

**The Adoptions with a Foreign Element  
(Scotland)  
Regulations 2009**

**CONSULTATION ON DRAFT  
REGULATIONS**

**The Scottish Government**

**Edinburgh, 2009**

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## **Introduction**

The Adoption and Children (Scotland) Act 2007 (the 2007 Act) received Royal Assent on 15 January 2007. The 2007 Act introduced a range of reforms into the law relating to adoption of, and permanent care for, children who cannot remain with their birth families. Once the new legislation is commenced, the existing legislation - the Adoption (Scotland) Act 1978 (the 1978 Act) - will be repealed, except to the extent necessary to maintain the legality of those adoptions that have already been made under it. One consequence of this is that existing Regulations made under the 1978 Act will no longer be valid. For that reason new Regulations require to be put in place to restate, and amend, extend and improve, existing Regulations. In doing this account will be taken of the report from the Adoption Policy Review Group (APRG) *Adoption: Better Choices for Our Children*, which has already shaped the 2007 Act itself.

This report analyses the responses received by the Scottish Government to the Adoptions with a Foreign Element (Scotland) Regulations consultation. This was the fifth of a suite of consultations on regulations associated with the Adoption and Children (Scotland) Act 2007. The consultation period ran from 9 October 2008 to 19 December 2008 and produced 9 responses; of which 6 were from local authorities and 3 were from organisations.

## **The Adoptions with a Foreign Element (Scotland) Regulations**

### **Question 1 – Should the current exemption of parents, guardians and relatives from the restrictions on the movement of children into or out of Great Britain for the purposes of adoption be removed?**

While the respondents agreed that the exemption should be removed, the responses indicated that these groups should be subject to some form of assessment. However, the suggested levels of assessment and what should be covered was fairly close to the full ‘home study’ which is required for Hague Convention adoptions and non-Hague Convention adoptions by ‘strangers’.

#### **Scottish Government action**

The Hague Convention sets out the minimum standards or basis rules to be observed within the intercountry adoption process. Since the Convention makes no distinction between relative and ‘stranger’ adoptions it seems reasonable that non-Hague adoptions by parents, guardians and relatives should be subject to the same level of assessment as adoptions under the Convention.

In the circumstances, the Scottish Government does not propose to make regulations exempting parents, relatives or guardians from the restrictions imposed on the movement of children into or out of the country for the purpose of adoption.

### **Question 2 – Should any other information be included in regulation 41?**

One respondent felt that the information contained in this regulation was comprehensive but commented that there didn’t appear to be a requirement for Disclosure (Scotland) checks in (draft) regulation 7(1)(h) of the Adoption Agencies (Scotland) Regulations. Another respondent thought that there was no clear tie-in between this regulation (or regulation 42) and the report mentioned in regulation 7(1)(h) of the Adoption Agencies (Scotland) Regulations. The same respondent thought that paragraph (1) (of regulation 41) should include a requirement on an agency to include information about the child’s views and wishes on the proposed adoption.

#### **Scottish Government action**

With regard to the Disclosure (Scotland) checks, this would be covered by the information collected under (draft) regulation 7(1)(c) of the Adoption Agencies (Scotland) Regulations. No action required.

Regulation 7 of the Adoption Agencies (Scotland) Regulations makes it quite clear that a report should be prepared and regulation 41 specifies what the report should include. No action required.

The need to include information about the child’s views and wishes has now been reflected in the regulations.

### **Question 3 – Is regulation 54 required?**

All respondents felt that this regulation was not required.

#### **Scottish Government action**

Delete regulation.

### **Question 4 – Is regulation 55 required?**

All respondents agreed that this regulation was required.

#### **Scottish Government action**

No action required.

**Question 5 – Is regulation 56(1) required, and if so, under what circumstances should sections 21-23 be disapplied (e.g. should the disapplication apply only to cases where the child was not placed by an adoption agency)?**

**Question 6 – Is regulation 56(2) required?**

There were six responses to these two questions and there was no real consensus. One of the responses felt that regulation 56 was correct for cases in Chapter 1 of Part 3, but not correct for cases under Chapter 2 when Scotland is the country of origin as, in that situation, anyone applying for an order here would be applying for one under section 59 and not a Convention adoption order. The respondent therefore offered an alternative form of words.

#### **Scottish Government action**

Part 3, Chapter 1, applies to adoptions involving prospective adopters who are habitually resident in the British Islands and a child who is habitually resident outwith the British Islands. The adoption can be undertaken in either (a) the country the child comes from or (b) this country. If (a), sections 21-23 wouldn't apply anyway. If (b), regulation 56(1) disapplies sections 21-23 because of the procedure set out in draft regulation 30 which enables a local authority to withdraw the child from the prospective adopter.

Part 3, Chapter 2, applies to adoptions involving a child who is habitually resident in the British Islands and prospective adopters who are habitually resident outwith the British Islands. The adoption can be undertaken either (a) this country or (b) the country the prospective adopters come from. If (a) the adoption would be done as a Convention adoption order. Although draft regulation 53 effectively means that a reference to "adoption order" means a reference to "a Convention adoption order", draft regulation 56(2) is intended to remove any doubt as to what happens to cases which fall within Chapter 2 of Part 3. If (b), a section 59 order would be required. Draft regulation 9(a)(iv) substitutes "order under section 59" for "adoption order" in section 18(2). Section 21 therefore applies as though the "notice" in section 21(1) is a notice of intention to apply for an order under section 59.

The alternative wording suggested is insufficient to enable "adoption order" in section 21(4) to be read as "order under section 59".

The response has, therefore, highlighted an omission in the regulations as there would be nothing to prevent the child from being removed in a section 59 case. This omission has been corrected by including section 21(4) in draft regulation 9(a) as a provision which should apply to orders under section 59.

**Question 7 – Is regulation 57 required?**

There were 2 responses to this question and both respondents agreed that the regulation was required.

#### **Scottish Government action**

No action required.

**Question 8 – Is regulation 58 required?**

There were 4 responses to this question. Two respondents agreed with the regulation and 1 felt that it was not required. The other respondent was unclear why the regulation was required because the existing provision in the 1978 Act (section 12) was not modified by the Intercountry Adoption (Hague Convention) (Scotland) Regulations 2003.

### **Scottish Government action**

No action required. The effect of the modification in the 2003 Regulations was that an adoption order under the Convention could not be made if the person had reached the age of 19. The removal of “or over” as proposed by this regulation has the same effect.

### **Question 9 – Are regulations 59 and 60 required?**

Four responses were received. Two respondents agreed that the regulations were required and 2 felt that the regulations were confused and may not achieve their intention. The latter 2 responses (one of which suggested alternative wording) pointed out that under the Convention, eligibility is about residence in the home country not domicile and referred to draft regulation 12.

### **Scottish Government action**

No action required. Draft regulation 12 applies to the eligibility of adopters habitually resident in the UK who wish to adopt a child who is habitually resident outwith the UK.

Draft regulations 59 and 60 relate to a Convention adoption order. The residence requirements have to be ‘removed’ from the Act because they are covered in draft regulations 34 and 51. The modifications proposed by one of the respondents would not work because their effect would be that both the child and the prospective adopters would be habitually resident in the British Islands for at least one year. This would mean that the adoption could not be done under the Convention as the Convention requires the child to be habitually resident in one contracting State and the adopters to be habitually resident in another contracting State.

### **Question 10 – Have the consultees any comments on regulation 61?**

Only one response was received and the respondent felt unable to answer the question until the final version of the Adoption Agencies (Scotland) Regulations was available.

### **Scottish Government action**

No action required.

### **Question 11 – Should any other modifications be included in regulation 61?**

One response was received to the effect that it was impossible to say whether this regulation was sufficient until a final version of the Adoption Agencies (Scotland) Regulations was available. Respondent wanted modifications under this regulation to duplicate as much as possible the modifications made by the Intercountry Adoption (Hague Convention) (Scotland) Regulations 2003 so that the new intercountry adoption system under the Convention remains as similar as it can be to the existing one.

### **Scottish Government action**

No action required. Intention is to retain existing system but duplication of the modifications in the 2003 Regulations is not always possible/necessary as the wording and intent of the 2007 Act may be different to the 1978 Act.

### **Question 12 – Should a failure to comply with any other provisions of the regulations constitute a criminal offence?**

Four responses were received to this question. Although one of the respondents was uncertain as to whether all necessary offences have been covered, the responses appeared to be content with this regulation. One of the responses suggested that consideration be given to imposing offences in relation to non-Convention adoptions.

### **Scottish Government action**

No action required. Offences in relation to non-Convention adoptions will be covered by section 61 which states that failure to comply with any requirements or conditions imposed by regulations will constitute an offence.

### **Comments on other regulations**

#### **Regulation 4**

One respondent suggested that there should be a requirement for the prospective adopters or the local authority to notify the Government of the process of the match and the child's arrival in this country.

### **Scottish Government action**

The only mechanisms currently in place relate to matching details. These details can be sent by the overseas authority either to the Department for Children, Schools and Families, the Scottish Government or to the prospective adopters. The respondents suggestion is reasonable and regulations 5 and 24 have been adjusted to place a requirement on the local authority/adoption agency to notify the Scottish Ministers in writing of the child's arrival into the UK/Scotland.

#### **Regulation 5**

The same respondent suggested that it might be helpful to clarify whether or not the private fostering legislation will continue to apply.

### **Scottish Government action**

Private fostering legislation will continue to apply but it is more appropriate to cover this in guidance.

#### **Regulation 15**

One respondent expressed a number of concerns in relation to this regulation and the offences in Schedule 1. These concerns appear to cover 4 specific issues i.e.(i) section 13(5)(a) of the Criminal Law (Consolidation) (Scotland) Act 1995 should be excepted from paragraph 2 or provision should specify that offences are restricted to those committed against persons under 17 years of age (ii) references to repealed provisions (iii) an error in Schedule 1, paragraph 3(a) and (iv) separate provision for male rape should be added to the Schedule.

### **Scottish Government action**

Schedule 1 has been adjusted to cover points (i) (so far as practicable – see following paragraph) and (iii). With regard to (ii), the regulations can only refer to the Criminal Procedure (Scotland) Act 1995 Schedule 1 offences and, in turn, to those provisions of the Consolidation Act which are in force at the time the regulations are made. It is correct that some provisions of section 13 in particular have been repealed following legal challenge but, as the provisions cited are now repealed, they are not caught in Schedule 1 to the regulations so there is no question of non-ECHR compliance in this regard.

As indicated above, Schedule 1 has been adjusted to cover point (i) so far as practicable. This is because the issues raised by the respondent in relation to (i) are linked to point (iv) which cannot immediately be resolved. Male rape is not a crime recognised in Scots law. Although this is likely to be addressed in the Sexual Offences Bill which aims to create a new statutory offence of rape against a male, the regulations cannot pre-empt that.

**Regulation 17**

One respondent suggested that in paragraph (d) “may obtain legal advice” should be changed to “must obtain legal advice”.

**Scottish Government action**

No action required. Legal advice is only required if needed to assist the adoption panel in coming to a decision.

## **Regulation 20**

One respondent suggested that the timescale in paragraph (2) should be extended from 7 days to 21 days as there is a significant amount of information which has to be passed to the Central Authority and this can take around 21 days to prepare.

### **Scottish Government action**

No action required. The 7 day timescale is the same as in the Intercountry Adoption (Hague Convention (Scotland) Regulations 2003. The report being requested should already exist as it is the one which is prepared for and submitted to the adoption panel under regulation 16(6).

## **Regulation 53**

One respondent suggested that the regulation be re-worded to read “Subject to the modifications provided for in this Chapter, the provisions of the Act apply to adoptions within the scope of the Convention unless the context otherwise requires”.

### **Scottish Government action**

See Scottish Government action at Part 3 Chapter 3 below.

### **Other comments**

#### **Part 3 Chapter 3**

One respondent suggested that a modification to section 31 of the 2007 Act should be included here which would have the same effect in relation to parental consent etc as the modification made to section 16 of the 1978 Act by regulation 31 of and Schedule 3 to the Intercountry Adoption (Hague Convention (Scotland) Regulations 2003 had.

The modification of section 31 was also raised by the Sheriff Court Rules Council Adoption Working Group (SCRCAWG) as part of their revision of the existing Court Rules.

### **Scottish Government action**

Regulation 53 has been adjusted in order to meet the SCRCAWG concerns. As a result of replacing “adoptions within the scope of the Convention” in regulation 53, this term has been replaced with “Convention adoption order” in regulations 57 and 61 (which is a new regulation). In regulation 62 (which was regulation 61 in the consultation version of the regulations) the term “adoptions to be effected by a Convention adoption order or a Convention adoption” has been used as the various procedures set out in the Adoption Agencies (Scotland) Regulations 2009 are applicable regardless of whether the prospective adopters adopt the child in Scotland or in the child’s own State.

### **Designated List**

One respondent asked how the existing Orders (i.e. the Adoption (Designation of Overseas Adoptions) Order 1973 and the Adoption (Designation of Overseas Adoptions) (Variation) (Scotland) Order 1995) will be dealt with as a result of the repeal of the Adoption (Scotland) Act 1978.

### **Scottish Government action**

The Orders in question will be ‘saved’ by the Transitional/Savings provisions Order.



**2009 No. 182**

**CHILDREN AND YOUNG PERSONS**

**The Adoptions with a Foreign Element (Scotland)  
Regulations 2009**

*Made* - - - - - *14th May 2009*

*Laid before the Scottish Parliament* *15th May 2009*

*Coming into force* - - - *28th September 2009*

**ARRANGEMENT OF REGULATIONS**

**PART 1**

*GENERAL*

1. Citation and commencement
2. Interpretation

**PART 2**

*BRINGING CHILDREN INTO, AND TAKING CHILDREN OUT OF, THE UNITED KINGDOM*

**CHAPTER 1**

*BRINGING CHILDREN INTO THE UNITED KINGDOM*

3. Requirements applicable in respect of bringing, or causing another to bring, a child into the United Kingdom
4. Conditions applicable in respect of a child brought into the United Kingdom
5. Functions imposed on the local authority
6. Application of Chapter 2 of Part 1 of the Act

**CHAPTER 2**

*TAKING CHILDREN OUT OF THE UNITED KINGDOM*

7. Orders under section 59 of the Act: requirements
8. Matters to be submitted to the court under regulation 7
9. Application of the Act in respect of orders under section 59

## **PART 3**

### *ADOPTIONS UNDER THE CONVENTION*

#### **CHAPTER 1**

##### *PROCEDURE IN SCOTLAND WHERE THE UNITED KINGDOM IS THE RECEIVING STATE*

10. Application of Chapter 1
11. Application: eligibility, and suitability, to adopt
12. Determination of eligibility to adopt
13. Provision of information
14. Case records and counselling
15. Criminal record checks
16. Duties of adoption agency prior to decision on suitability
17. Functions of the adoption panel
18. Adoption agency decision, notification and request for review
19. Review without request
20. Procedure following decision that prospective adopters are suitable to adopt
21. Procedure following receipt of Article 16 Information
22. Procedure where proposed adoption not to proceed
23. Child's entry into the United Kingdom
24. Notifications to be given prior to child's entry into the United Kingdom
25. Child's entry into the United Kingdom where no Convention adoption made: applicable provisions
26. Duty of prospective adopters to notify local authority
27. Functions of the local authority following child's entry into the United Kingdom
28. Duty of prospective adopters
29. Prospective adopters not wishing to proceed with adoption
30. Withdrawal of child from prospective adopters
31. Breakdown of placement
32. Convention adoptions subject to a probationary period
33. Report of local authority investigation
34. Convention adoption order
35. Requirements following a Convention adoption order or a Convention adoption
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38. Application of Chapter 2
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40. Counselling and information for parent or guardian and counselling for others
41. Information for inclusion in report and for adoption panel
42. Function of the adoption panel in assessing the child
43. Decision and notification
44. Convention list
45. Receipt of Article 15 Report
46. Proposed placement: functions of adoption panel and adoption agency
47. Adoption agency's decision: notification and return of documents
48. Preparation of the Article 16 Report
49. Requirements to be met before child placed with Convention prospective adopter
50. Requirements for order under section 59 of the Act prior to proposed Convention adoption
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52. Requirements following a Convention adoption order or a Convention adoption

## CHAPTER 3

### *MISCELLANEOUS PROVISIONS*

53. Application of the Act to, and making of, Convention adoption orders
54. Notification to local authority of adoption application
55. Prohibition on removal where Convention adoption order pending
56. Removal of children
57. Return or delivery of child
58. Age of person in respect of whom Convention adoption order may be made
59. Application for Convention adoption order by relevant couple
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61. Convention adoption orders: consent
62. Application and modification of the Adoption Agencies Regulations
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## PART 4

### *REVOCAION*

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- SCHEDULE 1 — SPECIFIED OFFENCES  
SCHEDULE 2 — CERTIFICATE OF ELIGIBILITY AND APPROVAL  
SCHEDULE 3 — CERTIFICATE THAT AN ADOPTION HAS BEEN MADE IN  
ACCORDANCE WITH THE CONVENTION

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 1(1) to (3) and (5) of the Adoption (Intercountry Aspects) Act 1999<sup>(a)</sup> and sections 8, 58(5), (6), (7) and (10), 59(3) and (6) and 61(1) of the Adoption and Children (Scotland) Act 2007<sup>(b)</sup> and all other powers enabling them to do so.

## PART 1 GENERAL

### **Citation and commencement**

1.—(1) These Regulations may be cited as the Adoptions with a Foreign Element (Scotland) Regulations 2009 and come into force on 28th September 2009.

(2) These regulations extend to Scotland only.

### **Interpretation**

2. In these Regulations—

“the Act” means the Adoption and Children (Scotland) Act 2007;

“the Adoption Agencies Regulations” means—

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(a) 1999 c.18. Section 1 of the Adoption (Intercountry Aspects) Act 1999 enables the Scottish Ministers to make regulations to give effect to the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption concluded at the Hague on 29th May 1993 (“the Convention”). The functions of the Secretary of State transferred to the Scottish Ministers by virtue of section 16(2) of the 1999 Act and section 53 of the Scotland Act 1998 (c.46).

(b) 2007 asp 4.

- (a) in Part 2, the Adoptions Agencies (Scotland) Regulations 2009<sup>(a)</sup>; and
  - (b) in Part 3, those Regulations subject to the modifications set out in regulation 62;
- “adoption agency” in Part 3 means a local authority or a registered adoption service which is an accredited body for the purposes of the Convention;
- “adoption panel”, in relation to an adoption agency, means an adoption panel appointed by the agency under regulation 3 of the Adoption Agencies Regulations, and includes a joint adoption panel (within the meaning of that regulation) established by the agency jointly with any other adoption agency;
- “CA of the receiving State” means, in relation to a Convention country<sup>(b)</sup> other than the United Kingdom, the Central Authority of the receiving State;
- “CA of the State of origin” means, in relation to a Convention country other than the United Kingdom, the Central Authority of the State of origin;
- “Central Authority” means the Scottish Executive;
- “competent authority”, in relation to a function under the Convention, means an authority in a Contracting State which is entitled to carry out that function;
- “Convention prospective adopter” is to be construed in accordance with regulation 45(1);
- “eligible to adopt” in Part 3, except in regulations 16(4)(b) and 50(3)(a)(ii), is to be construed in accordance with regulation 12(1);
- “prospective adopters”–
- (a) in Chapter 1 of Part 2 means a person who makes, or persons who make, an application under regulation 3; and
  - (b) in Chapter 1 of Part 3 means a person or, as the case may be, a relevant couple who makes an application under regulation 11;
- “receiving State” is to be construed in accordance with Article 2 of the Convention;
- “relevant foreign authority” means a person or body outwith the British Islands performing functions in the country in which the child, or the prospective adopter, is habitually resident which correspond to the functions of an adoption agency or to the functions of the Scottish Ministers in respect of adoptions with a foreign element;
- “relevant local authority”, in relation to prospective adopters, means–
- (a) the local authority within whose area the prospective adopters have their home; or
  - (b) in the case where the prospective adopters no longer have a home in Scotland, the local authority for the area in which they last had their home; and
- “State of origin” is to be construed in accordance with Article 2 of the Convention.

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(a) S.S.I. 2009/154.

(b) The expression “Convention country” is defined in section 119(1) of the Act.

PART 2  
BRINGING CHILDREN INTO, AND TAKING CHILDREN OUT OF, THE  
UNITED KINGDOM

CHAPTER 1  
BRINGING CHILDREN INTO THE UNITED KINGDOM

**Requirements applicable in respect of bringing, or causing another to bring, a child into the United Kingdom**

3. A person intending to bring, or to cause another to bring, a child into the United Kingdom in circumstances where section 58 of the Act applies must—

- (a) apply in writing to an adoption agency for an assessment of the person’s suitability to adopt a child; and
- (b) give the adoption agency any information it may require for the purpose of the assessment.

**Conditions applicable in respect of a child brought into the United Kingdom**

4.—(1) This regulation prescribes the conditions for the purposes of section 58(6) of the Act in respect of a child brought into the United Kingdom in circumstances where section 58 applies.

(2) Prior to the child’s entry into the United Kingdom, the prospective adopters must—

- (a) receive from the Secretary of State notification in writing that the Secretary of State has issued a certificate confirming to the relevant foreign authority—
  - (i) that the prospective adopters have been assessed and approved as eligible and suitable to be adoptive parents in accordance with the Adoption Agencies Regulations; and
  - (ii) that if entry clearance and leave to enter and remain, as may be necessary, is granted and not revoked or curtailed, and an adoption order is made or an overseas adoption<sup>(a)</sup> is effected, the child will be authorised to enter and reside permanently in the United Kingdom;
- (b) before visiting the child in the State of origin—
  - (i) notify the adoption agency of the details of the child to be adopted;
  - (ii) provide the adoption agency with any information and reports received from the relevant foreign authority; and
  - (iii) discuss with the adoption agency the proposed adoption and any information and reports so received;
- (c) visit the child in the State of origin (and, where the prospective adopters are a couple, each of them must so visit the child); and
- (d) after that visit—
  - (i) confirm in writing to the adoption agency that the prospective adopters have done so and wish to proceed with the adoption;
  - (ii) provide the adoption agency with any additional reports and information received on or after that visit; and
  - (iii) notify the adoption agency of the date the prospective adopters expect to enter the United Kingdom with the child.

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(a) The expression “overseas adoption” is defined in section 67 of the Act.

(3) On entering the United Kingdom, the child must be accompanied by the prospective adopters (and, where the prospective adopters are a couple, the child must be accompanied by both members of the couple unless the adoption agency and the relevant foreign authority have agreed that it is necessary for only one of them to do so).

(4) Except where an overseas adoption is, or is to be, effected, the prospective adopters must within the period of 14 days beginning with the date on which the child is brought into the United Kingdom give notice to the relevant local authority—

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

(5) In a case where the prospective adopters have given notice in accordance with paragraph (4) and subsequently move their home into the area of another local authority, they must within 14 days of so moving confirm in writing to that authority—

- (a) the child's arrival in the United Kingdom; and
- (b) that notice of the prospective adopters' intention has been given in accordance with paragraph (4)(b).

(6) In this regulation, "entry clearance" has the same meaning as in the Immigration Act 1971(a).

#### **Functions imposed on the local authority**

**5.**—(1) This regulation applies where—

- (a) a child is brought into the United Kingdom in circumstances where section 58 of the Act applies; and
- (b) notice has been given by the prospective adopters to the relevant local authority in accordance with section 18(2) of the Act of their intention to apply for an adoption order.

(2) The local authority must—

- (a) if it has not already done so, set up a case record in respect of the child and place on it any information received from—
  - (i) the relevant foreign authority;
  - (ii) the adoption agency (if it is not the local authority);
  - (iii) the prospective adopters;
  - (iv) the entry clearance officer; and
  - (v) the Secretary of State and the Scottish Ministers;
- (b) send to the Scottish Ministers written notification of the child's arrival in the United Kingdom;
- (c) send the prospective adopters' registered medical practitioner (and, where required in cases where the prospective adopters are a relevant couple(b), the registered medical practitioner of each member of the couple) written notification of the child's arrival in the United Kingdom and send with that notification a written report of the child's health history and current state of health (so far as is known);
- (d) send to the Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978(c) in whose area the prospective adopters have their home written notification of the child's arrival in the United Kingdom;

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(a) 1971 c.77.

(b) The expression "relevant couple" is defined in section 29(3) of the Act.

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

- (e) where the child is of school age (as defined in section 31 of the Education (Scotland) Act 1980(a)), send to the education authority in whose area the prospective adopters have their home written notification of the child's arrival in the United Kingdom and information, if known, about–
  - (i) the child's educational history; and
  - (ii) whether the child has additional support needs (within the meaning of the Education (Additional Support for Learning) (Scotland) Act 2004(b));
- (f) ensure that the child and the prospective adopters are visited within one week of receipt of the notice mentioned in paragraph (1)(b) and thereafter not less than once a week until the review mentioned in sub-paragraph (g) and thereafter at such frequency as the local authority may (subject to sub-paragraphs (g) and (h)) decide;
- (g) unless the child no longer has a home with the prospective adopters or an adoption order is made in respect of the child–
  - (i) carry out a review of the child's case not more than 4 weeks after receipt of the notice mentioned in paragraph (1)(b);
  - (ii) within 3 months of that review, visit the child and prospective adopters and, if the local authority considers it necessary, carry out a further review of the child's case; and
  - (iii) thereafter at intervals not exceeding 6 months, visit the child and prospective adopters and, if the local authority considers it necessary, carry out a further review of the child's case;
- (h) when carrying out a review, consider–
  - (i) the child's needs, welfare and development and whether any changes need to be made to meet those needs or assist that development;
  - (ii) the arrangements for the provision of adoption support services(c) and whether there should be any re-assessment of the need for those services; and
  - (iii) the need for further visits and reviews; and
- (i) ensure that–
  - (i) where necessary, advice is given to the prospective adopters as to the child's needs, welfare and development;
  - (ii) written reports are made of all visits and reviews of the case and placed on the child's case record; and
  - (iii) during visits carried out in accordance with this paragraph, advice is given, where appropriate, to the prospective adopters and the child as to the availability of adoption support services.

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

(4) In a case where the prospective adopters fail, within 2 years of the local authority's receiving the notice mentioned in paragraph (1)(b), to make an application under section 29 or section 30 of the Act, the authority must review the case.

(5) For the purposes of the review referred to in paragraph (4), the local authority must consider–

- (a) the child's needs, welfare and development and whether any changes need to be made to meet those needs or assist that development;
- (b) the arrangements, if any, in relation to the exercise of parental responsibilities and parental rights in relation to the child;

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(a) 1980 c.44.

(b) 2004 asp 4.

(c) The expression "adoption support services" is defined in section 1(5) of the Act.

- (c) the terms upon which leave to enter the United Kingdom is granted and the immigration status of the child;
- (d) the arrangements for the provision of adoption support services and whether there should be any re-assessment of the need for those services; and
- (e) in conjunction with the appropriate agencies, the arrangements for meeting the child's health care and educational needs.

(6) In a case where a local authority ("the original authority") receives the notice mentioned in paragraph (1)(b) and is further notified by the prospective adopters that they intend to move, or have moved, their home into the area of another local authority ("the new authority"), the original authority must, within 14 days of receipt of such further notification, notify the new authority of—

- (a) the name, sex, date of birth and place of birth of the child;
- (b) the name, sex and date of birth of the prospective adopters;
- (c) the date of the child's arrival in the United Kingdom;
- (d) the date the original authority received the notice mentioned in paragraph (1)(b);
- (e) (if known), whether an application for an adoption order in respect of the child has been made and the stage of those proceedings; and
- (f) any other relevant information.

(7) In this regulation, "entry clearance officer" means a person responsible for the grant or refusal of entry clearance; and "entry clearance" has the same meaning as in the Immigration Act 1971.

#### **Application of Chapter 2 of Part 1 of the Act**

**6.—**(1) This regulation applies in the case of a child brought into the United Kingdom in circumstances where section 58 of the Act applies.

(2) Subsection (6) of section 21 of the Act (restrictions on removal: notice of intention to adopt given) does not apply.

(3) Section 25 of the Act (return of child placed for adoption by adoption agency) applies as if—

- (a) for paragraphs (a) and (b) of subsection (1) there were substituted "a child is brought into the United Kingdom in circumstances where section 58 applies";
- (b) in subsection (2)—
  - (i) after "adopters" there were inserted "of the child in question"; and
  - (ii) for "agency or society" there were substituted "local authority for the area in which they have their home ("the authority")";
- (c) for "agency or society" in subsection (3) there were substituted "authority";
- (d) in subsection (6)—
  - (i) for "return" there were substituted "deliver";
  - (ii) in each of paragraphs (a) and (b), for "agency or, as the case may be, society" there were substituted "authority";
- (e) in subsection (8) for "return" there were substituted "deliver"; and
- (f) in subsection (9)—
  - (i) for "returned" there were substituted "delivered"; and
  - (ii) for the words from "child's" to the end of that subsection there were substituted "authority".

## CHAPTER 2

### TAKING CHILDREN OUT OF THE UNITED KINGDOM

#### **Orders under section 59 of the Act: requirements**

7.—(1) This regulation prescribes, for the purposes of subsection (3) of section 59 of the Act (preliminary order where child to be adopted abroad), the requirements to be satisfied before an order under that section may be made in the case where the prospective adopters (within the meaning of that section) intend to adopt a child otherwise than under a Convention adoption<sup>(a)</sup>.

(2) This regulation applies in the case of a child placed for adoption with the prospective adopters by an adoption agency.

(3) The requirements are—

- (a) that the adoption agency has—
  - (i) confirmed to the court that it has complied with the requirements imposed on it under Parts IV and V of the Adoption Agencies Regulations; and
  - (ii) submitted to the court the things mentioned in regulation 8;
- (b) that the relevant foreign authority has—
  - (i) confirmed in writing to the adoption agency that the prospective adopters have been counselled and that the legal implications of adoption have been explained to them;
  - (ii) prepared a report on the suitability of the prospective adopters to be adoptive parents;
  - (iii) determined and confirmed in writing to the adoption agency that the prospective adopters are eligible and suitable to adopt in the country or territory in which the adoption is to be effected; and
  - (iv) confirmed to the adoption agency that the child is or will be authorised to enter and reside permanently in that country or territory;
- (c) in a case where there is only one prospective adopter, that the prospective adopter has confirmed in writing to the adoption agency that the prospective adopter will accompany the child out of Great Britain and into the country or territory where the adoption is to be effected; and
- (d) in a case where there are two prospective adopters, that they have confirmed in writing to the adoption agency—
  - (i) that both will so accompany the child; or
  - (ii) if the adoption agency and the relevant foreign authority have confirmed that it is necessary for only one so to accompany the child, that one of them will do so.

#### **Matters to be submitted to the court under regulation 7**

8. The things to be submitted to the court under regulation 7(3)(a)(ii) are—

- (a) a copy of the recommendations of the adoption panel under regulation 6(2) of the Adoption Agencies Regulations;
- (b) if regulation 6(4) of those Regulations applies, a copy of the report of the adoption panel mentioned in that regulation;
- (c) a copy of the report on the health of the child mentioned in regulation 18(1)(d) of those Regulations and any report obtained in accordance with regulation 18(2) of those Regulations;
- (d) a copy of the report and information mentioned in regulation 18(1)(i) of those Regulations; and
- (e) a copy of the written reports mentioned in regulation 25(1)(b) of those Regulations.

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(a) The expression “Convention adoption” is defined in section 119(1) of the Act.

### **Application of the Act in respect of orders under section 59**

**9.**—(1) Subject to paragraphs (2), (3) and (4) the provisions of Chapter 2 of Part 1 of the Act, as they relate to adoption orders, apply to orders under section 59 of the Act so far as the nature of the provision permits and unless the contrary intention is shown.

(2) The following provisions of the Act which relate to adoption orders apply to orders under section 59 of the Act subject to the following:—

- (a) in section 28, omit subsections (1), (3), (4), (5) and (6);
- (b) in section 29, omit subsections (1)(c) and (2); and
- (c) in section 30, omit subsections (1)(c), (3)(d) and (6).

(3) For the purposes of section 14(1) of the Act, a court considering an application for an order under section 59 in respect of a child is to be treated as a court coming to a decision relating to the adoption of a child.

(4) The following provisions of Chapter 2 of Part 1 of the Act do not apply to orders under section 59 of the Act:—

- (a) section 15;
- (b) section 21;
- (c) section 22;
- (d) section 24;
- (e) section 25;
- (f) section 26;
- (g) section 34.

(5) Sections 53 to 55 and paragraphs 1 to 4 of schedule 1 to the Act, as they relate to adoption orders, apply to orders made under section 59 of the Act as if—

- (a) in each place where the words “adoption order” appear there were substituted “order under section 59”;
- (b) in each place where the words “adopted person” appear there were substituted “person subject to an order made under section 59”;
- (c) in section 55(1) and paragraph 3 of schedule 1 where the words “Adopted” appear there were substituted “Proposed foreign adoption”; and
- (d) in paragraph 3 of schedule 1 where the words “Re-adopted” appear there were substituted “Proposed foreign re-adoption”.

## **PART 3**

### **ADOPTIONS UNDER THE CONVENTION**

#### **CHAPTER 1**

#### **PROCEDURE IN SCOTLAND WHERE THE UNITED KINGDOM IS THE RECEIVING STATE**

##### **Application of Chapter 1**

**10.** The provisions of this Chapter apply where—

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

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

### **Application: eligibility, and suitability, to adopt**

**11.** Such a person or couple must—

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

### **Determination of eligibility to adopt**

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

- (a) has attained the age of 21 years; and
- (b) has been habitually resident in a part of the British Islands for a period of not less than one year ending with the date of application.

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

### **Provision of information**

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

- (a) explain to the prospective adopters the procedure in relation to, and the legal implications of, adopting a child from the State of origin from which the prospective adopters wish to adopt in accordance with the Convention; and
- (b) provide the prospective adopters with written information about the matters referred to in sub-paragraph (a).

(2) Paragraph (1) does not apply if the adoption agency is satisfied that the requirements in that paragraph have been met in respect of the prospective adopters by another adoption agency.

### **Case records and counselling**

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

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

(2) The adoption agency must—

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

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

### **Criminal record checks**

- 15.**—(1) This regulation applies to an adoption agency to which regulation 14(2) applies.
- (2) The adoption agency must so far as is reasonably practicable obtain information about—
- (a) any criminal convictions of the prospective adopters and any other member of the prospective adopters' household aged 16 or over; and
  - (b) any police cautions issued to such persons in England, Wales or Northern Ireland in respect of an offence which was admitted at the time the caution was issued.
- (3) In paragraph (2)(a), the reference to criminal convictions includes a reference to convictions in England, Wales or Northern Ireland.
- (4) The adoption agency is not to consider prospective adopters to be suitable to be adoptive parents if the prospective adopters or any member of their household aged 16 or over—
- (a) have been convicted of an offence specified in Schedule 1;
  - (b) have been convicted of—
    - (i) a specified offence (within the meaning of regulation 23(3) of the Adoption Agencies Regulations 2005<sup>(a)</sup> (requirement to carry out police checks)), other than an offence mentioned in paragraphs 2 to 11 of Part I of Schedule 3 to those Regulations (offences in Scotland and Northern Ireland); or
    - (ii) an offence mentioned in Part 2 of Schedule 3 to those Regulations (repealed statutory offences) notwithstanding its repeal; or
  - (c) have received a police caution in England, Wales or Northern Ireland in respect of an offence mentioned in sub-paragraph (a) or (b) which, at the time the caution was given, the prospective adopters or, as the case may be, the member of their household, admitted.
- (5) The adoption agency must—
- (a) as soon as possible after becoming aware that the prospective adopters are not suitable to be adoptive parents by virtue of paragraph (4), notify the prospective adopters in writing of that fact; and
  - (b) where the conviction or police caution in question relates to the prospective adopters, specify in the notification the conviction or, as the case may be, the police caution.

### **Duties of adoption agency prior to decision on suitability**

- 16.**—(1) This regulation applies to an adoption agency to which regulation 14(2) applies.
- (2) The adoption agency must so far as is reasonably practicable obtain—
- (a) such information in relation to the prospective adopters as is referred to in Part I of Schedule 1 to the Adoption Agencies Regulations; and
  - (b) any other relevant information which may be requested by the adoption panel.
- (3) Where the adoption agency is not the local authority in whose area the prospective adopters have their home—
- (a) the agency must request the authority to provide any relevant information relating to the prospective adopters of which the authority is aware; and
  - (b) the authority must provide the information.
- (4) The adoption agency must prepare a written report which—
- (a) identifies the Convention country from which the prospective adopters wish to adopt a child;
  - (b) confirms the prospective adopters are eligible to adopt a child under the law of that Convention country;

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(a) S.I. 2005/389 as amended by S.I. 2005/3482 and S.I. 2007/603.

- (c) provides any other information obtained as a consequence of the requirements of that Convention country;
- (d) includes the adoption agency's assessment of the prospective adopters' suitability to be adoptive parents;
- (e) includes any other observations of the adoption agency on the matters referred to in this regulation and regulations 12, 14 and 15; and
- (f) includes any other information about the prospective adopters of the type specified in Article 15(1) of the Convention.

(5) The adoption agency must notify the prospective adopters that their application is to be referred to an adoption panel and, at the same time—

- (a) send the prospective adopters a copy of the written report referred to in paragraph (4) (excluding any information from third parties given in confidence); and
- (b) invite the prospective adopters to send any observations on the report in writing to the agency within a period of 14 days beginning with the date on which the notification was sent.

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

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

### **Functions of the adoption panel**

**17.—**(1) The adoption panel must—

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

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

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

### **Adoption agency decision, notification and request for review**

**18.—**(1) The adoption agency must—

- (a) take into account the recommendation of the adoption panel in coming to a decision (in this regulation, “the decision”) on the prospective adopters' suitability to be adoptive parents; and
- (b) make the decision within 14 days of the date the recommendation was made.

(2) No member of the adoption panel which made the recommendation is to take part in the decision.

(3) Where the decision is that the prospective adopters are suitable to be adoptive parents, the adoption agency must notify the prospective adopters in writing of the decision within 14 days of making the decision.

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

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

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

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

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

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

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

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

### **Review without request**

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

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

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

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

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

- (a) prepare a written report (the “review report”) setting out the agency’s reasons for its view;
- (b) notify the prospective adopters that the case is to be referred to the adoption panel;

- (c) send the prospective adopters a copy of the review report; and
- (d) invite the prospective adopters to submit any representations to the adoption agency within 14 days of the report's being sent.

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

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

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

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

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

**Procedure following decision that prospective adopters are suitable to adopt**

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

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

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

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

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

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

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

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

(5) The documents are—

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

(6) The conditions are that—

- (a) the requirements specified in section 1(5A) of the British Nationality Act 1981<sup>(a)</sup> are met;
- (b) entry clearance and leave to enter and remain, as may be necessary, is granted and not revoked or curtailed and a Convention adoption order or Convention adoption is made.

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

### **Procedure following receipt of Article 16 Information**

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

(2) The adoption agency must consider the Article 16 Information and—

- (a) send the Information to the prospective adopters;
- (b) meet with the prospective adopters to discuss the Information, the proposed placement and the availability of adoption support services; and
- (c) if appropriate, offer—
  - (i) such counselling as may be necessary in connection with the proposed adoption; and
  - (ii) further information as required.

(3) Where—

- (a) the procedure in paragraph (2) has been followed;
- (b) the prospective adopters have (or, in the case of a relevant couple where there are exceptional circumstances, one of them has) visited the child in the State of origin; and
- (c) after that visit, the prospective adopters have confirmed to the adoption agency that—
  - (i) they have visited the child;
  - (ii) they have provided the adoption agency with any additional reports and information received on or after that visit; and
  - (iii) they wish to proceed to adopt the child,

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

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

- (a) notify the CA of the State of origin that—
  - (i) the prospective adopters wish to proceed to adopt the child; and
  - (ii) it is prepared to agree with the CA of the State of origin that the adoption may proceed; and
- (b) confirm to the CA of the State of origin that—
  - (i) in the case where the requirements specified in section 1(5A) of the British Nationality Act 1981 are met, that the child will be authorised to enter and reside permanently in the United Kingdom; or
  - (ii) in any other case, if entry clearance and leave to enter and remain, as may be necessary, is granted and not revoked or curtailed and a Convention adoption order or a Convention adoption is made, the child will be authorised to enter and reside permanently in the United Kingdom.

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

(5) The Central Authority must inform the adoption agency and the prospective adopters when the agreement under Article 17(c) of the Convention has been made.

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

- (a) the report referred to in Article 16 of the Convention including information about the child’s identity, adoptability, background, social environment, family history, medical history including that of the child’s family and any special needs of the child;
- (b) proof of confirmation that the consents of the persons, institutions and authorities whose consents are necessary for adoption have been obtained in accordance with Article 4 of the Convention; and
- (c) the reasons for the CA of the State of origin’s determination on the placement.

### **Procedure where proposed adoption not to proceed**

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

- (a) the Central Authority must inform the adoption agency of the CA of the State of origin’s decision;
- (b) the agency must then inform the prospective adopters and return the Article 16 Information to the Central Authority; and
- (c) the Central Authority must then return the Article 16 Information to the CA of the State of origin.

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

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

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

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

### **Child’s entry into the United Kingdom**

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

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

(2) In exceptional circumstances, a nominee of the prospective adopters who has been approved by the adoption agency may accompany the child as mentioned in paragraph (1)(c) instead of the

prospective adopters; and in such a case the word “their” in paragraph (1)(a) is to be read as “the nominee’s”.

### **Notifications to be given prior to child’s entry into the United Kingdom**

**24.** Where the adoption agency is informed by the Central Authority that the agreement under Article 17(c) of the Convention has been made and the adoption may proceed, before the child enters the United Kingdom the agency must—

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

### **Child’s entry into the United Kingdom where no Convention adoption made: applicable provisions**

**25.** Regulations 26 to 30 apply where—

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

### **Duty of prospective adopters to notify local authority**

**26.—**(1) The prospective adopters must, within the period of 14 days beginning with the date on which the child enters the United Kingdom, give notice to the relevant local authority—

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

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(a) 1978 c.29. Section 2 was amended by the National Health Service and Community Care Act 1990 c.19, sections 28 and 66(1) and Schedule 9; the National Health Service Reform (Scotland) Act 2004 asp 7, section 11 and Schedule 1 and the Smoking, Health and Social Care (Scotland) Act 2005 asp 13, section 42(1) and Schedule 2.  
(b) 1980 c.44.  
(c) 2004 asp 4.

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

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

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

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

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

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

### **Duty of prospective adopters**

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

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

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

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

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

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

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

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

### **Prospective adopters not wishing to proceed with adoption**

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

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

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(a) 1995 c.36.

### **Withdrawal of child from prospective adopters**

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

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

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

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

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

the prospective adopters are not required by virtue of paragraph (1) to deliver the child unless the court so orders.

(4) This regulation does not affect the exercise by any local authority or other person of any power conferred by any enactment or the exercise of any power of arrest.

### **Breakdown of placement**

**31.**—(1) This regulation applies where—

- (a) notification is given by the prospective adopters under regulation 29 that they do not wish to proceed with the adoption;
- (b) the child is withdrawn from the prospective adopters under regulation 30 or is otherwise removed by the relevant local authority under any other power competent to it;
- (c) an application for a Convention adoption order is refused;
- (d) a Convention adoption which is subject to a probationary period cannot be made; or
- (e) a Convention adoption order or a Convention adoption is annulled pursuant to section 68(1) of the Act.

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

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

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

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

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

(5) Where the relevant local authority—

- (a) is not satisfied as mentioned in paragraph (2); or
- (b) is so satisfied but is unable to identify and approve other prospective adopters as mentioned in paragraph (3),

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

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

### **Convention adoptions subject to a probationary period**

**32.**—(1) Paragraph (2) applies where—

- (a) the child has been placed with the prospective adopters by the competent authority of the State of origin in that State and a Convention adoption has been applied for by the prospective adopters in the State of origin, but the placement is subject to a probationary period before the Convention adoption is made; and
- (b) the prospective adopters return to Scotland with the child before the probationary period is completed and before the Convention adoption is made in the State of origin.

(2) The relevant local authority must, if requested by the competent authority of the State of origin, submit a report about the placement to the competent authority; and such a report must be prepared within such timescales, and contain such information, as the competent authority may reasonably require.

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

### **Report of local authority investigation**

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

- (a) confirmation that the certificate of eligibility and approval mentioned in paragraph (5)(a) of regulation 20 has been sent to the CA of the State of origin in accordance with paragraph (4) of that regulation;
- (b) the date on which the agreement under Article 17(c) of the Convention was made; and
- (c) details of the reports of the visits and reviews made in accordance with regulation 5 as modified by regulation 27.

### **Convention adoption order**

**34.** An adoption order may not be made as a Convention adoption order unless—

- (a) in the case of—
  - (i) an application for the order by a relevant couple, both members of the couple have been habitually resident in any part of the British Islands for a period of not less than one year ending with the date of the application; or
  - (ii) an application for the order by one person, the applicant has been habitually resident in any part of the British Islands for a period of not less than one year ending with the date of the application;
- (b) the child to be adopted was, on the date on which the agreement under Article 17(c) of the Convention was made, habitually resident in a Convention country outwith the British Islands;
- (c) copies of the Article 16 Information and the agreement under Article 17(c) of the Convention are made available to the court; and
- (d) in a case where one member of a relevant couple (in the case of an application by a relevant couple) or the applicant (in the case of an application by one person) is not a

British citizen, the Home Office has confirmed that the child is authorised to enter and reside permanently in the United Kingdom.

### **Requirements following a Convention adoption order or a Convention adoption**

**35.**—(1) Where a Convention adoption order is made by a court in Scotland, the court must send a copy of the order to the Central Authority.

(2) On receipt of a copy of the order under paragraph (1), the Central Authority must issue a certificate in the form set out in Schedule 3 certifying that the adoption has been made in accordance with the Convention.

(3) A copy of the certificate issued under paragraph (2) must be sent to—

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

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

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

### **Convention adoption order: refusal or withdrawal**

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

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

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

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

### **Annulment of Convention adoption order or Convention adoption**

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

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

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

## CHAPTER 2

### PROCEDURE IN SCOTLAND WHERE THE UNITED KINGDOM IS THE STATE OF ORIGIN

#### **Application of Chapter 2**

**38.** The provisions of this Chapter apply to—

- (a) a child who is habitually resident in the British Islands;
- (b) a person, or a relevant couple, habitually resident outwith the British Islands who wishes to adopt such a child in accordance with the Convention.

#### **Counselling and information for the child**

**39.—**(1) Where an adoption agency is considering whether a child is suitable for an adoption in accordance with the Convention, it must so far as reasonably practicable—

- (a) ensure that such counselling as may be necessary in connection with such an adoption is made available to the child;
- (b) explain to the child in an appropriate manner the procedure in relation to, and the legal implications of, adoption in accordance with the Convention for the child by prospective adopters habitually resident in the receiving State; and
- (c) provide the child with written information about the matters referred to in sub-paragraph (b).

(2) Paragraph (1) does not apply if the adoption agency is satisfied that the requirements in that paragraph have been met in respect of the child by another adoption agency.

#### **Counselling and information for parent or guardian and counselling for others**

**40.—**(1) Where an adoption agency is considering whether a child is suitable for an adoption in accordance with the Convention, it must—

- (a) ensure that such counselling as may be necessary in connection with an adoption in accordance with the Convention is made available to—
  - (i) the parent or guardian of the child; and
  - (ii) any individual who has any parental responsibilities or parental rights in relation to the child;
- (b) explain to the parent or guardian the procedure in relation to, and the legal implications of, adoption in accordance with the Convention by prospective adopters habitually resident in the receiving State; and
- (c) provide the parent or guardian with written information about the matters referred to in sub-paragraph (b).

(2) Paragraph (1) does not apply—

- (a) if the adoption agency is satisfied that the requirements in that paragraph have been met in respect of the parent, guardian or, as the case may be, individual mentioned in sub-paragraph (a)(ii) of that paragraph by another adoption agency;
- (b) to the father of the child if, after reasonable steps have been taken by the adoption agency, his identity cannot be ascertained.

#### **Information for inclusion in report and for adoption panel**

**41.—**(1) The report mentioned in regulation 18(1)(i) of the Adoption Agencies Regulations must include—

- (a) a summary of the possibilities (if any) for placement of the child for adoption within the United Kingdom; and
  - (b) an assessment of whether an adoption by a person in a particular receiving State is in the child's best interests.
- (2) The adoption agency must refer the child's case to the adoption panel and send to the panel—
- (a) if received, the report from the CA of the receiving State which has been prepared for the purposes of Article 15 of the Convention (in this Chapter, the “Article 15 Report”);
  - (b) the agency's observations on any Article 15 report; and
  - (c) copies of—
    - (i) the report on the health of the child mentioned in regulation 18(1)(d) of the Adoption Agencies Regulations and any report obtained in accordance with regulation 18(2) of those Regulations; and
    - (ii) the report mentioned in regulation 18(1)(i) of those Regulations.

### **Function of the adoption panel in assessing the child**

**42.—**(1) The adoption panel must consider the case of the child and make a recommendation to the adoption agency as to whether adoption by a person, or a relevant couple, habitually resident in a Convention country outwith the British Islands is in the best interests of the child.

- (2) In considering what recommendation to make under paragraph (1), the adoption panel must—
- (a) have regard to the duties imposed on an adoption agency by section 14 of the Act (considerations applying to the exercise of powers);
  - (b) take into account all the information and reports passed to it under regulation 41;
  - (c) request the adoption agency to obtain any other relevant information which the panel considers necessary; and
  - (d) obtain such legal advice in relation to the case as may be necessary.

### **Decision and notification**

**43.—**(1) The adoption agency must—

- (a) take into account the recommendation of the adoption panel in coming to a decision (“the decision”) on whether adoption by a person, or a relevant couple, habitually resident in a Convention country outwith the British Islands is in the best interests of the child; and
- (b) make the decision within 14 days of the date the recommendation was made.

(2) No member of the adoption panel which made the recommendation is to take part in the decision.

(3) Where the decision is that adoption is in the best interests of the child, the adoption agency must, within 7 days of making the decision, notify the Central Authority of—

- (a) the name and age of the child;
- (b) the reasons why the agency considers that the child may be suitable for adoption by a person, or a relevant couple, habitually resident in a Convention country outside the British Islands; and
- (c) any other information that the Central Authority may require.

(4) The adoption agency must within 7 days of the day on which the decision is made notify in writing the parent or guardian of the child, and any individual who has any parental responsibilities or parental rights in relation to the child, that the child has been approved in principle for adoption in a Convention country outwith the British Islands.

(5) Paragraph (4) does not apply if, after reasonable steps have been taken by the adoption agency, the identity of the parent, guardian or individual cannot be ascertained.

## **Convention list**

**44.**—(1) The Central Authority must—

- (a) maintain a list of children (in this Chapter, the “Convention list”) in respect of whom it is given notification under regulation 43(3); and
- (b) make the contents of the Convention list available for inspection by the other Central Authorities within the British Islands on request.

(2) Where an adoption agency—

- (a) places for adoption a child in respect of whom notification under regulation 43(3) has been given to the Central Authority; or
- (b) determines that an adoption in accordance with the Convention is no longer in the best interests of the child,

the agency must notify the Central Authority accordingly and the Authority must remove the details relating to that child from the Convention list.

## **Receipt of Article 15 Report**

**45.**—(1) This regulation applies where—

- (a) the Central Authority receives from the CA of the receiving State an Article 15 Report which relates to a prospective adopter who is habitually resident in that receiving State (a “Convention prospective adopter”); and
- (b) the Convention prospective adopter wishes to adopt a child who is habitually resident in the British Islands.

(2) Subject to paragraph (3), if the Central Authority is satisfied that the Convention prospective adopter meets—

- (a) the age requirements specified in section 29 of the Act (in the case of a relevant couple) or section 30 of the Act (in the case of adoption by one person); and
- (b) in the case of adoption by a relevant couple, both members of the couple are, or in the case of adoption by one person, that person is, habitually resident in a Convention country outwith the British Islands,

the Central Authority must consult the Convention list and may, if the Authority considers it appropriate, consult any list of children notified to any other Central Authority within the British Islands in accordance with provisions which correspond to regulation 44(1) (a “Convention list equivalent”).

(3) Where a Convention prospective adopter has already been identified in relation to a proposed adoption of a particular child and the Central Authority is satisfied that the Convention prospective adopter meets the requirements in paragraph (2)(a) and (b), the Authority—

- (a) need not consult the Convention list; and
- (b) must send the Article 15 Report to the adoption agency which notified the Central Authority of the child’s details.

(4) The Central Authority may pass a copy of the Article 15 Report to any other Central Authority within the British Islands for the purpose of enabling the other Central Authority to consult its Convention list equivalent.

(5) Where the Central Authority identifies a child on the Convention list who may be suitable for adoption by the Convention prospective adopter, the Authority must send the Article 15 Report to the adoption agency which notified the Authority of the child’s details.

(6) In considering whether it is appropriate to place the child for adoption with the Convention prospective adopter, the adoption agency must take into account the Article 15 Report.

(7) Where the adoption agency considers such a placement appropriate, it must refer the proposed placement to the adoption panel together with—

- (a) the Article 15 Report;

- (b) the documents referred to in sub-paragraphs (b) and (c) of regulation 41(2);
- (c) its observations on the proposed adoption; and
- (d) any other relevant information about the child.

**Proposed placement: functions of adoption panel and adoption agency**

**46.**—(1) The adoption panel must consider the proposed placement referred to it by an adoption agency under regulation 45(7) and make a recommendation to the agency as to whether—

- (a) the Convention prospective adopter is suitable to be an adoptive parent for the child; and
- (b) the proposed placement is in the best interests of the child.

(2) In considering what recommendation to make under paragraph (1), the adoption panel—

- (a) must have regard to—
  - (i) the child’s upbringing and ethnic, religious and cultural background;
  - (ii) the duties imposed on the adoption agency by section 14 of the Act (considerations applying to the exercise of powers); and
  - (iii) the documents referred to it under regulation 45(7);
- (b) may ask the adoption agency to obtain any other relevant information which the panel considers necessary; and
- (c) may obtain legal advice in relation to the case.

(3) The adoption agency must—

- (a) take into account the recommendation of the adoption panel in coming to a decision (“the decision”) about whether the proposed placement should proceed or not; and
- (b) make the decision within 14 days of the date the recommendation was made.

(4) No member of the adoption panel which made the recommendation is to take part in the decision.

(5) Paragraphs (6) to (8) apply where the decision is that the proposed placement should proceed.

(6) The adoption agency must, if practicable, within 7 days of making the decision, notify in writing the parent or guardian of the child, and any individual who has any parental responsibilities or parental rights in relation to the child, that the child has been or, as the case may be, is to be placed for adoption in a Convention country outwith the British Islands.

(7) Where the adoption agency is a local authority it must—

- (a) make an application to the appropriate court<sup>(a)</sup> for a permanence order; and
- (b) in the application, request that the order include—
  - (i) ancillary provisions vesting in the local authority the parental responsibilities and parental rights referred to in paragraph (a) of subsection (1) of section 82 of the Act (permanence orders: ancillary provisions); and
  - (ii) provision granting authority for the child to be adopted.

(8) Where the adoption agency is not a local authority, the agency must notify the local authority for the area where the child has a home of its decision; and that local authority must make an application and request as mentioned in paragraph (7).

(9) An application under paragraph (7) must be made—

- (a) where notification is given under paragraph (6), within 28 days of the adoption agency giving such notification;
- (b) where notification is not given under that paragraph, within 28 days of the adoption agency making the decision.

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(a) “appropriate court” is defined in section 118 of the 2007 Act.

(10) An application under paragraph (8) must be made within 28 days of the local authority being notified under that paragraph.

#### **Adoption agency's decision: notification and return of documents**

**47.**—(1) As soon as possible after the adoption agency makes a decision under regulation 46(3), it must notify the Central Authority of the decision.

(2) If the proposed placement is not to proceed—

- (a) the adoption agency must return the Article 15 Report and any other documents or information sent to it by the Central Authority to that Authority; and
- (b) the Central Authority must then send the Article 15 Report and any such documents or information to the CA of the receiving State.

#### **Preparation of the Article 16 Report**

**48.**—(1) If the adoption agency decides that the proposed adoption should proceed, it must prepare a report for the purposes of Article 16 of the Convention (the “Article 16 Report”) which must include—

- (a) the information about the child specified in Part II of Schedule 1 to the Adoption Agencies Regulations; and
- (b) the reasons for the agency's decision.

(2) Where a permanence order including provision granting authority for the child to be adopted is made the adoption agency must, within 14 days of the order being made, send to the Central Authority—

- (a) the Article 16 Report;
- (b) details of the permanence order; and
- (c) where known, details of any other orders made by the courts in relation to the child.

(3) The Central Authority must then send to the CA of the receiving State—

- (a) the Article 16 Report; and
- (b) the other information sent to it by virtue of paragraph (2).

(4) Where a court does not grant an application for a permanence order as mentioned in paragraph (2) the adoption agency must, within 14 days of the decision of the court, notify the Central Authority of the decision.

#### **Requirements to be met before child placed with Convention prospective adopter**

**49.**—(1) The Central Authority may notify the CA of the receiving State that it is prepared to agree that the proposed adoption should proceed provided the CA of the receiving State has confirmed that—

- (a) the Convention prospective adopter has agreed to adopt the child and has received such counselling as may be necessary;
- (b) the Convention prospective adopter has confirmed that—
  - (i) the Convention prospective adopter will accompany the child to the receiving State unless, in the case of a relevant couple, the adoption agency and the CA of the receiving State have agreed that it is necessary for only one member of the relevant couple to do so; or
  - (ii) in exceptional circumstances, the child will be accompanied to the receiving State by a nominee of the Convention prospective adopter who has been approved by the adoption agency;
- (c) it is content for the proposed adoption to proceed;

- (d) in the case where a Convention adoption is to be effected, it has explained to the Convention prospective adopter the need to make an application under section 59(1) of the Act; and
  - (e) the child is or will be authorised to enter and reside permanently in the Convention country if a Convention adoption is effected or a Convention adoption order is made.
- (2) The Central Authority may not make an agreement with the CA of the receiving State under Article 17(c) of the Convention unless—
- (a) confirmation has been received in respect of the matters referred to in paragraph (1);
  - (b) the adoption agency has confirmed to the Central Authority that—
    - (i) it has met the Convention prospective adopter and explained the requirement to make an application under section 59(1) of the Act before the child can be taken or sent out of Great Britain;
    - (ii) the Convention prospective adopter or, where the Convention prospective adopter is a relevant couple and there are exceptional circumstances, one member of the couple has visited the child; and
    - (iii) the Convention prospective adopter is content for the proposed adoption to proceed.
- (3) The adoption agency may not place the child for adoption with the Convention prospective adopter unless the agreement under Article 17(c) of the Convention has been made; and the Central Authority must advise the agency when the agreement has been made.

**Requirements for order under section 59 of the Act prior to proposed Convention adoption**

**50.**—(1) This regulation prescribes, for the purposes of subsection (3) of section 59 of the Act (preliminary order where child to be adopted abroad), the requirements to be satisfied before an order under that section may be made in the case where the prospective adopters (within the meaning of that section) intend to adopt a child under a Convention adoption.

(2) This regulation applies in the case of a child placed for adoption with the prospective adopters by an adoption agency.

(3) The requirements are that—

- (a) the competent authorities of the receiving State have—
  - (i) prepared an Article 15 report;
  - (ii) determined and confirmed in writing that the prospective adopters are eligible and suitable to adopt;
  - (iii) ensured and confirmed in writing that the prospective adopters have been counselled as may be necessary; and
  - (iv) determined and confirmed in writing that the child is or will be authorised to enter and reside permanently in the receiving State;
- (b) the report required for the purposes of Article 16(1) of the Convention has been prepared by the adoption agency;
- (c) the adoption agency confirms in writing to the court that it has complied with the requirements imposed on it under Parts IV and V of the Adoption Agencies Regulations;
- (d) the adoption agency has obtained and made available to the court—
  - (i) a copy of the recommendations of the adoption panel under regulation 46(1);
  - (ii) a copy of the report on the health of the child mentioned in regulation 18(1)(d) of the Adoption Agencies Regulations and any report obtained in accordance with regulation 18(2) of those Regulations;
  - (iii) a copy of the report and information mentioned in regulation 18(1)(i) of those Regulations; and
  - (iv) a copy of the permanence order including provision granting authority for the child to be adopted;

- (e) the adoption agency includes in any report submitted to the court in accordance with subsection (2) of section 17 of the Act (reports where child placed by agency), or subsection (2) of section 19 of the Act (notice under section 18: local authority's duties) (as those sections fall to be construed by virtue of the modifications in regulation 9), details of—
  - (i) visits carried out under regulation 25(1) of the Adoption Agencies Regulations; and
  - (ii) any reviews carried out under regulation 26(2) of those Regulations;
- (f) in a case where there is only one prospective adopter, the prospective adopter has confirmed in writing to the adoption agency that the prospective adopter will accompany the child out of Great Britain and into the receiving State; and
- (g) in a case where the prospective adopters are a relevant couple, they have confirmed in writing to the adoption agency—
  - (i) that both members of the relevant couple will so accompany the child; or
  - (ii) if the adoption agency and the competent authority of the receiving State have confirmed that it is necessary for only one such member so to accompany the child, that one such member will do so.

### **Convention adoption order**

**51.** An adoption order may not be made as a Convention adoption order unless—

- (a) in the case of—
  - (i) an application for the order by a relevant couple, both members of the couple have been habitually resident in a Convention country outwith the British Islands for a period of not less than one year ending with the date of the application;
  - (ii) an application for the order by one person, the applicant has been habitually resident in a Convention country outwith the British Islands for a period of not less than one year ending with the date of the application;
- (b) the child to be adopted was, on the date on which the agreement under Article 17(c) of the Convention was made, habitually resident in any part of the British Islands;
- (c) copies of the Article 16 Report (within the meaning of regulation 48) and the agreement under Article 17(c) of the Convention are made available to the court; and
- (d) the competent authority of the receiving State has confirmed that the child is authorised to enter and remain permanently in the Convention country in which the applicant is or, as the case may be, the applicants are habitually resident.

### **Requirements following a Convention adoption order or a Convention adoption**

**52.—(1)** Where a Convention adoption order is made by a court in Scotland, the court must send a copy of the order to the Central Authority.

(2) On receipt of a copy of the order under paragraph (1), the Central Authority must issue a certificate in the form set out in Schedule 3 certifying that the adoption has been made in accordance with the Convention.

(3) A copy of the certificate issued under paragraph (2) must be sent to—

- (a) the CA of the receiving State; and
- (b) the relevant local authority.

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

- (a) the adoption agency which sent the Central Authority the Article 16 Report under regulation 48(2); and
- (b) the Registrar General of Births, Deaths and Marriages for Scotland.

## CHAPTER 3

### MISCELLANEOUS PROVISIONS

#### **Application of the Act to, and making of, Convention adoption orders**

**53.**—(1) Subject to the modifications provided for in this Chapter, the provisions of the Act apply to Convention adoption orders so far as the nature of the provision permits and unless the contrary intention is shown.

(2) Without prejudice to paragraph (1), an adoption order is to be made as a Convention adoption order if—

- (a) the application is for a Convention adoption order; and
- (b) the requirements specified in regulation 34 or, as the case may be, regulation 51 are complied with.

#### **Notification to local authority of adoption application**

**54.** Section 18(1) of the Act applies as if for the words “not placed for adoption with the applicants by an adoption agency” there were substituted “entrusted to the applicants by a competent authority within the meaning of the Convention (other than an adoption agency which placed the child for adoption with the applicants).”.

#### **Prohibition on removal where Convention adoption order pending**

**55.** Section 20 of the Act applies as if—

- (a) for subsection (1) there were substituted—

“(1) Where an application for a Convention adoption order in respect of a child has been made but not disposed of, a parent or guardian of the child is not entitled to remove the child from the care of the applicant except with the consent of the court.”; and
- (b) subsection (2) were omitted.

#### **Removal of children**

**56.**—(1) In a case falling within Chapter 1 of this Part, sections 21 to 23 of the Act do not apply.

(2) In a case falling within Chapter 2 of this Part, section 21 of the Act applies as if—

- (a) in subsection (4), references to an adoption order were references to a Convention adoption order; and
- (b) subsection (6) were omitted.

#### **Return or delivery of child**

**57.** As respects Convention adoption orders, the Act applies as if sections 25 and 26 were omitted.

#### **Age of person in respect of whom Convention adoption order may be made**

**58.** Section 28(4) of the Act applies as if “or over” were omitted.

#### **Application for Convention adoption order by relevant couple**

**59.** Section 29 of the Act applies as if—

- (a) in subsection (1)—
  - (i) “and” were inserted at the end of paragraph (a);

- (ii) paragraph (c) and “and” immediately preceding it were omitted; and
- (b) subsection (2) were omitted.

#### **Application for Convention adoption order by one person**

**60.** Section 30 of the Act applies as if subsections (1)(c), (3)(d) and (6) were omitted.

#### **Convention adoption orders: consent**

**61.** As respects Convention adoption orders, the Act applies as if section 31 were omitted.

#### **Application and modification of the Adoption Agencies Regulations**

**62.**—(1) Subject to paragraphs (2) and (3), the provisions of the Adoption Agencies Regulations apply to adoptions to be effected by a Convention adoption order or a Convention adoption, so far as the nature of the provision permits and unless the contrary intention is shown.

(2) In their application to such adoptions, the Adoption Agencies Regulations apply as if—

- (a) regulations 6, 7, 8, 9, 10, 11, 14, 15, and 21 were omitted;
- (b) in regulation 13—
  - (i) paragraphs (1) and (2) were omitted;
  - (ii) in paragraph (3) the references to a decision were to a decision mentioned in regulation 18(1) of these Regulations;
  - (iii) in that paragraph the reference to a recommendation were to a recommendation under regulation 17(1)(b) of these Regulations;
  - (iv) in paragraph (4) the reference to the decision under paragraph (1) of regulation 13 were a reference to a decision mentioned in regulation 18(1) of these Regulations; and
  - (v) in each of paragraphs (5) and (6) the references to a recommendation under regulation 6(2) were references to a recommendation under regulation 17(1)(b) of these Regulations; and
- (c) in each of regulations 16(1) and 17(1), the references to a decision under regulation 13(1) were references to a decision mentioned in regulation 18(1) of these Regulations.

(3) In a case falling within Chapter 1 of this Part, the Adoption Agencies Regulations apply as if regulations 24 and 25 of those Regulations were omitted.

#### **Offences**

**63.**—(1) Any person who contravenes or fails to comply with any of the regulations mentioned in paragraph (2) commits an offence and is liable on summary conviction to imprisonment for a term not exceeding three months, or a fine not exceeding level 5 on the standard scale, or both.

(2) The regulations are—

- (a) regulation 26;
- (b) regulation 29(1);
- (c) regulation 30(1)(b);
- (d) regulation 30(3); and
- (e) regulation 36.

PART 4  
REVOCATION

**Revocation**

**64.** The Intercountry Adoption (Hague Convention) (Scotland) Regulations 2003<sup>(a)</sup> are revoked.

*ADAM INGRAM*

Authorised to sign by the Scottish Ministers

St Andrew's House,  
Edinburgh  
14th May 2009

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<sup>(a)</sup> S.S.I. 2003/19.

## SCHEDULE 1

Regulation 15(4)

### SPECIFIED OFFENCES

#### Offences in Scotland

1. An offence of rape.
2. An offence specified in Schedule 1 to the Criminal Procedure (Scotland) Act 1995(a) (offences against children under the age of 17 years to which special provisions apply) except—
  - (a) an offence under subsection (5) of section 13 of the Criminal Law (Consolidation) (Scotland) Act 1995(b) (homosexual offences) of committing or being party to the commission of, or procuring or attempting to procure the commission of an act of sodomy otherwise than in private;
  - (b) in a case where the offender—
    - (i) was under 18 at the time the offence was committed, an offence of assault; or
    - (ii) was under 20 at the time the offence was committed, the offences mentioned in paragraph 3 below, and
  - (c) any offence specified in paragraph 2B of that Schedule (certain offences under section 52 or 52A of the Civic Government (Scotland) Act 1982)(c).
3. The offences are—
  - (a) an offence contrary to subsection (3) of section 5 of the Criminal Law (Consolidation) (Scotland) Act 1995 (intercourse with a girl between 13 and 16);
  - (b) an offence under section 13(5)(d) of that Act of committing or being party to the commission of, or procuring or attempting to procure the commission of a homosexual act with a person under the age of 16 years; and
  - (c) an offence under section 6 of that Act (indecent behaviour towards a girl between 12 and 16).
4. An offence under section 170 of the Customs and Excise Management Act 1979(e) (penalty for fraudulent evasion of duty etc.) in relation to goods prohibited to be imported under section 42 of the Customs Consolidation Act 1876(f) (prohibitions and restrictions relating to pornography) where the prohibited goods included indecent photographs of children under the age of 16.
5. An offence under section 52 (taking, distributing, showing or publishing etc. any indecent photograph or pseudo-photograph of a child) or 52A (possessing any indecent photograph or pseudo-photograph of a child) of the Civic Government (Scotland) Act 1982.

#### Offences in Northern Ireland

6. An offence of rape under Article 5 of the Sexual Offences (Northern Ireland) Order 2008(g).
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- (a) 1995 c.46. Schedule 1 was amended by the Prohibition of Female Mutilation (Scotland) Act 2005 asp 8, section 7 and the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 asp 9, schedule 1.
  - (b) 1995 c.39. Section 13 was amended by the Sexual Offences (Amendment) Act 2000 c.44, sections 1 and 2 and the Convention Rights (Compliance) (Scotland) Act 2001 asp 7, section 10.
  - (c) 1982 c.45. Section 52 was amended by the following enactments: the Criminal Justice and Public Order Act 1994 c.33, section 84; the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 c.40, Schedule 4; the Criminal Justice (Scotland) Act 2003 asp 7, section 19, and the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005 asp 9, section 16. Section 52A was inserted by the Criminal Justice Act 1988 c.33, section 16(1)(2) and was subsequently amended by the Criminal Justice and Public Order Act 1994, section 84 and the Criminal Justice (Scotland) Act 2003, section 19.
  - (d) Section 5(3) was amended by the Crime and Punishment (Scotland) Act 1997 c.48, section 14.
  - (e) 1979 c.2. Section 170 was amended by the Finance (No. 2) Act 1992 c.48, Schedule 2; the Criminal Justice Act 2003 c.44, section 293; the Criminal Justice and Immigration Act 2008 c.4, Schedule 17, S.I. 1996/2686 and S.I. 2004/702.
  - (f) 1876 c.36. Section 42 was repealed in part by the Statute Law (Repeals) Act 1993 c.50, Part IX of the Schedule and the Statute Law (Repeals) Act 2008 c.12, Schedule 2.
  - (g) 2008 No. 1769 (N.I. 2).

7. An offence of assault by penetration under Article 6 of that Order.
8. An offence of causing a person to engage in sexual activity without consent under Article 8 of that Order if the activity fell within paragraph (4) of that Article.
9. An offence of rape of a child under 13 under Article 12 of that Order.
10. An offence of sexual activity with a child family member under Article 32 of that Order if the touching fell within paragraph (6) of that Article.
11. An offence of inciting a child family member to engage in sexual activity under Article 33 of that Order if the touching to which the incitement related fell within paragraph (6) of that Article.
12. An offence of sexual activity with a person with a mental disorder impeding choice under Article 43 of that Order if the touching fell within paragraph (3) of that Article.
13. An offence of causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity under Article 44 of that Order if the activity caused or incited fell within paragraph (3) of that Article.
14. An offence of inducement, threat or deception to procure sexual activity with a person with a mental disorder under Article 47 of that Order if the touching fell within paragraph (2) of that Article.
15. An offence of causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement, threat or deception under Article 48 of that Order if the activity caused or agreed to fell within paragraph (2) of that Article.
16. An offence specified in Schedule 1 to the Children and Young Persons Act (Northern Ireland) 1968(a) except for—
  - (a) the offence of common assault or battery;
  - (b) in a case where the offender was under 18 at the time the offence was committed, an offence contrary to section 47 of the Offences Against the Person Act 1861(b) (assault occasioning actual bodily harm).
17. An offence under Article 3 of the Protection of Children (Northern Ireland) Order 1978(c) (indecent photographs).
18. An offence contrary to Article 15 of the Criminal Justice (Evidence, etc.) (Northern Ireland) Order 1988(d) (possession of indecent photographs of children).
19. An offence contrary to section 170 of the Customs and Excise Management Act 1979(e) in relation to goods prohibited to be imported under section 42 of the Customs Consolidation Act 1876 (prohibitions and restrictions relating to pornography) where the prohibited goods included indecent photographs of children under the age of 16.

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(a) 1968 c.34. Schedule 1 was amended by the Sexual Offences Act 2003 c.42, Schedule 6 and the Domestic Violence Crime and Victims Act 2004, c.28, Schedule 10 and by S.I. 1978 No. 1047 (N.I. 17); S.I. 1985 No. 1638 (N.I. 17); S.I. 2003 No. 1247 (N.I. 13); S.I. 1986 No. 595 (N.I. 4); S.I. 1995 No. 755 (N.I. 2).

(b) 1861 c.100.

(c) Northern Ireland Order in Council 1978 No. 1047 (N.I. 17). Article 3 was amended by the Criminal Justice and Public Order Act 1994 c.33, section 84 and the Criminal Justice and Court Services Act 2000 c.43, section 41 and by S.I. 2003 No. 1247 (N.I. 13).

(d) Northern Ireland Order in Council 1988 No. 1847 (N.I. 17). Article 15 was amended by the Criminal Justice and Public Order Act 1994 c.33, section 84 and the Criminal Justice and Court Services Act 2000 c.43, section 41.

(e) Section 17 was repealed by the Commissioners for Revenue and Customs Act 2005 c.11, Schedule 5.

## SCHEDULE 2

Regulation 20(5)

### CERTIFICATE OF ELIGIBILITY AND APPROVAL

To the Central Authority of the State of origin

Re ..... [name of applicant]

In accordance with Article 5 of the Convention, I hereby certify on behalf of the Central Authority for Scotland that ..... [name of applicant] has been counselled as necessary, is eligible to adopt and has been assessed and approved as suitable to adopt a child from ..... [State of origin] by ..... [a local authority in Scotland or an accredited body for the purpose of the Convention].

The attached report has been prepared in accordance with Article 15 of the Convention for presentation to the competent authority in ..... [State of origin].

This certificate of eligibility and approval and the report under Article 15 of the Convention are provided on the condition that a Convention adoption or Convention adoption order will not be made until the agreement under Article 17(c) of the Convention has been made.

I confirm on behalf of the Central Authority that, following the agreement under Article 17(c) of the Convention, the child ..... [name] will be authorised to enter and reside permanently in the United Kingdom if–

- (i) the requirements specified in section 1(5A) of the British Nationality Act 1981 are met, or
- (ii) entry clearance and leave to enter and remain, as may be necessary, is granted and not revoked or curtailed and a Convention adoption order or Convention adoption is made.

Signed

On behalf of the Scottish Ministers

Central Authority for Scotland

SCHEDULE 3

Regulations 35(2), 52(2)

CERTIFICATE THAT AN ADOPTION HAS BEEN MADE IN ACCORDANCE WITH THE CONVENTION

1. The Central Authority as the competent authority for Scotland being the country in which the Convention adoption order was made hereby certifies, in accordance with Article 23(1) of the Convention, that the child:

(a) name: .....[name on birth certificate]

[also known as/now known as ..... ]

sex: .....

date and place of birth: .....

habitual residence at the time of adoption: .....

State of origin: .....

(b) was adopted on .....

by order made by ..... [court in Scotland]

(c) by the following person(s):

(i) surname and first name(s): .....

sex: .....

date and place of birth: .....

habitual residence at the time of the adoption: .....

occupation at the time of the adoption: .....

(ii) surname and first name(s): .....

sex: .....

date and place of birth: .....

habitual residence at the time of the adoption: .....

occupation at the time of the adoption: .....

2. The competent authority for Scotland in pursuance of Article 23(1) of the Convention hereby certifies that the adoption was made in accordance with the Convention and that the agreement under Article 17(c) was given by:

(a) Name and address of the Central Authority in the State of origin: .....  
.....

Date of the agreement: .....

(b) Name and address of the Central Authority of the receiving State: .....  
.....

Date of the agreement: .....

Signed ..... Date .....

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision for adoptions with a foreign element under the Adoption (Intercountry Aspects) Act 1999 and the Adoption and Children (Scotland) Act 2007 (“the 2007 Act”).

The Regulations distinguish two categories of adoptions with a foreign element – those effected under the Hague Convention on the Protection of Children and Co-operation in respect of Intercountry Adoption<sup>(34)</sup> (“Convention cases”) and all other foreign adoptions (“non-Convention cases”).

Part 2 (with the exception of regulation 9) makes provision for non-Convention cases whilst Part 3 concerns Convention cases.

The requirements for non-Convention cases are set out in Part 1, Chapter 6 of the 2007 Act. Chapter 1 of Part 2 of these Regulations makes provision for cases where a child is brought into the United Kingdom in circumstances where section 58 of the 2007 Act applies. Section 58 applies where a British resident brings or causes another to bring a child into the United Kingdom for the purposes of adoption or where they bring or cause another to bring a child adopted by a British resident under an external adoption effected within a period of 12 months from that adoption.

Regulations 3 and 4 prescribe the requirements which must be met by the prospective adopters before a child is brought into the United Kingdom. Regulation 5 then imposes functions on the local authority which apply when the child has been brought into the United Kingdom and the prospective adopters have given notice of their intention to apply for an adoption order.

Chapter 2 of Part 2 of these Regulations makes provision for cases where a child is to be taken out of the United Kingdom for overseas adoption (an adoption effected outwith the British Islands which is not within the scope of the Convention). Regulations 7 and 8 prescribe the requirements which must be met before an order under section 59 of the 2007 Act (a preliminary order conferring parental responsibilities and rights on prospective adopters where the child is to be adopted abroad) is made. These provisions apply only to non-Convention cases. Regulation 9 specifies those provisions of the 2007 Act which apply to orders made under section 59 and applies to both Convention and non-Convention cases.

Part 3 of the Regulations makes provision only for Convention cases. Chapter 1 regulates the procedure which must be followed when the United Kingdom is the receiving State (where a child is brought from outwith the British Islands to the United Kingdom for adoption by a British resident in accordance with the Convention) whilst Chapter 2 regulates the process when the United Kingdom is the State of Origin (where a child who is habitually resident in the British Islands is to be adopted by a person or a couple habitually resident outwith the British Islands in accordance with the Convention). Both Chapters prescribe the requirements and procedures which must be followed for such adoptions as well as making provision for the recognition of such adoptions.

Chapter 3 makes miscellaneous provision. Regulation 53 applies the provisions of the 2007 Act to Convention adoption orders subject to modifications. Regulations 54 to 61 modify the application of that Act to such adoptions. Regulation 62 applies the Adoption Agencies (Scotland) Regulations 2009 with modifications. Regulation 63 provides that a person who fails to comply with any of the provisions listed in paragraph (2) commits an offence.

Part 4 (regulation 64) revokes the Adoption (Hague Convention) (Scotland) Regulations 2003.

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<sup>(34)</sup> Concluded at The Hague on 29th May 1993.