find the guidance:

Very helpful  Helpful  Not very helpful  Not at all helpful

**B. ADOPTIONS WITH A FOREIGN ELEMENT REGULATIONS & GUIDANCE**

**Question 6 – Links with other regulations**

(a) Is the guidance clear how the Adoption Agencies Regulations and Suitability of Adopters Regulations interrelate with the requirements in the Adoptions with a Foreign Element Regulations?

Yes                       No                       No view

(b) What improvements could be made?

Comment:

**Question 7 – Existing arrangements**

Have we succeeded in replicating the current regulations on intercountry adoption while taking the new context of the Adoption and Children Act into account?

Yes                       No                       No view

Comment:

### Question 8 – Lessons from phase one implementation

(a) The Regulations largely replicate the new arrangements implemented on 1 June 2003. Have these arrangements been successfully implemented in your experience?

Yes                       No                       No view

(b) Are there any lessons that need to be taken into account when finalising the new Regulations and guidance?

Yes                       No                       No view

(c) If yes, please specify and indicate whether they need to be reflected in the Regulations or guidance:

Comment:

### Question 9 – Monitoring placements

(a) The Regulations impose new duties on local authorities to monitor placements of children brought into England and Wales for the purposes of adoption. Are the requirements:

Too many                       About right                       Too few                       No view

(b) Are the recommended visiting intervals set out in the guidance:

Too many                       About right                       Too few                       No view

Comment:

### Question 10 – Adherence to Hague Convention principles

(a) We have tried to apply the spirit of the Convention to all intercountry adoptions. Do the Regulations and guidance adhere to this:

- Too much       About right       Too little

(b) If no, what changes need to be made?

Comment:

### Question 11 – Criteria for Overseas Adoptions

(a) In developing the criteria we have attempted to produce something that will safeguard and protect children, is consistent with the Hague Convention principles and with domestic requirements while also being something that adoption systems can be measured against. Has this been:

- Achieved in relation to principles       Not achieved in relation to principles  
 Achieved in relation to measurability       Not achieved in relation to measurability  
 No view

Comment:

(b) Overall are the criteria to be met by adoption systems before an adoption made overseas will be recognised in England and Wales:

- Too restrictive       About right       Too lenient       No view

(c) How should they be amended (if at all)?

Comment:

### Question 12 - Overall Detail

(a) Overall, is the level of detail provided by the Regulations and guidance:

Too much       About right       Too little

(b) What, if any, additional issues need to be covered?

Comment:

### Question 13 – Overall View of the Guidance

(a) Overall, in assisting you in interpreting the requirements set out in the Regulations do you find the guidance:

Very helpful       Helpful       Not very helpful       Not at all helpful

(b) How could we make the guidance more helpful and accessible?

Comment:

**C. PARTIAL REGULATORY IMPACT ASSESSMENT ON THE RESTRICTIONS ON THE PREPARATION OF ADOPTION REPORTS**

**Question 14 – Impact of the Regulations**

Do you agree with the assessment made on the likely impact of the draft Regulations?

- Yes  No, assessment too high  
 No, assessment too low  No view

Comment:

**Question 15 - Benefits**

Is the assessment of the benefits of the Regulations:

- Too positive  About right  Too negative

Comment:

**D. PARTIAL REGULATORY IMPACT ASSESSMENT ON THE ADOPTIONS WITH A FOREIGN ELEMENT  
REGULATIONS AND GUIDANCE**

**Question 16 – Impact of the Regulations**

Do you agree with the assessment made on the likely impact of the draft Regulations?

- Yes  No, assessment too high  
 No, assessment too low  No view

Comment:

**Question 17- Benefits**

Is the assessment of the benefits of the Regulations:

- Too positive  About right  Too negative

Comment:

**Question 18 – General Comments**

Please use this space for any general comments that you may have, comments on the layout of this consultation would also be welcomed.

Comment:

Thank you for taking the time to let us have your views. We do not intend to acknowledge individual responses unless you place an 'X' in the box below.

**Please acknowledge this reply**

Here at the Department for Education and Skills we carry out our research on many different topics and consultations. As your views are valuable to us, would it be alright if we were to contact you again from time to time either for research or to send through consultation documents?

Yes

No

### **Code of Practice on written consultation**

All UK national public consultations are required to conform to the following standards:

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

### **Thank you for taking the time to respond to this consultation.**

Completed questionnaires and other responses, should be sent to the address shown below by **30/04/2004**

**Send by post to:** Consultation Unit, Department for Education and Skills, Area 2A, Castle View House, East Lane, Runcorn, Cheshire, WA7 2GJ

Send by e-mail: Once you have completed the questionnaire, save it on your hard drive and then open an e-mail to: [reportsandforeign.consultation@dfes.gsi.gov.uk](mailto:reportsandforeign.consultation@dfes.gsi.gov.uk), attach the completed questionnaire file and send the e-mail.

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