SCOTTISH STATUTORY INSTRUMENTS

2003 No. 19

CHILDREN AND YOUNG PERSONS

The Intercountry Adoption (Hague Convention) (Scotland) Regulations 2003

Made - - - -	*14th January 2003*
Laid before the Scottish Parliament - - - -	*15th January 2003*
Coming into force - -	*1st June 2003*

The Scottish Ministers, in exercise of the powers conferred by section 1(1) to (3) and (5) of the Adoption (Intercountry Aspects) Act 1999(**1**) and sections 9(2) and (3) and 50A(1) of the Adoption Act 1978(**2**), and of all other powers enabling them in that behalf, hereby make the following regulations:

PART 1

General

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Intercountry Adoption (Hague Convention) (Scotland) Regulations 2003 and shall come into force on 1st June 2003.

(2) These Regulations extend to Scotland only.

Interpretation

2. In these Regulations–

"the Act" means the Adoption (Intercountry Aspects) Act 1999;

"the 1978 Act" means the Adoption (Scotland) Act 1978;

(**1**) 1999 c. 18. Section 1 of the Adoption (Intercountry Aspects) Act 1999 ("the 1999 Act") 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).

(**2**) 1978 c. 28. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of. Section 53 of the Scotland Act 1998 (c. 46).

"the 2001 Regulations" means the Adoption of Children from Overseas (Scotland) Regulations 2001(**3**);

"the Adoption Agencies Regulations" means the Adoption Agencies (Scotland) Regulations 1996(**4**) subject to the modifications set out in Schedule 4;

"adoption agency" means a local authority or an approved adoption society which is an accredited body for the purposes of the Convention(**5**);

"adoption panel" has the same meaning as in the Adoption Agencies Regulations;

"contact order" has the same meaning as in section 11(2) of the Children (Scotland) Act 1995(**6**);

"eligible to adopt", except in regulations 6(7)(a) and 9(1) has the meaning given in regulation 5;

"local authority" in Part 3 means a local authority acting in its capacity as an adoption agency;

"prospective adopter" in Part 2 means a person who makes an application under regulation 3;

"receiving State" has the same meaning as in the Convention;

"relevant local authority" in Part 2 has the meaning given in regulation 13;

"RSCA" means, in relation to a Convention country other than the United Kingdom, the Central Authority of the receiving State;

"SOCA" means, in relation to a Convention country other than the United Kingdom, the Central Authority of the State of origin;

"State of origin" has the same meaning as in Article 2 of the Convention.

PART 2

Procedure in Scotland where the United Kingdom is the receiving State

Application for assessment of suitability to be an adoptive parent

3.—(1) A person habitually resident in the British Islands who wishes to adopt a child habitually resident in a Convention country(**7**) outside the British Islands shall apply to an adoption agency for assessment of that person's suitability to be an adoptive parent.

(2) An application under this regulation shall be made in writing and shall include such information as the agency may require.

Requirement to provide information

4.—(1) Where an application for assessment is made in accordance with regulation 3, the adoption agency shall–

(a) explain to the prospective adopter the legal implications of adoption and the procedure in relation to adopting a child under the Convention; and

(b) provide the prospective adopter 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 set out in paragraph (1) have been carried out in respect of the prospective adopter by another adoption agency.

(**3**) S.S.I. 2001/236.
(**4**) S.I.1996/3266.
(**5**) See section 2(3) of the 1999 Act.
(**6**) 1995 c. 36.
(**7**) Section 65(1) of the 1978 Act as amended by section 8 of the 1999 Act defines "Convention country" and "the Convention".

Eligibility requirements

5. An adoption agency shall not consider a person eligible to adopt unless–

(a) in the case of an application for assessment under regulation 3 by a married couple, they have both attained the age of 21 years and the requirement prescribed in regulation 30(2)(a) is complied with; or

(b) in the case of an application for assessment under regulation 3 by any other person, that person has attained the age of 21 years and the requirement prescribed in regulation 30(2)(a) is complied with.

Duty of the adoption agency – case record, police checks and assessment

6.—(1) Where, following the procedures referred to in regulation 4, and subject to regulation 5 and paragraph (3) of this regulation, the adoption agency–

(a) is satisfied that the prospective adopter is eligible to adopt; and

(b) considers that person's suitability as an adoptive parent should be assessed,

it shall–

(i) set up a case record in respect of that person and place on it any information obtained under this regulation; and

(ii) ensure that such counselling as may be necessary in connection with the proposed adoption is made available to the prospective adopter.

(2) An adoption agency shall take all reasonably practicable steps to obtain information about any previous criminal convictions (including convictions in England, Wales or Northern Ireland and any police cautions issued in England, Wales or Northern Ireland where the offence in question was admitted at the time the caution was given) in respect of criminal offences which relate to the prospective adopter and any other member of the prospective adopter's household aged 16 years or over.

(3) An adoption agency shall not consider a person to be suitable to be an adoptive parent if that person or any member of their household aged 16 years or over–

(a) has been convicted of an offence specified in Schedule 5;

(b) has received a police caution in England, Wales or Northern Ireland in respect of such an offence which, at the time the caution was given, that person admitted.

(4) The adoption agency shall notify a prospective adopter in writing as soon as possible after becoming aware that–

(a) the prospective adopter is not eligible to adopt because that person does not meet the requirements of regulation 5; or

(b) the prospective adopter is not suitable to be an adoptive parent by virtue of paragraph (3) of this regulation,

and in a case to which sub-paragraph (b) applies the notification shall specify the conviction, or as the case may be, the police caution in question where that conviction or police caution relates to the prospective adopter.

(5) The adoption agency shall obtain such particulars as are referred to in Part IV of Schedule 2 to the Adoption Agencies Regulations together with, so far as is reasonably practicable, any other relevant information which may be requested by the adoption panel.

(6) In a case where the adoption agency is not the local authority in whose area the prospective adopter has their home, it shall obtain a written report about the prospective adopter from that authority.

(7) The adoption agency shall prepare a written report which shall–

(a) state the Convention country from which the prospective adopter wishes to adopt a child, confirm that person is eligible to adopt a child under the law of that Convention country and provide any other information which that Convention country usually requires;

(b) include the adoption agency's assessment of the prospective adopter's suitability to be an adoptive parent;

(c) include any other observations of the adoption agency on the matters referred to in regulation 5 and this regulation; and

(d) include any other information about the prospective adopter of the type specified in Article 15(1) of the Convention.

(8) The adoption agency shall notify the prospective adopter that the prospective adopter's application is to be referred to the adoption panel and at the same time, send that person a copy of the adoption agency's report referred to in paragraph (7) (excluding any information from third parties given in confidence), inviting that person to send any observations in writing to the adoption agency on the report within 14 days, beginning with the date on which the notification was sent.

(9) At the end of the period of 14 days referred to in paragraph (8), (or earlier if any observations made by the prospective adopter are received before the 14 day period has expired), the adoption agency shall pass the report referred to in paragraph (7) together with all relevant information obtained by it under this regulation (including the prospective adopter's observations on the report), to the adoption panel.

Function of the adoption panel

7.—(1) Subject to paragraph (2), the adoption panel shall consider the case of the prospective adopter referred to it by the adoption agency and shall make a recommendation to the adoption agency as to whether the prospective adopter is suitable to be an adoptive parent.

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

(a) shall consider and take into account all information and reports passed to it in accordance with regulation 6(9);

(b) shall give the prospective adopter the opportunity to meet with the adoption panel and discuss the information and reports obtained under regulation 6(9);

(c) may request the agency to obtain any other relevant information which the panel considers necessary; and

(d) may obtain legal advice as it considers necessary in relation to the case.

Adoption agency decision, notification and review procedure

8.—(1) The adoption agency shall take into account the recommendation of the adoption panel in coming to a decision about whether the prospective adopter is suitable to be an adoptive parent and shall make that decision within 14 days after the date of the recommendation of the adoption panel.

(2) No member of an adoption panel shall take part in any decision made by the adoption agency under paragraph (1).

(3) If the adoption agency decides to approve the prospective adopter as suitable to be an adoptive parent, it shall notify the prospective adopter in writing of its decision within 7 days after the date of the decision under paragraph (1).

(4) If the adoption agency considers that the prospective adopter is not suitable to be an adoptive parent, it shall–

(a) notify the prospective adopter in writing that it proposes not to approve that person as suitable to be an adoptive parent within 7 days after the date of a decision under paragraph (1) (the "decision");

(b) send with that notification its reasons together with a copy of the recommendations of the adoption panel, if different;

(c) notify the prospective adopter in writing that the prospective adopter may require the decision to be reviewed within 28 days after the date of notification; and

(d) invite the prospective adopter to submit any representations regarding the decision that person wishes to make within 28 days after the date of notification.

(5) If within the period of 28 days referred to in paragraph (4), the prospective adopter has not made any representations and a request for review, the adoption agency shall proceed to confirm the decision and shall notify the prospective adopter in writing of the confirmed decision together with the reasons for the decision.

(6) If within the period of 28 days referred to in paragraph (4), the adoption agency receives further representations from the prospective adopter and the prospective adopter indicates that the decision should be reviewed, it shall refer the case together with all the relevant information (including the further representations) to the adoption panel for further consideration.

(7) The adoption panel shall reconsider any case referred to it under paragraph (6) and make a fresh recommendation to the adoption agency as to whether the prospective adopter is suitable to be an adoptive parent.

(8) The adoption agency shall make a decision (the "reviewed decision") on the case within 14 days after the date of any fresh recommendation of the adoption panel under paragraph (7) and shall make the reviewed decision only after taking into account any fresh recommendation of the adoption panel made under paragraph (7).

(9) Within 7 days after making the reviewed decision under paragraph (8), the adoption agency shall notify the prospective adopter in writing of its reviewed decision, stating its reasons for that decision if they do not consider the prospective adopter to be suitable to be an adoptive parent, and of the adoption panel's recommendation, if this is different from the adoption agency's reviewed decision.

Procedure following approval by the adoption agency

9.—(1) Where the adoption agency is satisfied that the prospective adopter is eligible to adopt a child under the law of Scotland and has approved the prospective adopter as suitable to be an adoptive parent ("its decision") it shall send to the Central Authority within 7 days after the date of making its decision–

(a) written confirmation of its decision; and

(b) a copy of the report prepared for the purpose of regulation 6(7).

(2) The Central Authority may seek further information from the adoption agency, if the Authority considers it is appropriate to do so.

(3) If the Central Authority is satisfied that the adoption agency has complied with these Regulations and that all the relevant information has been supplied by that adoption agency, the Central Authority shall send to SOCA–

(a) a certificate in the form set out in Schedule 1 confirming that–

(i) the prospective adopter is eligible to adopt;

(ii) the prospective adopter has been assessed in accordance with these Regulations;

(iii) the prospective adopter has been approved as suitable to be an adoptive parent; and