

**Adoption and Children Act 2002**

**Intercountry Adoption Guidance  
and  
Information on Processes**

**Welsh Assembly Government**

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## INTRODUCTION

1. This document is issued under section 7 of the Local Authority Social Services Act 1970, which requires local authorities in their social services functions to act under the general guidance of the National Assembly for Wales. As such this document does not have the full force of statute, but should be complied with unless local circumstances indicate exceptional reasons which justify a variation.
2. For the purposes of this document references to the Welsh Assembly Government shall be taken as references to the Welsh Assembly Government acting under powers delegated to it by the National Assembly for Wales.
3. This guidance, relating to intercountry adoption in Wales, is issued by the Welsh Assembly Government. The guidance in this document is not a complete statement of the law and should be read in conjunction with the Act, the Adoption Agencies (Wales) Regulations 2005 and the Adoptions with a Foreign Element Regulations 2005 and other Regulations listed in the Introduction.
4. Local authorities will need to review their existing policies and practice in the light of the Regulations and this guidance and give the same priority to these responsibilities as to other statutory duties.
5. This document also contains in an Annex supplementary information about the context of and processes for handling intercountry adoptions. That information does not have the status of guidance issued under the Local Authority Social Services Act 1970. It is intended as a practise guide only.

### The legal framework for intercountry adoption.

5. Section 3 of The Adoption and Children Act 2002 requires a local authority to provide an adoption service, including an intercountry adoption service, within its area. Under section 2 of the Act a local authority or a registered adoption society may be referred to as an adoption agency.
6. The Adoption and Children Act 2002 ('the Act') took effect on 30 December 2005. Section 83 of the Act
  - imposes restrictions on British residents bringing or causing someone else to bring a child who is habitually resident outside the British Islands into the UK with the intention of adopting the child in this country

- makes it a criminal offence for a British resident to bring or cause someone else to bring a child habitually resident outside the British Islands who he has adopted within the last six\* months into the UK unless (s)he complies with prescribed requirements and meets prescribed conditions.

[\* The Children and Adoption Bill proposes to extend this period to 12 months.]

7. Section 84 provides that the High Court may make an order for the transfer of parental responsibility for a child to prospective adopters who are not domiciled or habitually resident in England or Wales but who intend to adopt the child outside the British Islands.

8. Section 1 of the Adoption (Intercountry Aspects) Act 1999 empowers the Secretary of State for Education and Skills, after consultation with the National Assembly for Wales, to make Regulations to give effect in England and Wales to the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption. The Convention was concluded at the Hague in May 1993 (the Hague Convention). The Regulations made are the Adoptions with a Foreign Element Regulations 2005.

9. This guidance refers to the key Regulations made under the 1999 and 2002 Acts that relate to intercountry adoption. Those Regulations are:

- The Adoption Agencies (Wales) Regulations 2005 [SI 20051313 (W.95)]  
(English) [www.opsi.gov.uk/legislation/wales/wsi2005/20051313e.htm](http://www.opsi.gov.uk/legislation/wales/wsi2005/20051313e.htm)  
(Welsh) <http://www.opsi.gov.uk/legislation/wales/wsi2005/20051313w.htm>
- The Adoptions with a Foreign Element Regulations 2005 [SI 2005/392]  
<http://www.opsi.gov.uk/si/si2005/20050392.htm>
- The Local Authorities (Prescribed Fees) (Adoptions with a Foreign Element) (Wales) Regulations 2005 [SI 2005/3114 (W.234)]  
(English) <http://www.opsi.gov.uk/legislation/wales/wsi2005/20053114e.htm>  
(Welsh) <http://www.opsi.gov.uk/legislation/wales/wsi2005/20053114w.htm>
- The Restrictions on Preparation of Adoption Reports Regulations 2005 [SI2005/1711]  
<http://www.opsi.gov.uk/si/si2005/20051711.htm>
- The Adopted Children and Adoption Contact Registers Regulations 2005 [SI 2005/924]  
<http://www.opsi.gov.uk/si/si2005/20050924.htm>

10. The document may also be accessed from the Welsh Assembly Government's website: [[www.wales.gov.uk/subchildren](http://www.wales.gov.uk/subchildren)]

11. Intercountry adoption can be categorised as follows:

- Proposed adoption of a child from a country whose adoptions orders are not recognised and where the child is to be brought to the UK for adoption in the courts here.
- Proposed adoption of a child from a country included on the Designated list, where an adoption order made in that country would be recognised as an overseas adoption under the Adoption (Designation of Overseas Adoptions) Order 1973.
- Proposed adoption of a child from a Hague Convention compliant country

12. It is also possible for a looked after child to be adopted by people domiciled or habitually resident in a country outside the British Islands. That can occur as an adoption under the Hague Convention, with the High Court being asked to grant an order under section 84 of the Act giving parental responsibility to the prospective adopters. They would then seek an adoption order in their own country. [For more details, see Annex, Part 1, paragraphs 20 – 24.]

## **STANDARDS, VALUES AND TIMESCALES**

13. The same standards, values and timescales set out in the Adoption Agencies Guidance apply where appropriate to intercountry adoption.

## **DEFINITIONS**

**Adopted Children Register** – a register maintained by the Registrar General of all legal adoptions in England and Wales since January 1927, including all registrable foreign adoptions since June 2003, registered on the authority of orders (or overseas equivalent) from the courts (or overseas equivalent) granting the adoption.

**Article 15 report (of the Hague Convention)**– report prepared under Article 15 of the Convention on the prospective adopter. This includes information on their identity, eligibility and suitability to adopt, background, family and medical history, social environment, reasons for adoption, ability to undertake an intercountry adoption and the characteristics of the children for whom they would be qualified to care.

**Article 16 Information (of the Hague Convention)** – report prepared under Article 16 of the Convention on the child. This includes information on his/her identity, adaptability, background, social environment, family history, medical history including that of the child's family, and any special needs of the child.

**Article 17 (of the Hague Convention)** – this Article sets out what action needs to be taken where it is decided in the State of origin that a child should be entrusted to a prospective adopter. The Central Authorities must conclude an agreement under Article 17(c) before a child can be placed with prospective adopters.

**British Islands** – England, Wales, Scotland, Northern Ireland, the Channel Islands, and the Isle of Man.

**Central Authority (under the Hague Convention)** – in relation to a prospective adopter who is habitually resident in Wales and in relation to a local authority in Wales, the National Assembly for Wales. [In England, the Secretary of State for Education and Skills].

**The Convention** – the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, concluded at the Hague on 29 May 1993 and implemented by the UK on 1 June 2003.

**Convention adoption** – an adoption effected under the law of a Convention country outside the British Islands, and certified in pursuance of Article 23(1) of the Convention.

**Convention adoption order** – an adoption order made under UK law as a Convention adoption order.

**Convention case** – adopting a child in accordance with the Convention from the child's State of origin.

**Convention country** – a country or territory in which the Convention is in force. This excludes countries to whose accession the UK has objected (see the DfES adoption website for more information).

**Convention list** – a list of children available for intercountry adoption under the Convention, maintained by the relevant Central Authority in the UK.

**Court report:**

- **Adoption Order Application (AOA)** – report to the court where there has been an adoption order application. This is the report prepared by the adoption agency under section 43 of the Act, where it placed the child for adoption; or the report prepared by the local authority under section 44 of the Act, where it has been given notice by proposed adopters of their intention to adopt. The report sets out information about:
  - the child

- the child's parent(s)
- relationships, contact arrangements and views
- the prospective adopter(s)
- a summary of the authority's actions
- the placement
- and the agency's recommendations with respect to the making of an adoption order and future contact arrangements.
- **Section 84 Order Application** – report to the court where there has been an application for an order under section 84 of the Act giving parental responsibility prior to adoption abroad. This is the report prepared by the adoption agency under section 43 or 44 of the Act.

**Department for Education and Skills (DfES)** – the Department for Education and Skills is the designated Central Authority for England for the purposes of adoptions under the Convention. DfES also has a role in processing all non-Convention intercountry adoption applications for Wales.

**Designated List** – full adoptions effected in countries on the Designated List are automatically recognised in the UK (see the DfES adoption website for more information <http://www.dfes.gov.uk/adoption/> ).

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

**Fee** – includes expenses.

**Fees** – refers to any fees charged by a local authority to prospective intercountry adopters for carrying out an assessment of their suitability (see the Local

Authorities (Prescribed Fees) (Adoptions with a Foreign Element) (Wales) Regulations 2005 – SI 2005/3114 (W.234)).

**Full adoption** – adoption law in the UK recognises only full adoption, which creates a new and irrevocable legal relationship between the child and the adoptive parents, severing all legal ties between the child and his natural parents. See also interim adoption.

**Habitual residence** – the term indicates the quality of residence rather than mere duration and requires an element of intention. The term suggests personal presence must continue for some time. There is no requisite period of residence.

**Hague Convention** – see ‘the Convention’.

**Intercountry adoption** - means the adoption of a child by a prospective adopter resident outside the British Islands, including an adoption under the Convention.

**Interim adoption** – some countries issue interim adoptions that become a full adoption after a probationary period. Usually, reports on the placement will be required before the interim adoption can become a full adoption.

**Local Health Board** – functions include improving the health and well-being of the community, and improving access to and quality of health services used by the community in Wales. The equivalent in England is a Primary Care Trust.

**Medical adviser** – the registered medical practitioner appointed by the adoption agency as their medical adviser.

**National Assembly for Wales** – means the body corporate established by the Government of Wales Act 1998.

**Non Convention case** – the adoption of a child outside the requirements of the Convention.

**Overseas adoption** – an adoption effected in another country that is recognised in the UK by virtue of the Designated List.

**Receiving State** – the State where the prospective adopters are resident in intercountry adoption cases.

**Registrar General** – a Crown-appointed statutory officer who administers, through the General Register Office, the registration services relating to all births (including adoptions), marriages, civil partnerships and deaths in England and Wales.

**Registration authority** – the National Assembly for Wales in Wales (Care Standards Inspectorate for Wales – CSIW) and the Commission for Social Care Inspection in England.

**Relevant authority in the State of origin** – a general term for referring to the adoption authorities in another country. In a Convention case, this means the relevant Central Authority. In all other intercountry cases, this means the relevant foreign authority.

**Relevant foreign authority** – a person, outside the British Islands performing functions in the country in which the child is, or in which the prospective adopter is, habitually resident which correspond to the functions of an adoption agency or to the functions of the Secretary of State for Education and Skills in respect of adoptions with a foreign element.

**Section 83 case** – a case where a person who is habitually resident in the British Islands intends to bring, or to cause another to bring, a child into the UK in connection with adoption in circumstances where section 83 of the Act (restriction on bringing children into the UK) applies. Section 83 does not apply to Convention cases.

**Section 84 order** – an order made under section 84 of the Act authorising a prospective adopter to remove a child from the British Islands for the purposes of adoption in another country. Removing a child from the British Islands without a section 84 order is an offence under section 85 of the Act.

**Social worker** – a person who is registered as a social worker with the General Social Care Council or the Care Council for Wales under section 56 of the Care Standards Act 2000 or in a corresponding register maintained under the law of Scotland or Northern Ireland.

**State of origin** – the state where the child is habitually resident in intercountry adoption cases.

**UK (United Kingdom)** – means England, Wales, Scotland and Northern Ireland, but does not include the Isle of Man or the Channel Islands.

**Welsh Assembly Government** – the part of the National Assembly for Wales carrying out executive functions delegated to it and comprising the Cabinet of Ministers and the staff who serve them.

## **GUIDANCE – PART 1**

### **ADOPTION AGENCIES GUIDANCE**

1. The Adoption Agencies Guidance issued by the Welsh Assembly Government should be referred to on matters relating to

- the arrangements for establishing the adoption panel
- deciding whether a looked after child should be placed for intercountry adoption and
- the preparation, assessment and approval of prospective adopters who wish to adopt a child from abroad.

#### *Advice to Panel*

2. In a case where prospective intercountry adopters are being considered, the agency should ensure that a social worker with experience of agency arrangements for intercountry adoption provides the panel with advice.

3. Advice to the panel may be given orally and in writing. As well as legal advice, the panel may wish to call for advice from social workers with particular expertise, such as in intercountry adoption.

#### *Medical adviser role in section 84 order cases*

4. The agency medical adviser should be consulted where the agency prepares a report to the court where there has been an application for a section 84 order, as the agency is required to provide summaries written by the medical adviser on the health of the child and the prospective adopter.

#### *Persons who may prepare adoption reports*

5. Regulation 3 of the Restriction on the Preparation of Adoption Reports Regulations 2005 provides that only persons who fall within one of three categories of the prescribed description may prepare adoption reports. These are:

- a social worker, employed by the agency, who either has the necessary experience or is supervised by a social worker, employed by the agency, who has the necessary experience

- a social worker, acting on behalf of the agency, (i.e. an independent social worker) who has the necessary experience and is supervised by a social worker, employed by the agency, who has the necessary experience
- a student training to become a social worker who is employed by, or placed with, the agency as part of a course and is supervised by a social worker, employed by the agency, who has the necessary experience. The social work student must be on a course approved by the General Social Care Council or the Care Council for Wales.

6. Where reports are being prepared by social work students, independent social workers or social workers without the necessary experience, the draft report should be considered and discussed during supervision and signed off by a social worker with the necessary experience before the report is submitted to the adoption panel or to a relevant foreign authority.

7. Regulation 4 of the Restriction on the Preparation of Adoption Reports Regulations provides that only a person who meets the requirements of Regulation 3 may prepare any of the following:

- report of a visit or review of an adoption placement where a child has been brought into the country for adoption
- pre-adoption report for a relevant authority in the child's State of origin of an intercountry adoption placement. See Annex for further information on post placement reports.
- Post-adoption report for a relevant authority in the child's State of origin following the adoption of the child. See Annex for further information on post placement reports.
- report for the Court under sections 43 and 44(5) of the 2002 Act<sup>2</sup>
- report for the Court considering the making of an order under section 84 of the 2002 Act giving parental responsibility prior to adoption abroad.

## **GUIDANCE – PART 2**

### **CONSIDERING AND DECIDING WHETHER A CHILD SHOULD BE PLACED FOR ADOPTION OUTSIDE THE BRITISH ISLANDS**

1. An agency has additional duties where it is considering adoption for a child by a prospective adopter resident outside the British Islands under the *Convention*. For *non-Convention* cases, this section sets out additional guidance for the agency to follow. **In both cases, the guidance on the Adoption Agencies (Wales) Regulations applies together with the guidance that follows below.**

2. In *Convention* cases, the Adoptions with a Foreign Element Regulations 2005 apply in conjunction with the Adoption Agencies (Wales) Regulations 2005 in relation to the following:

- Counselling and informing the child (Foreign Element Regulation 36 and Agencies Regulation 13)
- Counselling and informing the child's family and others (Foreign Element Regulation 37 and Agencies Regulation 14)
- Child's permanence report (Foreign Element Regulation 38 and Agencies Regulation 17)
- The adoption panel (Foreign Element Regulation 39 and Agencies Regulation 18)
- Agency decision (Foreign Element Regulations 40, 41 and Agencies Regulation 19)

### **COUNSELLING AND INFORMING THE CHILD: Foreign Element Regulation 36**

3. In *Convention* cases, Foreign Element Regulation 36 requires the agency – so far as is reasonably practicable – to:

- provide a counselling service for the child
- explain to the child in an appropriate manner the procedures for and the legal implications of intercountry adoption, including a *Convention adoption*.

4. The agency should also undertake this in *non-Convention* cases.

#### **COUNSELLING AND INFORMING THE CHILD’S FAMILY AND OTHERS: Foreign Element Regulation 37**

5. In a *Convention* case, the agency is required by Foreign Element Regulation 37 to counsel the child’s parent or guardian. The agency should explain to them – so far as is reasonably practicable – the procedures for adoption, including a *Convention adoption*, and the legal implications of adoption, including a *Convention adoption*. The agency is also to provide them with written information about these matters.

6. This requirement also applies where the father of the child does not have parental responsibility for the child, the father’s identity is known to the agency and the agency is satisfied it is appropriate to counsel him and explain these matters to him.

7. The agency should also undertake this in *non-Convention* cases.

#### **CHILD’S PERMANENCE REPORT: Foreign Element Regulation 38**

8. In a case where the agency is considering an intercountry adoption for the child, including a *Convention adoption*, Foreign Element Regulation 38.1 requires the agency to include in the child’s permanence report an assessment on whether an adoption by a person in a particular country is in the child’s best interests and a summary of possibilities for placing the child within the UK. This should also be included for *non-Convention* cases.

9. In a case where the agency is considering an intercountry adoption under the *Convention* for the child, Foreign Element Regulation 38.2 requires the agency to also send to the adoption panel the Article 15 report, if received, and the agency’s observations on that report.

#### **THE ADOPTION PANEL: Foreign Element Regulation 39**

10. In a case where the agency is considering an intercountry adoption under the *Convention* for the child, Foreign Element Regulation 39 requires the panel to consider and take into account:

- the Article 15 report, if available, and the agency's observations on that report
- and the assessment in the child's permanence report on whether an adoption by a person in a particular country is in the child's best interests, as required by Foreign Element Regulation 38.

### **AGENCY DECISION: Foreign Element Regulations 40 and 41**

11. In a case where the agency is considering an intercountry adoption under the *Convention* and the agency decision maker decides that the child should be so placed, Foreign Element Regulation 40 requires the agency to notify the Welsh Assembly Government to include the child's details on the *Convention* list (see Foreign Element Regulation 41) and to send to the Welsh Assembly Government:

- the name, sex and age of the child
- the reasons why the agency considers that the child may be suitable for such an adoption
- whether a prospective adopter has been identified and, if so, provide any relevant information about that prospective adopter
- and any other information that the Welsh Assembly Government may require.

12. Such a decision and notification does not prevent the agency from subsequently considering a domestic adoption placement or other permanence option for the child. If the agency later decides that an intercountry *Convention* adoption is no longer in the child's best interests, it is required by Foreign Element Regulation 41 to notify the Welsh Assembly Government, which will remove the child's details from the *Convention* list.

13. This part of the guidance explains the duties of an adoption agency in an intercountry case where it proposes to place a child with the prospective adopter.

### **Timescales**

14. The following timescale applies in an intercountry case where the UK is the receiving State and the relevant authority in the State of origin has matched the prospective adopter with a child:

- the agency should meet the prospective adopter to discuss the information on the child within **ten working days** of receiving the match proposed by the relevant authority in the State of origin.

## **PROPOSING A PLACEMENT WHERE THE PROSPECTIVE ADOPTER IS RESIDENT OUTSIDE THE BRITISH ISLANDS**

15. This guidance explains the duties of an adoption agency in an intercountry case where it proposes to place a child with a prospective adopter who is resident outside the British Islands under the *Convention*. For *non-Convention* cases, this section sets out additional guidance for the agency to follow. The preceding guidance in this chapter applies together with the guidance that follows below.

16. The Agencies Regulations apply to *non-Convention* cases. In a *Convention* case, the Foreign Element Regulations apply in conjunction with the Agencies Regulations in relation to the following:

- Proposing a placement (Foreign Element Regulations 42, 43 and Agencies Regulation 31)
- The adoption panel (Foreign Element Regulation 44 and Agencies Regulation 32)
- Agency decision (Foreign Element Regulations 45, 46 and Agencies Regulation 33)

### **PROPOSING A PLACEMENT: Foreign Element Regulations 42 and 43**

17. Where the agency considers the child's placement should be for an adoption outside the British Islands under the *Convention*, it should notify the Welsh Assembly Government, which will include the child's details on the *Convention* list. Where the Welsh Assembly Government receives an Article 15 report on a prospective adopter and is satisfied that the eligibility and suitability requirements are met, it will send the report to the agency that referred the child. Advice on the information that the agency should send to the Welsh Assembly Government is set out in the Annex.

18. Where the agency proposes that the child's placement should be for an adoption outside the British Islands under the *Convention*, the agency is also required by Foreign Element Regulation 43.2 to send to the adoption panel the:

- the agency's reasons for proposing the placement and any other information the agency considers relevant

- child's permanence report
- the Article 15 report.

19. In a *non-Convention* case, the agency should send details of the proposed placement and its reasons for proposing the placement to the panel.

#### **THE ADOPTION PANEL: Foreign Element Regulation 44**

20. Where the agency is proposing that the child's placement should be for an adoption outside the British Islands under the *Convention*, the adoption panel is also required by Foreign Element Regulation 44 to take into account the Article 15 report on the prospective adopter and any other information passed to it under Foreign Element Regulation 38.

#### **AGENCY DECISION: Agencies Regulation 33, Foreign Element Regulations 45 and 46**

21. Where the agency decides that the child's placement should be for an adoption outside the British Islands under the *Convention*, it is:

- required by Foreign Element Regulation 45 to notify the Welsh Assembly Government of its decision and, in an appropriate manner, explain its decision to the child
- required by Foreign Element Regulation 46 to prepare an Article 16(1)1 report on the child and to send this report to the Welsh Assembly Government, together with details of any placement order or other orders and confirmation that the child's parent or guardian consents to the proposed adoption. The Article 16(1) report is to include the information about the child specified in Agencies Regulations, Schedule 1, and the agency's reasons for its decision.

22. The Welsh Assembly Government will send the agency's documents to the Central Authority in the receiving State. The agency may only proceed with a placement for an adoption under the *Convention* if it receives written notification that an agreement under Article 17(c) of the *Convention* has been made. The Annex provides further information about Article 17 (c) agreements. Failure to comply with the *Convention* may mean that the prospective adopter is unable to obtain a *Convention adoption*.

23. If the agency decides that the proposed placement outside the British Islands is not to proceed, Foreign Element Regulation 45 requires it to return the Article 15 report to the Welsh Assembly Government, together with any other information it provided.

24. In a *non-Convention* case, where the agency decides that the child should be placed for adoption outside of the British Islands, it may now make arrangements for placing the child in accordance with the Agencies Regulations.

**PLACEMENT BY AGENCY IN AN INTERCOUNTRY CASE: Foreign Element Regulation 47**

25. In an intercountry adoption under the *Convention*, before the agency places the child, Foreign Element Regulation 47 requires that:

- the relevant authority in the receiving State has confirmed that:
- the prospective adopter has agreed to adopt the child
- the prospective adopter has received such counselling as may be necessary
- the prospective adopter understands the need to obtain an order under section 84 (see Annex A for more information) or a *Convention adoption order*.
- the child is or will be authorised to enter and reside permanently in the receiving State.
- an agreement under Article 17(c) has been made by the relevant authority in Wales and the relevant authority in the receiving State.

26. In a *non-Convention* case, the prospective adopter will need to confirm that he or she will accompany the child upon leaving the UK. In the case of a couple, both of them must accompany the child unless the agency agrees that it is only necessary for one of them to do so.

## **GUIDANCE – PART 3**

### **PREPARING, ASSESSING AND APPROVING PROSPECTIVE ADOPTERS**

**1. In assessing a prospective intercountry adopter, the agency should follow the guidance on the Adoption Agencies (Wales) Regulations and that below which describes additional requirements.**

2. Local authorities have a duty under the Act to provide, or arrange to provide, a domestic and intercountry adoption service.

3. Where an enquiry is made about adopting a child from abroad and the agency is a VAA which is not registered to provide an intercountry adoption service, it should offer general information about adoption and provide details of agencies which can provide an intercountry adoption service.

### **SPECIFIC REQUIREMENTS FOR PROSPECTIVE INTERCOUNTRY ADOPTERS**

4. This part of the guidance explains the additional duties of an agency where it is preparing, assessing and approving a prospective intercountry adopter where the UK is the receiving State. The guidance on the Adoption Agencies (Wales) Regulations applies together with the guidance that follows below.

5. The duties of the agency in *non-Convention* cases are set out in the Adoption Agencies Regulations and the related guidance.

6. In *Convention* cases, the Foreign Element Regulations apply in conjunction with the Adoption Agencies Regulations in relation to the following:

- Informing and counselling (Foreign Element Regulations 13, 14 and Agencies Regulation 21)
- considering applications (Foreign Element Regulation 15 and Agencies Regulation 22)
- police checks (Foreign Element Regulation 15 and Agencies Regulation 23)
- prospective adopter's report (Foreign Element Regulation 15 and Agencies Regulation 26)
- adoption panel (Foreign Element Regulation 15 and Agencies Regulation 27)
- agency decision (Foreign Element Regulation 16 and Agencies Regulation 28)
- approval review (Foreign Element Regulation 17 and Agencies Regulation 30)

### **INFORMING AND COUNSELLING: Foreign Element Regulations 13 & 14, and Agencies Regulation 21**

7. The agency should provide the following information to the prospective adopter during their counselling, orally and in writing: general details about the intercountry adoption process, the countries from which children may be adopted, and details of the fees involved.

8. Where the agency starts to consider the suitability to adopt of a prospective intercountry adopter, the agency is also to explain to the adopter the procedure in relation to and the legal implications of:

- in a *Convention* case, adopting a child in accordance with the *Convention* from the child's State of origin (Foreign Element Regulation 14). **The agency must also ensure that the prospective adopter is eligible to adopt under the Convention.** Foreign Element Regulation 13 states that the agency may not consider the application unless the prospective adopter has attained the age of 21 years and has been habitually resident in the British Islands for at least one year ending with the date of application
- in a *non-Convention* case, adopting a child from the country from which the prospective adopter wishes to adopt (Agencies Regulation 21).

9. A prospective intercountry adopter must make a written application for an assessment of suitability under Regulation 22 of the Agencies Regulations (*non-Convention* cases) or Regulation 13 of the Foreign Element Regulations (*Convention* cases). The latter is also an application for a determination of eligibility.

## **DATA PROTECTION ISSUES**

10. It will be necessary to obtain the written consent of all prospective intercountry adopters to the disclosure of their personal information to the National Assembly for Wales if the authority decides to approve them. Further details are given below.

11. Local authorities should obtain the written consent of all prospective intercountry adopters to the disclosure of their personal information to the National Assembly for Wales if the authority decides to approve them.

12. In *Convention* cases, the consent form/box should specify that the National Assembly for Wales

- (a) will disclose this information to the Central Authority of the child's state of origin and
- (b) may send the information to be notarised and translated and onwards to the Foreign and Commonwealth Office for legalisation if required to do so

13. In *non-Convention* cases, the consent form/box should specify that:

(1) the National Assembly for Wales -

- (a) will disclose this information to the Secretary of State for Education and Skills to enable a certificate of eligibility to be issued; and
- (b) may use this information to advise the Home Secretary upon the child's entry clearance application;

(2) the Secretary of State for Education and Skills -

- (a) will use the information to determine whether to issue a certificate of eligibility;
- (b) will send the information:
  - (i) to the Foreign and Commonwealth Office for legalisation;
  - (ii) to the relevant foreign Embassy or Consulate for authentication; and

(iii) to the adoptive child's country of residence, either directly or via the relevant foreign Embassy or Consulate; and

(c) may send the information to be notarised and translated if required to do so

14. Local authorities should be aware at all times that there may be data protection and confidentiality issues to consider and seek legal advice as appropriate.

## **Fees**

15. Under Regulation 3 of the Local Authorities (Prescribed Fees) (Adoptions with a Foreign Element) (Wales) Regulations 2005, local authorities may decide to charge fees to prospective intercountry adopters for the assessment of their suitability (including any counselling preceding a formal application for approval). No charges may be made for functions imposed on a local authority by Regulation 5 of the Foreign Element Regulations, where notice of intention to adopt has been given to an authority. These functions cover setting up case records; notifications to the adopter's GP, the LHB and LEA of the child's arrival; visits to the child; reviews of the child's case; and, if necessary, review of the case if there is a failure to apply for an adoption order within 2 years. Nor may charges be made for

- provision of information or counselling if that is not followed by a written application for an assessment of suitability;
- providing information and counselling in a *Convention* case where the child's details are under consideration for matching;
- a pre-adoption report prepared in accordance with Regulation 29(2) of the Foreign Element Regulations.

16. Regulation 3(5) of the Prescribed Fees Regulations provides that any fee charged must be reasonable and not exceed the authority's costs and expenses properly incurred in the case (excluding any costs incurred in dealing with a complaint, representations or a review of a qualifying determination).

## **CONSIDERING APPLICATIONS: Foreign Element Regulation 15**

17. In a *Convention* case, Foreign Element Regulation 15 stipulates that the agency must also place on the prospective adopter's case record any information obtained under the Foreign Element Regulations, Chapter 1, Part 3. Foreign Element Regulation 15.2 stipulates that the agency may not consider an application unless it is satisfied that the requirements in Foreign Element Regulation 14 and Agencies Regulation 23 (police checks) and Agencies Regulation 25 (adoption preparation) have been met.

## **PROSPECTIVE ADOPTER'S REPORT: Foreign Element Regulation 15 and Agencies Regulation 26**

18. In the case of a prospective intercountry adopter, Foreign Element Regulation 15.4 and Agencies Regulation 26.5 stipulate that the prospective adopter's report is also to include:

- the name of the State from which the prospective adopter wishes to adopt
- **confirmation that the prospective adopter is eligible to adopt a child under the laws of that State**
- any additional information obtained as a consequence of the requirements of that State
- and the agency's assessment of the prospective adopter's suitability to adopt a child who is habitually resident in that State.

## **APPROVAL REVIEW: Foreign Element Regulation 17 and Agencies Regulation 30**

19. Where the prospective adopter has been approved as suitable to adopt a child, the relevant authority in the State of origin will be trying to match them with a child, having received their processed application from the Welsh Assembly Government (*Convention* cases) or DfES (*non-Convention* cases).

20. Foreign Element Regulation 17 and Agencies Regulation 30 require the agency to review the prospective adopter's approval periodically until:

- in a *Convention* intercountry case, when the agency receives written notification from the Welsh Assembly Government that the agreement under Article 17(c) of the Convention has been made
- in a *non-Convention* intercountry case, the prospective adopter has visited the child in the country where the child is habitually resident and has confirmed in writing to the agency that he or she wishes to proceed with the adoption.

## **PROCEDURE FOLLOWING APPROVAL OF PROSPECTIVE INTERCOUNTRY ADOPTER: Foreign Element Regulation 18 and Agencies Regulation 31**

21. Where the agency decides to approve a prospective adopter as suitable to adopt a child habitually resident outside the British Islands, Foreign Element

Regulation 18 and Agencies Regulation 31 require the agency to send to the Welsh Assembly Government:

- written confirmation of the agency's decision and any recommendation the agency may make about the number of children the prospective adopter may be suitable to adopt, their age range, sex, likely needs and background. The agency recommendation will not come from the adoption panel, which is limited by Agencies Regulation 27 to a recommendation of suitability to adopt, but may be informed by the panel's advice, provided under Agencies Regulation 27.3
- all the documents and information which were passed to the adoption panel in accordance with Foreign Element Regulation 15 and Agencies Regulation 26
- the prospective adopter's report and the prospective adopter's views
- the prospective adopter's health report, references and information from their local authority
- and any other relevant information obtained by the agency
- the minutes of the relevant part of the adoption panel's meeting, its recommendation and the reasons for its recommendation
- if the prospective adopter applied to the Independent Review Panel administrator for a review by an independent review panel of a qualifying determination, the minutes of that panel, its recommendation and the reasons for its recommendation
- and any other information relating to the case which the Welsh Assembly Government or the relevant authority in the State of origin may require.

The documents submitted should include the originals of the prospective adopter's report, the medical report(s) and the CRB enhanced disclosure certificate(s).

22. The Welsh Assembly Government will check the application. In *Convention* cases it will normally issue a certificate of eligibility and suitability to adopt. Documentation on *non-Convention* cases will be sent to DfES who will normally issue a certificate of eligibility and suitability to adopt. The agency should inform the prospective adopter that he or she must receive written notice that a certificate has been issued before bringing a child into the UK and that failure to do so may prevent a *Convention* adoption from going ahead and is an offence

under section 83 of the Act in a *non-Convention* case. See Annex for more information on the roles of the Welsh Assembly Government and DfES.

23. Where the application has been checked and a certificate issued, the application will normally be sent to the relevant authority in the State of origin, which will seek to match the prospective adopter with a suitable child. See Annex for more information.

**INTERCOUNTRY CASE WHERE THE UK IS THE RECEIVING STATE:  
Foreign Element Regulation 19 and Agencies Regulation 35**

24. In an intercountry case where the UK is the receiving State, the child and the prospective adopter will be matched by the relevant authority in the child's State of origin. Details of the proposed match may be sent to the Welsh Assembly Government or DfES, in which case they will be forwarded to the agency and the prospective adopter. However, in some *non-Convention* cases the prospective adopter will receive details of the proposed match directly and, if so, the prospective adopter is required to forward a copy to the agency and meet with them to discuss the match.

25. The agency should remind the prospective adopter that failure to forward details of the proposed match is an offence under section 83 of the Act. When the agency receives information about such a case, it is required by Foreign Element Regulation 19 and Agencies Regulation 35:

- to send a copy of the information about the child to the prospective adopter unless it is aware that the prospective adopter has received this information
- to consider that information and meet with the prospective adopter to discuss it; and
- if appropriate, provide a counselling service and any further information to the prospective adopter as may be required.

26. The agency should aim to meet the prospective adopter to discuss the proposed match within 10 working days of receiving the information, where this is reasonably practicable. The prospective adopter should be given time and reasonable assistance to consider the information. The agency should:

- explain the need for the prospective adopter to carefully consider the child's needs and background and their capacity to meet those needs
- provide the prospective adopter with written information about requesting an

assessment of their needs for adoption support services. Where the agency is a VAA, it should notify the prospective adopter that the adopter may ask their local authority to carry out an adoption support assessment

- provide the prospective adopter with its medical adviser's view of the health needs of the child.

27. As the agency counsels the prospective adopter, it should explain that:

- although the child may be described as being healthy and developing well, neither the agency nor the Welsh Assembly Government are able to verify the veracity of any health information provided
- the child's parents may provide little or no background or medical information about the child or themselves
- uncertainty about the child's background, health and development means that the child may have or develop unrecognised health and behavioural problems. While some children may respond well to therapy or treatment, other children may need long term care and support in the prospective adopter's home
- the prospective adopter should not feel obliged to make a swift decision, particularly if the adopter has significant doubts or concerns about his or her capacity to meet the child's needs
- where the prospective adopter decides not to proceed with the proposed match, the prospective adopter may ask the relevant authority in the State of origin to match them with another child. Generally the prospective adopter will be expected to provide reasons in writing for not accepting the original match. In most cases the relevant authority in the State of origin will try to match the prospective adopter with another child
- where the prospective adopter decides to proceed with the proposed match, they will need to make arrangements to visit the child in the State of origin. In the case of a couple adopting jointly both of them must visit the child. If the prospective adopter has visited the child and decides to proceed, they will need to notify the agency in writing, including any additional reports provided on the child and their expected date of return to the UK. The agency should remind the prospective adopter that failure to visit the child or to provide written notification may prevent a *Convention* adoption from going ahead and is an offence under section 83 of the Act in *non-Convention* cases.

28. In *Convention* cases, where the agency receives written confirmation that the

prospective adopter wishes to proceed, Foreign Element Regulation 19 requires the agency to inform the Welsh Assembly Government whether or not the agency is content for the adoption to proceed. Without confirmation that the agency is content, the Welsh Assembly Government will not be able to complete the necessary steps for the adoption to go ahead. See Annex for further information on the process under the *Convention* and agreements under Article 17(c).

29. If, at any stage before an agreement is made under Article 17(c), the agency determines the prospective adopter is no longer suitable, or the prospective adopter decides not to proceed, Foreign Element Regulation 20 requires the agency to inform the Welsh Assembly Government and to arrange for the return of the relevant documents.

30. Where the agency is notified by the Welsh Assembly Government that an agreement under Article 17(c) has been made, Foreign Element Regulation 22 requires it to send written notification of the proposed placement to:

- the prospective adopter's GP, along with a report on the child's health history and current state of health, so far as it is known
- the local authority (if not the agency) and the LHB in whose area the prospective adopter lives
- the local education authority, along with any information about the child's educational history and whether he is likely to be assessed for special educational needs under the Education Act 1996.

31. The following guidance explains the duties of an adoption agency where a child enters the UK for adoption or enters the UK after having been adopted outside the British Islands in the previous six months.

**PLACEMENT BY RELEVANT AUTHORITY IN THE STATE OF ORIGIN:  
Foreign Element Regulations 4.3 and 21.c**

32. In an intercountry case, where the prospective adopter has visited the child in the State of origin, decides to accept a proposed match and to proceed with placement, the prospective adopter must notify the agency in writing of their decision. The prospective adopter may then proceed to adopt the child under the laws of the child's State of origin or simply have the child placed with them. In some countries, an order may be made to grant them parental responsibility. See Annex C for information about the various routes to placement and bringing the child back to the UK.

33. Foreign Element Regulations 4.3 and 21.c stipulate that the prospective adopter is to accompany the child on entry into the UK. In the case of a couple, they must both accompany the child unless the agency and the relevant authority in the State of origin agree that it is only necessary for one of them to do so. The agency should remind the prospective adopters that failure to do so may prevent a *Convention* adoption going ahead and is an offence under section 83 of the Act in *non-Convention* cases.

34. Where the child was placed with the prospective adopter without any of the following:

- a *Convention adoption* certified under Article 21
- an interim adoption that will become a *Convention adoption* certified under Article 21
- an overseas adoption under section 87 of the Act
- or an interim adoption that will become an overseas adoption under section 87 of the Act,

Foreign Element Regulations 4.4 and 24.1 require that the prospective adopter must contact the relevant local authority within 14 days of the child entering the UK and notify the authority of:

- the child's arrival in the UK
- and their intention:
  - to apply for an adoption order in accordance with section 44(2) of the Act; or
  - not to give the child a home.

35. For the purposes of Foreign Element Regulations 4 and 24, the relevant local authority is:

- the local authority in whose area the prospective adopter has their home; or
- if the prospective adopter does not currently have a home in England or Wales (for example, a member of the British armed forces serving abroad), the local authority in whose area they last had their home.

36. Prospective adopters should be made aware that they commit an offence if they fail to give notice within 14 days. If convicted, the maximum penalty is 12 months imprisonment and an unlimited fine.

37. Where notice of intention to adopt has been given to the local authority, Foreign Element Regulation 5 requires that authority to:

- set up a case record in respect of the child, unless it has already done so, in accordance with Agencies Regulations 40 to 45
- place on it any information received from:
  - the relevant authority in the State of origin
  - the agency that assessed the prospective adopter, if this was not the local authority
  - the prospective adopter
  - the Entry Clearance Officer
  - and the Welsh Assembly Government.
- send written notification of the child's arrival into Wales to the following:
- the prospective adopter's general practitioner, including a written report of the child's health history and current state of health, so far as is known
- the Local Health Board for the area where the prospective adopter has their home [Primary Care Trust in England]
- and where the child is of compulsory school age, the local education authority for the area where the prospective adopter has their home, including information, if known, about the child's educational history and whether he or she has been or is likely to be assessed for special educational needs under the Education Act 1996.

38. The authority is not required to send written notification for an adoption in accordance with the *Convention* if the agency has already sent the relevant notifications required by Foreign Element Regulation 22.

## **GUIDANCE – PART 4**

### **REVIEWS AND VISITS IN AN INTERCOUNTRY CASE**

1. Where the local authority has received notice of intention to adopt in an intercountry case, they are required to visit the child and prospective adopter and review the placement to monitor and determine whether the child's needs are being met. The visits and reviews also provide an opportunity for the prospective adopter to receive further advice and information on caring for the child. As the child has not been placed for adoption by an agency, the local authority will not be able to consider whether the child should remain with the prospective adopters unless there are child protection concerns.

2. A placement is most likely to disrupt during the first few weeks, so Foreign Element Regulation 5 requires the authority to:

- ensure that the child and the prospective adopter are visited within one week of the placement and at least once a week until the first review. The frequency of following visits is then to be decided by the authority at each subsequent review
- ensure that written reports are made of these visits and placed on the child's case record
- and, where appropriate, provide advice as to the child's needs, welfare and development and the availability of adoption support services.

3. Foreign Element Regulation 5.1.f stipulates that – unless the child no longer has his home with the prospective adopter or an adoption order is made – the local authority must:

- review the placement not more than 4 weeks after the date of receipt of the notice of intention to adopt
- visit, and if necessary review, the placement not more than 3 months after the first review
- and visit, and if necessary review, the placement not more than 6 months after the date of the previous review.

4. The purpose of the review is to enable the local authority to consider whether the child's needs are being met and, if not, what advice and assistance may be provided. When carrying out a review, Foreign Element Regulation 5.1.g stipulates that the authority must consider:

- the child's needs, welfare and development, and whether any changes need to be made to meet the child's needs or assist his or her development
- the arrangements for the provision of adoption support services and whether there should be any re-assessment of the need for those services; and
- the need for further visits and reviews.

5. If the local authority (the original authority) is notified by the prospective adopter that the or she has moved or intends to move into the area of another local authority, Foreign Element Regulation 5.5 stipulates that the original authority must notify the new local authority within 14 days of the prospective adopter's notification and at the same time provide the following information:

- the name, sex, date and place of birth of the child
- the prospective adopter's name, sex and date of birth
- the date upon which the child entered the UK
- where the original authority has received notification of intention to adopt, the date of receipt of that notification, whether an application for an adoption order has been made and the stage of any proceedings; and
- any other relevant information.

6. In order to obtain an adoption order, the prospective adopter will need to apply to adopt the child in a UK court. Under section 42 of the Act, as modified by Foreign Element Regulation 9, the child must have had his or her home with the prospective adopter for at least:

- where the Foreign Element Regulations have been complied with, 6 months; or
- if the prospective adopter has failed to comply with the Foreign Element Regulations, 12 months.

7. If, two years after receipt by a local authority of notice of intention to adopt, the prospective adopter has failed to make an application for an adoption order under section 50 or 51 of the Act, the local authority is required by Foreign Element Regulation 5.3 to review the case.

8. The review must consider:

- the child's needs, welfare and development, and whether any changes need to be made to meet the child's needs or assist his or her development
- the arrangements, if any, in relation to the exercise of parental responsibility for the child
- the terms upon which leave to enter the UK is granted and the immigration status of the child
- the arrangements for the provision of adoption support services for the adoptive family and whether there should be any reassessment of the need for those services; and

- in conjunction with the appropriate agencies, the arrangements for meeting the child's health care and educational needs.

9. When carrying out such a review, the local authority should also consider:

- the reasons why the prospective adopter has not made an application for an adoption order; and
- the options for the child's future permanence.

10. It is highly undesirable for the child to remain indefinitely without permanent legal status and the authority should discuss with the prospective adopter a plan for securing an appropriate permanent legal status for the child. The plan should also set out the action required to secure the child's immigration status until such a time as permanence is secured.

### **Interim adoptions**

11. Where an interim adoption has been made that will become a *Convention adoption* or an *overseas adoption* in the child's State of origin, the adopter must notify the local authority that the child is staying in their home as soon as possible after their arrival in the UK. The local authority should treat the child as a privately fostered child under sections 66 and 67 of the 1989 Act and carry out regular welfare visits until the full adoption has been made.

12. The adopter may be required to provide update reports to the relevant authority in the child's State of origin prior to a full adoption being made and the relevant authority should specify how the reports are to be submitted to it. When the interim adoption becomes a full *Convention adoption* or *overseas adoption*, no further action is necessary as the adoption is automatically recognised under UK law. In a *Convention* case, the relevant authority in the State of origin will issue a certificate confirming that the adoption is a *Convention adoption*. A copy of this certificate will be provided to the local authority and the adopters.

### **Prospective adopters do not want to proceed with the adoption**

13. Where the prospective adopter gives notice to the local authority of their intention not to give the child a home, the local authority should then contact the Welsh Assembly Government so that the relevant authority in the child's State of origin can be informed. In these circumstances, the local authority must consider the child as a child in need as defined in the 1989 Act and make such alternative arrangements for the care and welfare of the child as it considers appropriate. It may be that, with help and support, the adopters will feel that they can resume the care of the child.

## **GUIDANCE – PART 5**

### **ADOPTED CHILDREN REGISTER**

1. This part of the guidance explains the Registrar General's role in provision of the Adopted Children Register.

2. The Adopted Children and Adoption Contact Registers Regulations 2005, Regulations 2 - 5 make provision in relation to the Registrar General's duty to maintain the Adopted Children Register.

3. Adopted Children and Adoption Contact Registers Regulation 2.2 prescribes the form of entry in the Register in the case of a registrable foreign adoption as being the same as for an entry pursuant to an adoption order made in a court sitting in England or Wales. (The prescribed form at Schedule 1 of the Regulations is to be used in the case of a child habitually resident in England, and the form at Schedule 2, in the case of a child habitually resident in Wales).

### **REGISTRABLE FOREIGN ADOPTION: Adopted Children and Adoption Contact Registers Regulation 3**

4. Adopted Children and Adoption Contact Registers Regulation 3 specifies the requirement which must be satisfied to make a foreign adoption registrable, namely that at the time of the adoption the adoptive parent or parents must be habitually resident in England or Wales.

### **PERSONS WHO MAY MAKE AN APPLICATION: Adopted Children and Adoption Contact Registers Regulation 4**

5. Adopted Children and Adoption Contact Registers Regulation 4 specifies the three categories of individual(s) who may make an application to register a registrable foreign adoption in the Adopted Children Register. These are:

- the adoptive parent (or one adoptive parent in the case of a couple)
- anyone who has parental responsibility for the child, and
- the adopted person themselves if aged 18 or over

### **MANNER OF APPLICATION AND PRESCRIBED DOCUMENTS AND OTHER INFORMATION: Adopted Children and Adoption Contact Registers Regulation 5**

6. Adopted Children and Adoption Contact Registers Regulation 5 prescribes the manner in which an application for registration of a registrable foreign adoption shall be made, and the documents and other information required to be provided to the Registrar General.

7. Adopted Children and Adoption Contact Registers Regulation 5.1 requires such application to be in writing and signed by the person making the application. This is to include electronic means of application such as email, and online applications via the Internet from such time as this becomes practical.

8. Adopted Children and Adoption Contact Registers Regulation 5.2 prescribes all the documents and other information which must be provided as part of the application.

9. Adopted Children and Adoption Contact Registers Regulation 5.2.a specifies that in the case of a *Convention adoption* the following must be provided:

- a copy of the certificate issued by the relevant Central Authority under the Adoptions with a Foreign Element Regulations 2005, and
- the date on which the adoption was effected

10. Adopted Children and Adoption Contact Registers Regulation 5.2.b specifies that in the case of an *overseas adoption* the following must be provided:

- such evidence as complies with Article 4 of the Adoption (Designation of Overseas Adoptions) Order 1973, or an order made under section 87(1) of the Act,
- the date on which the adoption was effected

11. Adopted Children and Adoption Contact Registers Regulation 5.2.c specifies those details which would be on the court order for a domestic adoption and which must therefore be provided by the applicant for a registrable foreign adoption. These are:

- the adopted child's adoptive and birth name(s)
- gender, and
- date, place and country of birth

12. Adopted Children and Adoption Contact Registers Regulation 5.2.d and 5.2.e specify further information which must be provided, namely:

- the full (and any previous) names of both the adopted child's natural and adoptive parents,
- the address and occupation of the adopted child's adoptive parents

13. Adopted Children and Adoption Contact Registers Regulation 5.2.f requires the applicant to confirm the capacity in which they are making the application.

14. Adopted Children and Adoption Contact Registers Regulation 5.3 confirms that where any of the information specified at Adopted Children and Adoption Contact Registers Regulation 5.2.c to Adopted Children and Adoption Contact Registers Regulation 5.2.e above is not readily available, the applicant must state the extent to which such information is not known.

15. Adopted Children and Adoption Contact Registers Regulation 5.4 requires the applicant to provide a suitably authenticated translation into English of any of the above documents or information that are not available in English or Welsh. The translator must sign and endorse the translation and provide details of his name, address and occupation, as well as a statement as to the truth and accuracy of the translation.

**REVOCATIONS, TRANSITIONAL PROVISIONS AND SAVINGS  
REVOCATIONS ETC: Adopted Children and Adoption Contact Registers  
Regulation 14**

16. Adopted Children and Adoption Contact Registers Regulation 14 provides for the continued application of the Registration of Foreign Adoptions Regulations 2003 in relation to registrable foreign adoptions made or effected before 30th December 2005.

**CANCELLATION OF NAFWC 13/01 AND THE WELSH ASSEMBLY  
GOVERNMENT'S INTERCOUNTRY ADOPTION GUIDE DATED DECEMBER  
2003.**

17. This guidance replaces and cancels that given in National Assembly for Wales Circular (NAFWC)13/01 on Implementation of part of the Adoption (Intercountry Aspects) Act 1999. The Annex to this guidance document replaces and cancels the 2003 Intercountry Adoption Guide.

**ANNEX**

**ADOPTION AND CHILDREN ACT 2002 - INTERCOUNTRY  
ADOPTION**

## **Further information on adoptions with a foreign element**

This annex sets out information about adoptions with a foreign element, including international law, the roles of the Welsh Assembly Government and the Department for Education and Skills (DfES), the procedures for matching prospective adopters with a child, bringing children into the UK and taking children out of the UK.

Although the subjects in this annex cover the role of other agencies and authorities, adoption agencies should ensure that they are familiar with this information, so they are able to explain it to prospective intercountry adopters, or children for whom the agency is considering a placement outside the UK.

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## **PART ONE: GENERAL**

1 This part sets out general considerations that apply to all adoptions with a foreign element, regardless of whether the UK is the receiving State or the State of origin.

### *International law*

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

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

3 They provide that:

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

- Profit should not be made from the process

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

5 Key requirements are:

- The child's home country must ensure that the child has been freely given up for adoption and that this has not been induced by payment or compensation of any kind. Attempts must be made to place the child in a family in their home country. If this is not possible, it must be confirmed that intercountry adoption is in the child's best interests
- An adoption can only take place if the adopters have been approved as suitable to become adopters in the receiving State (i.e. in their home country) and the receiving country confirms that the child will be allowed to reside permanently in that country
- All appropriate measures must be taken by contracting States to prevent improper financial or other gain in connection with adoption and to deter all practices contrary to the objects of the Convention
- The State may accredit bodies to work as adoption agencies. These bodies must be non-profit making
- Adoptions made in countries which have ratified or acceded to the Convention, if certified in accordance with Article 23(1), are recognised in other Hague Convention contracting States.

6 Any person wishing to adopt under the Convention must comply with the procedures set out for Convention cases in the FER. Failure to do so may mean that one or both of the Central Authorities in the contracting States will be unable to provide the agreements required by the Convention. In such a case, the prospective adopter will not be able to obtain a Convention adoption or Convention adoption order and the provisions for non-Convention cases in section 83 of the Act will apply.

*Domestic law*

7 The main legal framework for intercountry adoption is set out in the following primary and secondary legislation:

- The Adoption (Intercountry Aspects) Act 1999
- The Adoption and Children Act 2002 ('the Act')
- The Adoption Agencies (Wales) Regulations 2005
- The Adoptions with a Foreign Element Regulations 2005
- The Local Authorities (Prescribed Fees) (Adoptions with a Foreign Element) (Wales) Regulations 2005
- The Restriction on the Preparation of Adoption Reports Regulations 2005

8 The Adoption Agencies Regulations provide for the duties adoption agencies have in relation to arranging adoptions under the Act. This includes agency arrangements for adoption work, considering whether a child should be placed for adoption, approval of prospective adopters and whether a particular child should be placed with prospective adopters.

9 The Adoptions with a Foreign Element Regulations provide additional requirements for, and set out additional procedures in relation to, the adoption of children from abroad by British residents and the adoption of children in England and Wales by persons resident abroad. This includes adoptions falling within the scope of the Convention and non-Convention adoptions. The Foreign Element Regulations apply particular provisions of the Adoption Agencies Regulations to intercountry cases. The two sets of Regulations must therefore be read together.

*Handling cases that have not been through the proper procedures*

10. As a public authority, a local authority has a duty to notify the Police and provide them with such information as they may require if they are made aware that a person has:

- made an application to adopt a child who was brought into the UK in contravention of the provisions on intercountry adoption in the Act, or
- brought, or has caused someone else to bring, a child into the UK without complying with the conditions or requirements included in the Foreign Element Regulations, or
- brought a child into the UK with the immigration status of a visitor but with the actual intention of adopting the child, or

- removed a child from the UK for the purposes of adoption in a country outside the British Islands without complying with section 85 of the Act (restrictions on taking children out of the UK).

11 The Police will investigate the case and, where relevant, refer it to the Crown Prosecution Service for it to determine whether or not to prosecute the alleged offender.

### **Applications for Adoption Orders in Wales or England**

12 It is essential that all prospective adopters are clear about their domicile and habitual residence status as early as possible in the adoption process. Section 49 of the Act provides that an:

- Application for an adoption order may be made by one person or a couple who meet the minimum age requirements in sections 50 and 51 of the Act but only if one of the following conditions relating to domicile or habitual residence is met:
- Where one person applies for an adoption order, the prospective adopter is *either* domiciled in the British Islands *or* has been habitually resident in a part of the British Islands for at least one year ending with the date of the application.
- Where a couple apply for an adoption order, *either* at least one of the couple is domiciled in the British Islands *or* both of the prospective adopters have been habitually resident in a part of the British Islands for at least one year ending with the date of the application.

Foreign Element Regulation 31 provides that in the case of a proposed Convention adoption order, the applicant (or both of them in the case of a couple) must have been habitually resident in any part of the British Islands for at least one year ending with the date of the application.

It is therefore essential that anyone who is not eligible to apply for an adoption order in the UK is made aware of this as early as possible.

### **Restrictions on bringing children into the UK**

13 The restrictions on bringing children into the UK in section 83 of the Act apply to anyone habitually resident in the UK.

### **Taking children out of the UK for the purposes of adoption**

14 Section 85 of the Act, which provides restrictions on taking children out of the UK for the purposes of adoption, applies to a child who is a Commonwealth citizen or is habitually resident in the UK.

### **Establishing Domicile and Habitual Residence Status**

15 Domicile and habitual residence are legal concepts which are undefined in statute, and subject to case law. Whether someone is domiciled or habitually resident in the UK will depend upon all the circumstances and facts of an individual case. Wherever there is an issue about the domicile and habitual residence status of an individual they should be advised to seek independent legal advice. The adoption agency may also wish to seek its own legal advice about domicile or habitual residence.

### **Habitual Residence**

16 Whether or not a person is habitually resident in the UK will depend on the circumstances of their particular case and all facts must be considered. Habitual residence will not solely be determined by the place a person is living at the time. The term indicates the quality of residence rather than mere duration and requires an element of intention. The term suggests personal presence must continue for some time. Bringing possessions, doing everything necessary to establish residence before coming, having a right of abode, seeking to bring family, “durable ties” with the country and many other factors must be taken into account.

17 There is no requisite period of residence. Someone who leaves the UK in order to take up employment elsewhere may well acquire habitual residence in another country. However, they may well retain habitual residence in the British Islands because of the type of links they have maintained.

18 It is also possible to be habitually resident in two countries at the same time. Factors such as possession of a property, type of employment contract, financial arrangements and location of bank accounts, and local connections are just some of the many factors that may be relevant to any question relating to habitual residence.

### **Domicile**

19 Domicile can be described as the legal relationship between an individual and a territory with a distinctive legal system which invokes that system as that individual’s personal law. A person is domiciled in the country in which he/she either has or is deemed to have his/her permanent home. Every person must have a personal law, and accordingly, everyone must have a domicile. A person can only have one domicile at any time. A person receives at birth a domicile of

origin which remains his/her domicile, wherever he/she goes, unless and until (s)he acquires a new domicile (a domicile of choice). A person may acquire a domicile of choice by the fact of residing in a country other than that of his/her domicile of origin with the intention of continuing to reside there indefinitely.

#### **ORDERS UNDER SECTION 84**

20 Anyone (including parents, guardians, civil partners, step-parents and relatives) wishing to take a child who is a Commonwealth citizen or is habitually resident in the UK outside the British Islands for the purposes of adoption must first apply to the High Court for and receive an order under section 84 of the Act.

21 Section 84 orders authorise a proposed foreign adoption and confer parental responsibility on the prospective adopters. Removing a child from the British Islands for the purpose of adoption without an order under section 84 (or an order under section 49 of the Adoption (Scotland) Act 1978 or Article 57 of the Adoption (Northern Ireland) Order 1987) is an offence under section 85 of the Act. This is punishable by up to 12 months imprisonment and an unlimited fine.

22 An order under section 84 of the Act, like an adoption order, confers on the applicant parental responsibility for the child and extinguishes the parental responsibility of any person.

23 An application for an order under section 84 of the Act can only be made if at all times during the preceding ten weeks the child's home was with the applicant or, in the case of a couple, both of them. An order under section 84 may not be made unless the court is satisfied that the adoption agency has had sufficient opportunity to see the child and the applicant in the home environment.

24 In all applications for an order under section 84, the adoption agency must prepare a report for the court under section 43 or 44 of the Act. In many cases, the agency will already hold current information about the child and the applicants which may be used for this report to prevent unnecessary duplication of effort. Before the court can make an order under section 84 it must be satisfied that the requirements prescribed by the Foreign Element Regulations have been met. These requirements are slightly different, depending on whether or not the child is intended to be adopted under the Hague Convention.

## **PART TWO: UK AS A RECEIVING STATE**

25 This part sets out considerations that apply where the UK is the receiving State.

### *Domicile and habitual residence*

26 It is essential that prospective intercountry adopters seek independent legal advice in respect of their domicile and habitual residence status as early as possible in the adoption process.

### *Immigration status of adopters*

27 It is recommended that prospective adopters check their immigration status prior to considering intercountry adoption and, if appropriate, seek their own independent legal advice. The main possibilities are:

- **British citizens** – British citizens are not subject to immigration control. If a British citizen adopts in a Convention country under the Hague Convention, and is (or, in the case of a couple, both of them are) habitually resident in the UK, the child will automatically receive British citizenship. If they adopt from a country whose adoptions are recognised as overseas adoptions, they will need to obtain entry clearance prior to bringing the child into the UK, and apply for their child to be registered as a British citizen. If they bring a child into the UK for the purposes of adoption, and a court in the UK makes an adoption order, the child will automatically receive British citizenship
- **Settled** – If an individual has settled status (i.e. they have indefinite leave to remain in the UK and are ordinarily resident in the UK) they are permitted to remain indefinitely in the UK. They will be able to apply for entry clearance for a child adopted in a foreign country by them to enter and remain indefinitely in the UK. They will then be able to adopt the child in a UK Court if they meet the domicile or habitual residence conditions in section 49 of the Act. If they are not domiciled they may seek to adopt from a Hague Convention country, or from a country whose adoptions are recognised as overseas adoptions, so that the adoption order is recognised in the UK
- **European Economic Area (EEA) nationals** – EEA nationals are able to exercise Treaty Rights to reside in the UK. Once they have lived in the UK for

four years, they are able to apply for indefinite leave to remain if they wish to do so. They will only be able to adopt the child in a UK Court if they meet the domicile or habitual residence conditions in section 49 of the Act. However, it is unlikely that the Home Office would be able to issue confirmation that the child would be permitted to reside permanently in the UK if they wished to adopt under the Hague Convention (although they should seek advice from the Home Office and their own independent legal advisor, as this is a complex area). But if they adopted from a country whose adoptions are recognised as overseas adoptions, then that adoption would be recognised and they would be able to apply for entry clearance for the child to join them

- Working Visa – someone in the UK on a short term working visa is unlikely to be domiciled in the UK or considered to be habitually resident in the UK. The Home Office would be unable to give the assurances that the child would be permitted to reside permanently in the UK (as the adopters would not be) so they would not be able to adopt under the Convention. They will only be able to adopt the child in a UK Court if they meet the domicile or habitual residence conditions in section 49 of the Act, and may therefore wish to consider adopting from a country whose adoptions are recognised as overseas adoptions.

28 Prospective intercountry adopters should also consider the immigration requirements for bringing a child into the UK at an early stage. The immigration requirements, together with the prospective adopter's domicile and habitual residence status, may have an impact on their choice of country.

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

- Bringing the Child into the UK for the Purposes of Adoption – those who have adopted in a country whose adoption orders are not recognised in the UK are likely to want to adopt in the UK so that their relationship with the child is recognised under UK law. Individuals may only adopt in the UK if they meet the domicile or habitual residence conditions in section 49 of the Act. Where the applicant meets either of these conditions, and the entry clearance officer is content that the adoption is a genuine adoption, and the paperwork is in order, a time limited visa may be issued which will allow the child to be brought into the UK for the purposes of adoption. Alternatively, an application can be made by a British citizen for the child to be registered as a British citizen prior to bringing the child into the UK. Decisions will be made on a case by case basis

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

### **Designated List**

30 The Adoption (Designation of Overseas Adoptions) Order 1973 (as amended in 1993) enables adoption orders made in countries listed on the Order (commonly referred to as the designated list) to be recognised in the UK. Anyone habitually resident in the UK wishing to adopt from a country on the designated list must comply with the requirements and conditions set out in the Foreign Element Regulations. When an adoption is made in a country included on the designated list, the adoption is automatically recognised under UK law. This is referred to as an *overseas adoption*. This type of adoption can be registered in the Adopted Children Register. See chapter 12 for more information.

### *British citizenship*

31 Adoptions by British citizens in designated countries do not automatically convey British citizenship on the child. However, the adopter can apply for British citizenship for the child. Application forms are available from:

Home Office Nationality Group  
PO Box 306  
Liverpool  
L2 7XS  
Telephone: 0845 010 5200

Email: [nationalityenquiries@ind.homeoffice.gsi.gov.uk](mailto:nationalityenquiries@ind.homeoffice.gsi.gov.uk)

Website: [www.ind.homeoffice.gov.uk/](http://www.ind.homeoffice.gov.uk/)

### **Procedure Following Approval of Intercountry Adopter**

32 This section sets out the typical process for all intercountry adoption applications, once the prospective adopter's application has been submitted to the Welsh Assembly Government for checking and onward transmission to DfES or direct to the relevant authority in the State of origin. Procedural differences between *Convention* cases and *non-Convention* cases are highlighted.

*Role of the Welsh Assembly Government and DfES.*

#### *Checking Applications*

33 On receipt of an application, the intercountry adoption caseworker in the Welsh Assembly Government will check that the relevant statutory requirements and procedures have been complied with, and that all the necessary information has been provided. [See list at paragraph 20 of Part 3 of the Guidance.]

34 The caseworker will check that the legislative requirements and procedures have been followed, and will contact the agency if there is anything missing or the correct procedures do not appear to have been followed.

#### *Issuing a certificate*

35 Once it has been confirmed that the documentation is in order and the relevant statutory procedures have been complied with, the Welsh Assembly Government will normally

- in Hague *Convention* cases, issue a certificate to the relevant authority in the State of origin
- in *non-Convention* cases, send the documentation to DfES for them to consider issuing a certificate

36 The certificate will confirm that:

- the prospective adopter has been assessed and approved as eligible and suitable to be an adoptive parent in accordance with the relevant statutory procedures; and
- subject to any entry clearance and immigration requirements, the child will be allowed to enter and reside in the UK.

#### *Putting papers into order*

37 In Hague *Convention* cases, the Welsh Assembly Government caseworker will arrange for any additional supporting documents and fees to be supplied to them by the prospective adopter. The caseworker will also advise the prospective adopter if there is a need for the documents to be translated, notarised or legalised (these requirements vary from country to country) and how to secure these services. In *non-Convention* cases, it will be the DfES caseworker who will advise the prospective adopter on the steps to be taken to secure translation, notarisation and legalisation of the documents as necessary.

#### *Sending the application abroad*

38 Once the papers have been notarised, legalised and translated as required, the Welsh Assembly Government or DfES caseworker (for Hague Convention or non-Convention cases respectively) will forward the applications to the relevant authority or agency in the State of origin from which the prospective adopter wishes to adopt. The caseworker will send written confirmation to the agency and the prospective adopter when the application has been sent abroad.

#### *Matching*

39 The relevant authority in the State of origin will consider the application and, if that authority approves the application, the prospective adopter will be added to the waiting list of approved adopters until the authority can match them with a child. Prospective adopters should be made aware that it can take some time to know what decision has been made by the authority in the State of origin. In some countries it is unlikely a decision will be made until the case comes to the top of the waiting list.

#### *Prospective adopter is not matched*

40 It is possible that the application will not be accepted, or it will be accepted but there are no suitable children with whom to match the prospective adopter at that time. Where this is the case, the adoption agency should arrange to discuss the outcome with the prospective adopter, provide counselling and support, and assist them in deciding what they would like to do. Information about the process that should be followed where the prospective adopter wishes to change countries is also set out in this annex. See also paragraphs 72 – 75 below.

*Prospective adopter is matched*

41 Where the relevant authority in the State of origin accepts the application they will consider the reports on the prospective adopter prior to making a match with a child. The relevant authority will then:

- send the proposed match with information about the child to the Welsh Assembly Government (*Convention* cases) or DfES (*non-Convention* cases), who will forward it to the prospective adopter and the adoption agency (notifying Welsh Assembly Government);

or

- send the proposed match and information about the child to the prospective adopter directly. Where this is the case, the prospective adopter must send a copy of the reports to the adoption agency. Failure to do so is an offence under section 83 of the Act.

42 When the adoption agency receives details of the proposed match it must make arrangements to meet with the prospective adopter to discuss the proposed adoption.

*Prospective adopter decides not to go ahead after discussing match*

43 If the prospective adopter decides not to go ahead the adoption agency should:

- notify the Welsh Assembly Government of this decision
- return all the papers to the Welsh Assembly Government who will arrange for their return to the relevant authority in the State of origin

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

*Prospective adopter decides to go ahead after discussing match*

45 If the prospective adopter decides that they would like to proceed further with the proposed match, they must make arrangements to travel to meet the child. The prospective adopter cannot accept the match until they have met the child or, in the case of a couple, until they have both met the child. Failure to visit the child in the State of origin may prevent a *Convention* adoption going ahead in a *Convention* case and is an offence under section 83 of the Act in a *non-Convention* case.

46 As a couple will be parenting any child together, they should be strongly encouraged to go together and meet the child at the same time. They are then in a better position to share their views and experiences of the visit and come to a considered view together of whether they feel they can meet the needs of that child.

47 After meeting the child the prospective adopter must notify the adoption agency in writing of whether or not they wish to accept the match. Failure to notify the agency may prevent a *Convention* adoption going ahead in a *Convention* case and is an offence under section 83 of the Act in a *non-Convention* case.

48 After meeting the child the prospective adopter may decide to accept the match and remain in the child's State of origin until the process has been completed, thus enabling them to return to the UK with the child. In these circumstances the prospective adopter will need to make arrangements to ensure that they can send the acceptance and any additional reports or information on the child to the adoption agency from the State of origin (for example, a faxed letter or email confirming that the adopter has met the child and wishes to proceed with the adoption).

49 Alternatively, the prospective adopter may decide to return to the UK until such time as formalities are completed and they are free to return to the State of origin to bring the child to the UK.

50 If, after meeting the child, the prospective adopter decides not to go ahead with the match, the adoption agency must notify the Welsh Assembly Government and return all the relevant papers to them for onward transmission to the authority in the State of origin.

51 If, after meeting the child, the prospective adopter decides go ahead with the adoption and has notified the adoption agency of this, then one of the following series of steps will be applicable.

***Convention*** cases

52 In *Convention* cases, the adoption agency must write to the Welsh Assembly Government confirming:

- whether or not the match has been accepted
- if it has been accepted, that the required processes (including meeting the child) have been followed, and

- if it has been accepted, that the adoption agency is content for the adoption to proceed.

53 Upon receipt of written confirmation that the prospective adopter wishes to proceed with the match and that the adoption agency is content for the adoption to proceed, the Welsh Assembly Government will refer the case to the Home Office for their view on the immigration status of the prospective adopters and the child. This is to mitigate the chances of any problems arising at a late stage which could prevent an adoption under the *Convention* proceeding when it is clear that entry clearance would not or could not be granted due to immigration concerns.

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

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

56 However, if it does occur the Welsh Assembly Government will notify the adoption agency and the agency will need to notify the prospective adopter and offer such counselling, advice and support as necessary. Where it is confirmed that the adoption cannot go ahead, the adoption agency must also return the relevant papers to the Welsh Assembly Government for onward transmission to the relevant authority in the State of origin.

57 Where:

- the prospective adopter has met the child and decided to go ahead with the match
- the adoption agency has confirmed that they are content for the match to go ahead

- the Home Office has confirmed that (subject to certain conditions being met) the child will be permitted to enter and reside permanently, the Welsh Assembly Government will advise the relevant authority in the State of origin of the decision to go ahead with the match, and confirm that the adoption may proceed, and
- the relevant authority in the State of origin confirms that they are content for the adoption to proceed

the Welsh Assembly Government will seek to make an agreement with the relevant authority of the State of origin in line with Article 17(c) of the *Convention*, and notify the adoption agency and the prospective adopter when the agreement has been made. The relevant authority of the State of origin will then make arrangements for placing the child.

### ***Non-Convention*** cases

58 In *Non-Convention* cases, the adoption agency should write to the Welsh Assembly Government stating:

- Whether or not the match has been accepted
- If it has been accepted, that the required processes (including meeting the child) have been followed.

59 The Welsh Assembly Government will inform DfES accordingly.

60 The relevant authority in the State of origin will make arrangements for placing the child.

### *Adopter decides not to go ahead*

61 If, in relation to *Convention* and *non-Convention* cases, having visited the child in the State of origin, the prospective adopter decides not to go ahead, the adoption agency should:

- notify the Welsh Assembly Government of this decision
- return all the papers to the Welsh Assembly Government for return to the relevant authority in the State of origin

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

## **Placing the Child with the Prospective Adopter**

63 Where the prospective adopter decides to go ahead with the match they will need to determine how the child will be placed with them in the State of origin. The arrangements for placing the child with the prospective adopter will vary according to the adoption laws and procedures of each country and whether the child's State of origin has ratified or acceded to the *Convention*, is on the designated list or neither.

### **Possible Routes for Placement of the Child with the Prospective Adopter in the State of Origin**

#### *64 Hague Convention country*

- prospective adopter is entrusted with the child to bring the child to the UK for the purposes of obtaining a *Convention adoption order* in a UK Court
- prospective adopter completes adoption procedures in the child's State of origin and obtains a *Convention adoption*
- prospective adopter obtains an interim adoption which will become a full *Convention adoption* if conditions are met

#### *65 Designated list country*

- prospective adopter is entrusted with the child to bring the child to the UK for the purposes of obtaining an adoption order in a UK Court
- prospective adopter completes adoption procedures in the State of origin and obtains an *overseas adoption*
- prospective adopter obtains an interim adoption which will become a full *overseas adoption* if conditions are met

#### *66 Other countries*

- prospective adopter is entrusted with the child to bring the child to the UK for the purposes of obtaining an adoption order in a UK Court
- prospective adopter completes adoption procedures in the State of origin and brings the child to the UK for the purposes of obtaining an adoption order in a UK Court

67 The adoption procedures and laws of the State of origin will usually determine how the child is placed with the prospective adopters. However, in

some countries the prospective adopter may be given a choice by the relevant authority in the State of origin and, if so, the prospective adopter will wish to consider whether this will take more or less time than an adoption process in the UK and the benefits of the different options available.

### **Bringing the Child into the UK**

68 The prospective adopter must accompany the child upon entering the UK. In the case of a couple adopting jointly, both of them must accompany the child unless the adoption agency and the authority in the State of origin have agreed that it is only necessary for one of them to accompany the child. Failure to accompany the child into the UK may prevent a *Convention* adoption going ahead in a *Convention* case and is an offence under section 83 of the Act in a *non-Convention* case.

### **Entry clearance**

69 If the child does not acquire British citizenship before entering the UK, the child must receive Entry Clearance prior to being brought into the UK and leave to enter or remain will need to be obtained upon arrival in the UK. British citizens are not subject to immigration controls.

70 The issues that will be considered by the Entry Clearance Officer (ECO) will depend on the nationality and immigration status of the adopter or prospective adopter and the nature of the adoption:

| <b>SITUATION</b>  | <b>IMMIGRATION REQUIREMENTS</b>   |
|---|---|
| Child automatically acquires British citizenship on the making of a <i>Convention adoption</i>  | The child will not be subject to immigration controls. The adopter may obtain a British passport for the child from the nearest British Diplomatic Post and bring the child back to the UK without seeking Entry Clearance.   |
| Child has been registered outside the UK as a British citizen   | The child will not be subject to immigration controls. The adopter may obtain a British passport for the child from the nearest British Diplomatic Post and bring the child back to the UK without seeking Entry Clearance.   |
| Child has been adopted by means of a <i>Convention adoption</i> by an adopter who is not a British citizen but who is settled in the UK | The ECO will need to be satisfied that the adoption is a genuine adoption and that other requirements of the Immigration Rules are satisfied prior to granting Entry Clearance for the child. The child will usually be granted the same rights to stay in the UK as their adopter subject to the usual discretion of the Home Secretary. |
| Child has been adopted by means of  | The ECO will consider the application and, if satisfied that the adoption is a genuine adoption and immigration   |

|  |  |
|--|--|
| <p>an <i>overseas adoption</i></p>   | <p>requirements have been met, issue Entry Clearance which, on entry to the UK, will normally result in leave to enter being granted for a limited period. Where the adopter is a British citizen, the child will be able to apply for British citizenship. If the adopter is not a British citizen, the child will be able to apply for leave to remain in the UK on the same basis as the adopter.</p>   |
| <p>Child has been adopted by means of an interim adoption which will become a <i>Convention adoption</i> in due course</p> | <p>The ECO will consider the application and, if satisfied that immigration requirements have been met, may issue Entry Clearance which, on entry to the UK, will normally result in leave to enter being granted for a limited period. If the child will automatically receive British citizenship when the <i>Convention adoption</i> is made, the child will no longer be subject to immigration control. If the child does not become a British citizen when the <i>Convention adoption</i> is made, the adopter will need to seek clearance for the child to reside permanently in the UK.</p>  |
| <p>Child has been adopted by means of an interim adoption which will become an <i>overseas adoption</i> in due course</p>  | <p>The ECO will consider the application and, if satisfied that immigration requirements have been met, may issue Entry Clearance which, on entry to the UK, will normally result in leave to enter being granted for a limited period. When the <i>overseas adoption</i> is made, and the adopter is a British citizen, the child will be able to apply for British citizenship. If the adopter is not a British citizen when the <i>overseas adoption</i> is made, the child will be able to apply for leave to remain in the UK on the same basis as the adopter.</p>   |
| <p>Child is entrusted to the prospective adopter to be brought to the UK for adoption</p>                                  | <p>The ECO will wish to ensure that the immigration requirements have been met, seek confirmation from the Welsh Assembly Government that the paperwork is in order and, in the case of the Hague <i>Convention</i>, that the Article 17(c) agreement has been made. If the ECO is content, an Entry Clearance will be issued which, on entry to the UK, will normally result in leave to enter being granted for a limited period, this allowing the child to come to the UK for the purposes of adoption. A child adopted by a British citizen in a UK Court will automatically receive British citizenship and will no longer be subject to immigration control. If the adopter is not a British citizen, the child will be able to apply for leave to remain in the UK on the same basis as the adopter once they have been adopted in a UK Court.</p> |

71 Occasionally it will be necessary for the ECO or immigration officer to seek advice from the UK Visas office in London prior to making a decision.

**Prospective Adopters wish to Change Country**

72 When prospective adopters are found eligible and suitable to adopt the report prepared will relate to a specific country. If the applicants wish to apply to a different country after they have been approved, they should discuss this with the adoption agency.

73 The applicant(s) will need to demonstrate that they fully understand the cultural and other needs of a child from the 'new' country, and that they also meet the eligibility criteria of that country. An addendum report should be produced and returned to the Adoption Panel and agency decision maker to obtain a new approval. This should then be forwarded to the Welsh Assembly Government.

74 The Welsh Assembly Government should be informed at the earliest opportunity if the prospective adopters decide on a change of country, so that the authorities in the country concerned can be notified and the original application can be withdrawn.

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

### **Circumstances where a Child has already been Identified by Prospective Adopters**

#### *Prospective Adopters in the UK*

76 It is important that prospective adopters comply with the laws of other countries and, in some cases, taking steps to identify a child to adopt is illegal. However, in some circumstances, a child will already have been identified by the prospective adopters who are applying to be assessed as eligible and suitable to adopt. This may be where the prospective adopters are guardians or relatives of the child concerned, or when the prospective adopters have met the child when travelling or living abroad.

77 It will usually be beneficial for the prospective adopter to demonstrate that the child is available for intercountry adoption and that the foreign authorities are content for them to proceed with an application to adopt, prior to beginning an assessment of their suitability to adopt.

78 It is also recommended that immigration checks are made as early as possible in the process where a named child is concerned, preferably prior to beginning an assessment. This is because the realisation that the adopter is ineligible to bring a child into the UK might occur after the adoption process abroad has been completed. This would be very distressing and costly for all

involved. The child's circumstances will need to meet certain criteria if they are to be granted entry clearance and leave to enter or remain in the UK. In particular, children who can still be cared for by their parents but who have been "gifted" or "given" to a relative in the UK are very unlikely to gain an entry clearance to enter and reside in the UK. The Home Office can provide information and advice about this.

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

80 Where a prospective adopter is approved to adopt a specific child, the prospective adopter's report and the agency decision maker's letter should clearly state the child's full name and date of birth.

### **British Citizens and Others with Rights to Live in the UK – Living and Adopting Abroad**

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

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

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

83 Where a person with rights to live in the UK is resident abroad and wishes to adopt under the law of that country, the Welsh Assembly Government has no role in the matter. However, some countries require a general statement from the UK government that the child to be is likely to be permitted to enter the UK. The Home Office Immigration and Nationality Directorate may be able to issue a letter on request, stating that if the immigration criteria are met, the adoptive child will be given leave to enter the UK with the adoptive parents, once they decide to return home.

84 Other countries may require a letter from the Welsh Assembly Government or

DfES confirming that they are content for the adoption to go ahead. Neither is able to provide such a letter because the full facts of the case will not be known and the Welsh Assembly Government and DfES have no role in this matter.

85 When the adopters wish to return to the UK they must, where necessary, seek the agreement of the foreign authorities for the child to leave the country. They must then apply to the British Embassy for an entry clearance for their child. There are a number of possible grounds for the issuing of entry clearance. Prospective adopters may need to seek independent legal advice about whether section 83 of the Act applies to them.

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

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

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

88 Where the adoption agency agrees to go ahead, the assessment should include a number of meetings between the social worker and the prospective adopter in the space of a few months. Usually, the adoption agency will also wish to commission a suitable social worker in the other country to produce a report on the home environment abroad. International Social Service may be able to advise adoption agencies on the commissioning of a suitable social worker.

89 Once the adoption agency has carried out the assessment, the case is passed to the Adoption Panel and agency decision maker in the usual way. The papers are then sent to the Welsh Assembly Government for the usual checks prior to being sent abroad.

### **POST-PLACEMENT REPORTS**

90 Many countries require post-placement reports about the child to be sent to them at regular intervals. Any agreement made by the adopter and the relevant authority in the State of origin to provide post-placement reports is an individual arrangement which has no status or effect under UK law. The length of any arrangement will vary from country to country. It may run until the child reaches 18, until an adoption order is made in the UK courts or there may be no arrangement made at all.

91 It is the responsibility of the adopter to make arrangements for the provision of any post-placement reports requested by the authority in the State of origin. Post placement reports must be prepared in accordance with the Restriction on the Preparation of Adoption Reports Regulations 2005.

92 In most cases the adopter may forward post-placement reports directly to the authority in the State of origin. However, some countries require that post-placement reports are sent to the Welsh Assembly Government or via the Assembly Government to the DfES for onward transmission.

### **PART THREE: UK AS A STATE OF ORIGIN**

93 This section sets out considerations that apply where the UK is the State of origin.

#### *Taking children outside the British Islands for the purpose of adoption*

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

95 Prior to the child being taken outside the UK, the prospective adopter must apply to the High Court for permission to take the child out of the country in accordance with sections 84 and 85 of the Act. An application for an order under

section 84 may only be made if the child has had her/his home with the prospective adopter at all times for 10 weeks preceding the application.

### *Role of the Welsh Assembly Government*

70 Where the adoption agency decides that intercountry adoption in a *Convention* country would be in the best interests of the child they must notify the Welsh Assembly Government (as the Central Authority for Wales) of the following:

- A file reference number
- The name of the child
- The age of the child (including month and year of birth)
- The gender of the child
- The reasons why they believe the child may be suitable for adoption outside the British Islands
- The date any placement order was made

71 The Welsh Assembly Government will maintain a list of children in Wales available for intercountry adoption under the *Convention*. The list will be held in a database format but will hold only anonymised information (with the file reference used as the identifier). The list of anonymised information will be made available for consultation by other Central Authorities within the British Islands.

72 If, after a child has been referred for inclusion on the list:

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

the agency must notify the Welsh Assembly Government so that the child's details can be removed from the list.

73 If the agency is seeking to place the child with prospective adopters for

intercountry adoption outside of the *Convention*, it is not required to notify the Welsh Assembly Government unless the child's details had previously been referred to the *Convention* List.

#### *Matching in Convention Cases*

74 Where a prospective adopter living in a *Convention* contracting State outside the British Islands wishes to adopt a child from Wales, the adopter's application will be forwarded to the Welsh Assembly Government by the Central Authority in the receiving State.

75 Where an application is received from a Central Authority outside the British Islands the Welsh Assembly Government will check that:

- the prospective adopter meets the requirements of eligibility, age and residence under UK law
- the Central Authority in the receiving State has confirmed that the adopter has been assessed and approved as eligible and suitable to adopt a child under the *Convention*.

76 The Welsh Assembly Government will then consult the lists of children available in the British Islands for intercountry adoption under the *Convention*. When consulting the lists the Welsh Assembly Government will look at the age and gender of the child and whether the child is part of a sibling group. The Welsh Assembly Government will not be able to consider any additional details.

#### *No children available for intercountry adoption*

77 If there are no children available for intercountry adoption, the Welsh Assembly Government will write immediately to the Central Authority in the receiving State, advising them that this is the case. Where the prospective adopter wishes to adopt a very young child, the adopter will also be advised that it is extremely unlikely that such a child will be available for intercountry adoption (due to the small numbers of very young children available for adoption in the UK and the high levels of demand from domestic adopters).

78 The Welsh Assembly Government will hold applications from foreign countries for 6 months. If the prospective adopter is not matched within that period, the papers will be returned to the relevant Central Authority in the receiving State. The prospective adopter will be permitted to resubmit the application if that is their wish.

#### *Children available for intercountry adoption*

79 If there are any children available for adoption who appear, at face value, to link with the characteristics of the child the prospective adopter is approved to adopt, the Welsh Assembly Government will copy the papers and send them to the local authority looking after the child on the list.

80 Upon receipt of the papers of a prospective adopter, the local authority must consider the papers in the same way as they would consider any other potential match. The local authority should initially consider whether or not the prospective adopter would be able to meet the particular needs of the child in their care. If they require additional information, they should pass this request to the Welsh Assembly Government who will pass it on to the foreign authorities. Once they have the necessary information, the local authority must decide whether or not to pursue the match.

*Decision not to pursue the match*

81 Where the local authority's decision is not to pursue the match they must return the papers to the Welsh Assembly Government, who will write to the Central Authority in the receiving State advising them that it has not been possible to identify a suitable match for the prospective adopter, but that the papers will be held for 6 months.

*Decision to pursue the match*

82 Where the local authority decides to pursue the match (subject to the prospective adopter(s) meeting the child) it must prepare a report for the purposes of Article 16 of the *Convention*. This will include information about the child's:

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

83 The report should also set out the reasons for the local authority's decision.

84 The report must be sent to the Welsh Assembly Government together with:

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

85 The Welsh Assembly Government will then send the information to the foreign authorities for onward transmission to the prospective adopter.

86 The suggested match and the report on the child will be considered by the prospective adopter. Where they decide to go ahead, the prospective adopters will then be required to travel to meet the child.

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

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

89 If the local authority is content for the adoption to go ahead, and the prospective adopter confirms that they would like the adoption to go ahead, the local authority must notify the Welsh Assembly Government accordingly.

90 The Welsh Assembly Government will then contact the Central Authority in the receiving State and, if they are content for the adoption to go ahead and can confirm that the child will be permitted to enter and reside permanently, an Article 17(c) Agreement can be made. Once the Welsh Assembly Government has confirmed that an Article 17(c) Agreement has been made, the local authority should make appropriate arrangements for introductions to the child before placing the child with the prospective adopter.

## **MATCHING IN NON-CONVENTION CASES**

91 Where the local authority is seeking to place a child with prospective adopters habitually resident abroad outside of the Convention, it will need to comply with Parts 5 & 6 of the Welsh Assembly Government guidance on the Adoption Agencies (Wales) Regulations 2005 about placements and reviews.

## **RESTRICTIONS ON TAKING CHILDREN OUT OF THE UK**

92 Section 85 of the Act provides restrictions on removing children from the British Islands for the purposes of adoption. Failure to comply with section 85 is an offence punishable by 12 months imprisonment and an unlimited fine. In order to avoid breaching section 85, prospective adopters who live abroad will need to either obtain a Convention adoption order, an adoption order in the UK courts, or an order under section 84 of the Act before removing the child from the British Islands.

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

93 A prospective adopter may only apply for an adoption order if the adopter meets one of the domicile or habitual residence conditions in section 49 of the Act. It is expected that most prospective adopters who are habitually resident outside the British Islands will not meet either of these conditions.

94 However, in *Convention* cases, arrangements are in place for prospective adopters to apply for a *Convention adoption order* in the UK if they have lived with the child for a minimum of 10 weeks. If a *Convention adoption order* is made the Welsh Assembly Government will normally issue a certificate under Article 23 of the *Convention* confirming that the adoption order has been made in accordance with the *Convention*. A copy of the certificate will be sent to the Central Authority of the receiving State, the adoptive parents and the adoption agency (and, if different, local authority).

### ***Adopting outside the UK***

95 Many prospective adopters will wish to adopt the child abroad. In these circumstances the prospective adopters will need to apply to the High Court for an order under section 84 of Act before removing the child from the British Islands.

#### *Convention cases*

96 Where the child is intended to be adopted under the Hague *Convention*, Foreign Element Regulation 48 requires that:

- the prospective adopter has confirmed in writing that he/she will accompany the child when leaving the UK. In the case of a couple, both of them will need

to confirm this unless the adoption agency and the competent foreign authority agree that it is only necessary for one of them to do so

- the competent authorities in the receiving State have:
  - prepared a report for the purposes of Article 15 of the Convention
  - confirmed in writing that the prospective adopter is eligible and suitable to adopt, has been counselled as may be necessary and that the child is or will be authorised to enter and reside permanently in the receiving State
- the adoption agency has:
  - prepared the report required by Article 16(1) of the Convention (Foreign Element Regulation 46)
  - confirmed in writing that it has complied with the requirements in Part 3 of the Agencies Regulations and Part 3, Chapter 2 of the Foreign Element Regulations
  - made available to the court the child's permanence report (Agencies Regulation 17.1), the child's health report (Agencies Regulation 15.2), any reports obtained under Agencies Regulation 15, the information about the health of each of the child's natural parents (Agencies Regulation 16), the recommendations of the adoption panel under Agencies Regulation 18 and Agencies Regulation 33 and the adoption placement report (Agencies Regulation 32.3.d)
  - included in their report to the court details of any reviews and visits carried out in accordance with Part 6 of the Agencies Regulations.

#### *Non-Convention cases*

97 Where the child is not intended to be adopted under the Hague Convention, Foreign Element Regulation 10 requires that:

- the prospective adopter has confirmed in writing that he/she will accompany the child when leaving the UK. In the case of a couple, both of them will need to confirm this unless the adoption agency and the competent foreign authority agree that it is only necessary for one of them to do so
- the relevant foreign authority has confirmed in writing that the legal implications of adoption have been explained to the prospective adopter, that

he/she is eligible and suitable to adopt, has been counselled as may be necessary and that the child is or will be authorised to enter and reside permanently in the receiving State

- the adoption agency has:
  - confirmed in writing that it has complied with the requirements in Part 3 of the Agencies Regulations
  - made available to the court the child's permanence report (Agencies Regulation 17.1), the child's health report (Agencies Regulation 15.2), any reports obtained under Agencies Regulation 15, the information about the health of each of the child's natural parents (Agencies Regulation 16), the recommendations of the adoption panel under Agencies Regulations 18 and 33 and the adoption placement report (Agencies Regulation 32.3.d).

Where the court has made an order under section 84 the prospective adopters may leave the UK with the child.

98 If a *Convention adoption* is subsequently made in the other country, a certificate will be issued by the Central Authority in the receiving State in accordance with Article 23 of the *Convention*. A copy of this should be sent to the Welsh Assembly Government, who will provide the adoptive parent(s) and the adoption agency (and, if different, the local authority), with a copy of this as soon as possible after receipt.

#### *Post-placement Reports*

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

## **STATUTORY ADOPTION PAY**

## **ADOPTIVE FAMILIES: THE BENEFIT AND TAX CREDIT SYSTEMS**

1 Local authorities may wish to join the DWP Publicity Register where they will have access to leaflets and products from other government departments (see catalogue for details). Once they have joined the register a quarterly magazine is issued with a mini guide to benefits and services. To join call: 0845 602 44 44 (9:00 am to 6:00 pm, Monday to Friday), fax: 0870 241 26 34, E-mail at: Publicity-Register@dwp.gsi.gov.uk. Or write to:

The Publicity Register, Freepost, NWW 1853, Manchester M2 9LU.

2 The Benefits Agency produces the leaflet BC1 Babies and Children which is a general guide for parents on the benefits and tax credits they may be able to get. The leaflet is available in large print, Braille, on audio cassette and in the following languages: Welsh, Arabic, Bengali, Chinese, Gujarati, Punjabi, Somali, Urdu and Vietnamese. The minimum order is 1 unit: this equals 50 leaflets in English or Welsh and 10 leaflets in other languages.

3 Local authorities are encouraged to obtain sufficient stocks of the BC1 leaflet to provide copies to all adoptive parents that they work with. For those who are not members of the Publicity Register, information about benefits and access to leaflets can be obtained from:

DWP  
CDI Customer Services  
Room 108  
Norcross  
Blackpool  
FY5 3TA  
Tel: 01253 332 921

4 Adoptive parents who have adopted a child from overseas should be reminded of the undertaking that they made when applying for entry clearance for the child that they could maintain and accommodate the child adequately without recourse to public funds. For immigration purposes, public funds are defined in the Immigration Rules which can be found on the Home Office web-site at [www.ind.homeoffice.gov.uk](http://www.ind.homeoffice.gov.uk). This does not prevent those adopting from overseas receiving financial support for adoption, Statutory Adoption Pay, adoption leave, Statutory Paternity Pay or paternity leave.

5 Financial support that local authorities pay to adoptive families under the Adoption Support Services (Wales) Regulations 2005 must complement and not duplicate financial support available through the benefits and tax credits system. It will be disregarded in calculating income for the purpose of income related benefits (Income Support, job seeking Allowance and Council Tax Benefit), although it will be offset against the applicable premium in respect of that child or young person (and where applicable to him any amount by way of a disabled

child premium). This financial support is exempt from tax and, as such, will be disregarded in calculating income for tax credit purposes.

6 To ensure that adoptive families are able to demonstrate, if necessary, in relation to tax returns or benefit claims that payments received should be disregarded, local authorities are strongly encouraged to include the following statement in the written notification that they are required to provide under Regulation 13 of the Adoption Support Services (Wales) Regulations. *This payment(s) is made in accordance with regulations made pursuant to Section 4 of the Adoption and Children Act 2002. Under the provisions of the Finance Act, the payment is to be exempt from tax. In addition, the payment will be disregarded if you currently receive, or apply to receive, Child Tax Credit or Working Tax Credit. You should keep this letter carefully in case you need to provide it to support any tax return or application for a tax credit.*

7 Although entitlement to Child Tax Credit is subject to income, it will go to more families than previous systems of support. It includes students and student nurses (who are not entitled to out of work or in work support at present) and families far further up the income scale. Those with household incomes of up to £58,000 are entitled to a minimum level of support, although those with lower incomes receive a higher level of support. However, Child Tax Credit will not be due if the child or young person has been placed with that household for fostering or adoption and the local authority is paying for the cost of caring for that child under section 23 of the Children Act 1989.

8 The Working Tax Credit which complements the Child Tax Credit also provides an income based system of support for all low-income working families whether they contain children or not.

9 There is a single claim form covering both the tax credits. Claims can be made online at [www.hmrc.gov.uk/taxcredits](http://www.hmrc.gov.uk/taxcredits). This web-site also provides information on eligibility and alternative ways to claim.

10 From 1 April 2003 responsibility for Child Benefit transferred to the Inland Revenue (now HMRC, known as Revenue and Customs). Child Tax Credit is paid in addition to Child Benefit. Child Benefit can usually be paid from the Monday following the date the child is placed with the prospective adopters and irrespective of whether or not payments are being made under the Adoption Support Services (Wales) Regulations 2005.

## **STATUTORY ADOPTION PAY (SAP) AND LEAVE AND STATUTORY PATERNITY PAY (SPP) AND LEAVE**

11 From 6 April 2003 the Department of Trade and Industry introduced for the first time the right to Statutory Adoption Pay (SAP) and leave and Statutory Paternity Pay (SPP) and leave. SAP and adoption leave, and SPP and paternity

leave are available to those adopting children up to 18 years of age, from both the UK and overseas.

12 The adoption leave scheme is broadly similar to maternity leave. An adoptive parent is able to take 26 weeks ordinary adoption leave, to be followed immediately by 26 weeks additional adoption leave, giving a total of one year's leave.

13 SAP is also broadly similar to Statutory Maternity Pay. SAP is paid for 26 weeks at £106 per week or 90% of average weekly earnings whichever is less.

14 The paternity leave scheme allows an adoptive parent (or their partner) to take either one week's or two consecutive weeks' leave within 56 days of the date on which the child is placed for adoption. SPP is paid at the same standard rate as SAP, £106 per week or 90% of average weekly earnings whichever is less.

15 If a couple are adopting, they can choose which of them will take adoption leave and SAP. The other member of the couple, or the partner of an individual adopting, is able to take paternity leave and receive SPP, providing they meet the eligibility criteria.

16 This facilitation of adoption leave is to help adopters and children adjust to their new relationships. These relationships are already in place for foster parents or step-parents who go on to adopt the child, and therefore SAP and adoption leave and SPP and paternity leave are not normally available to foster parents or step-parents who go on to adopt the child.

17 Further information about SAP and adoption leave and SPP and paternity leave can be found in the DTI booklet: *Adoptive Parents: rights to leave and pay when a child is placed for adoption in the UK*, available at [www.dti.gov.uk/workingparents](http://www.dti.gov.uk/workingparents). Interactive guidance is available at [www.tiger.gov.uk](http://www.tiger.gov.uk). Adopters and their employers can get information about adoption and paternity leave from ACAS on 08457 47 47 Employers can get advice on SAP and SPP from the HMRC Employers' Helpline on 08457 143 143.

## **THE ENTITLEMENTS AT A GLANCE**

## **Statutory Adoption Pay (SAP) and leave**

18 SAP and adoption leave are available to employees (male or female) adopting a child who is placed with them by an adoption agency. They could be adopting on their own, or with their partner.

- SAP is paid for a maximum of 26 weeks at the lower of £106 or 90% of average weekly earnings
- Adoption leave is available for 52 weeks but only the first 26 weeks are covered by SAP

19 To qualify for adoption leave, the adopter must have completed 26 weeks' continuous service with their employer by the end of the week in which they are notified of being matched with a child.

20 An adopter who wishes to receive SAP and take adoption leave will need to give their employer documentary evidence to confirm that they are adopting a child through an adoption agency. The adoption agency may provide a matching certificate to use as evidence. SAP cannot be paid without this evidence – see section on Matching Certificate below.

## **Statutory Paternity Pay (SPP) and leave**

21 SPP and paternity leave are available to employees (male or female) who are:

- Adopting a child with their partner, or
- The partner of someone adopting a child on their own

22 SPP and paternity leave can be taken for one or two whole weeks. SPP is paid at the lower of £106 or 90% of average weekly earnings. To qualify for paternity leave, the employee must have completed 26 weeks' continuous service with their employer by the end of the week in which the adopter is notified of having been matched with a child.

23 An adopter (or their partner) who wishes to take SPP and paternity leave, will need to give their employer evidence of their entitlement and will need information from the adoption agency for this – see section on SC4 below.

24 *Employees who adopt a child from overseas* (or whose partner does) may be eligible for SAP and adoption leave and SPP and paternity leave – the entitlements are the same as for those adopting a child in the UK. However,

because of the differences in procedure for adoptions from overseas, the eligibility and evidential requirements are different:

- To qualify for either adoption or paternity leave employees must have 26 weeks' continuous service with their employer
- The information and evidence which employees must provide for paternity leave/SPP and adoption leave/SAP, and the time at which they must do it are also different – see below on official notification.

25 Both paternity and adoption leave can only start once the child has entered the UK.

26 Official notification means the written notification issued by or on behalf of the relevant domestic authority that it is prepared to issue a certificate to the overseas authority concerned with the adoption of the child or has issued a certificate. The certificate confirms that the adopter is eligible to adopt and has been assessed and approved as being a suitable adoptive parent.

### **Notifying the employer**

27 Adopters should be advised to keep their employer informed throughout.

28 The adoptive parent (or their partner) must notify their employer of their intention to take adoption leave or paternity leave within seven days of the date the adoption agency tells the adopter that they have been matched with a child. They must tell their employer the date on which the child is expected to be placed for adoption with them, and the date they intend to start their adoption leave.

29 The time limit for producing evidence to receive pay is 28 days before the start of the pay period, unless there is a good reason for the evidence being produced late. An adoptive parent (or their partner) who wishes to claim SAP, adoption leave, SPP or paternity leave is legally required to give their employer the dates when the adoption agency tells the adopter that they have been matched with a child, and when the child is expected to be placed.

30 Entitlement to SAP and adoption leave, and SPP and paternity leave depends on how long adopters (or their partner) have been employed by their current employer and their average earnings. Both of these conditions are based around the date the adoption agency tells the adopter that they have been matched with a child. To be eligible for adoption leave or paternity leave the adoptive parent (or their partner) must have completed 26 week's service with their employer by the end of the week in which the adopter is told that they been

matched with a child. Only those earning at least the lower earnings limit for National Insurance will be entitled to SAP or SPP.

31 In the case of employees adopting from overseas, they should notify their employers of:

- the date the adopter received official notification, and
- the date the child is expected to enter the UK within 28 days of receipt of the notification or, if it is later, within 28 days of reaching 26 weeks' continuous employment with their employer

### **Matching Certificate – Evidence for SAP**

32 To receive SAP, an adoptive parent needs to provide documentary evidence from the adoption agency to confirm that they are adopting a child. An employer cannot pay SAP without this evidence. The evidence must show:

- the name and address of the adoption agency and of the person applying for SAP
- the date the child is expected to be placed for adoption, or the date the child was placed for adoption
- the date the adopter was told by the adoption agency that they had been matched with a child

33 Where a local authority decides in accordance with Agencies Regulation 28 that an adoptive parent would be a suitable adoptive parent for a child, they must provide the adoptive parent with the evidence that they need to receive SAP. When they notify them in writing of their decision, the agency should also enclose a completed Matching Certificate. It is available from the DTI website at [www.dti.gov.uk/er/adoption.htm](http://www.dti.gov.uk/er/adoption.htm).

### **SC4 – Evidence for SPP**

34 To receive SPP, the employee must provide their employer with the following evidence:

- the name of the person claiming SP
- the date on which the child is expected to be placed for adoption (or, if it has already happened, the actual date of placement)
- the date on which they expect SPP to begin

- whether they are claiming one or two weeks' SPP
- the date the adopter was notified of having been matched with the child  
They must also give a declaration:
- as to their relationship with the adopter
- that they will have responsibility for the child's upbringing, and that they are taking time off to support the adopter or to care for the child
- that they have chosen to receive SPP and not SAP

35 The model self-certificate *Becoming an adoptive parent* (SC4) available from [www.inlandrevenue.gov.uk/pdfs/emp2003/sc4.pdf](http://www.inlandrevenue.gov.uk/pdfs/emp2003/sc4.pdf) can be used for this purpose.

### **Evidence required for intercountry adopters**

36 The evidence required for employees adopting from overseas is different and there is no matching certificate. To claim either paternity leave or SPP, or adoption leave and SAP, an employee must tell their employer:

- the date the adopter received official notification
- the expected date their child will enter the UK
- when they want their leave to start

37 To claim SPP employees also have to make certain declarations. To claim SAP employees must provide a copy of the official notification and evidence of the date the child arrives. For further information, see the DTI guidance note at [www.dti.gov.uk/er/overseasadoption.htm](http://www.dti.gov.uk/er/overseasadoption.htm).

### **Adoptive parents who are not eligible for SAP/SPP**

38 Adoptive parents who have not completed 26 weeks' service with their employer by the time they are matched with a child, or are below the lower earnings limit or self employed will not be entitled to SAP or SPP.

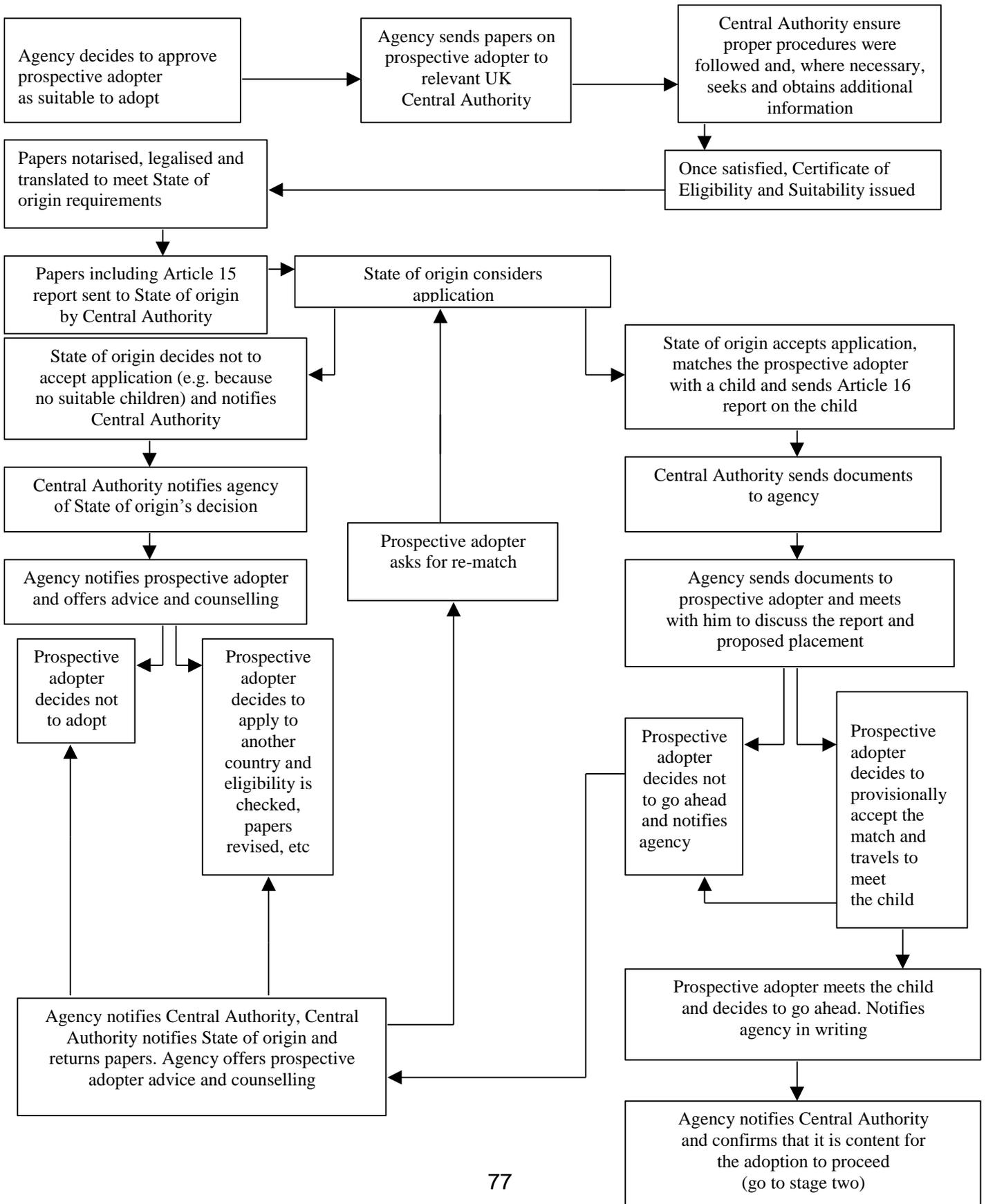
**Note: All figures are correct at the time of publication. The current figures are available from the Department for Work and Pensions website at [www.dwp.gov.uk](http://www.dwp.gov.uk).**



**E ENGLAND / WALES AS RECEIVING STATE**

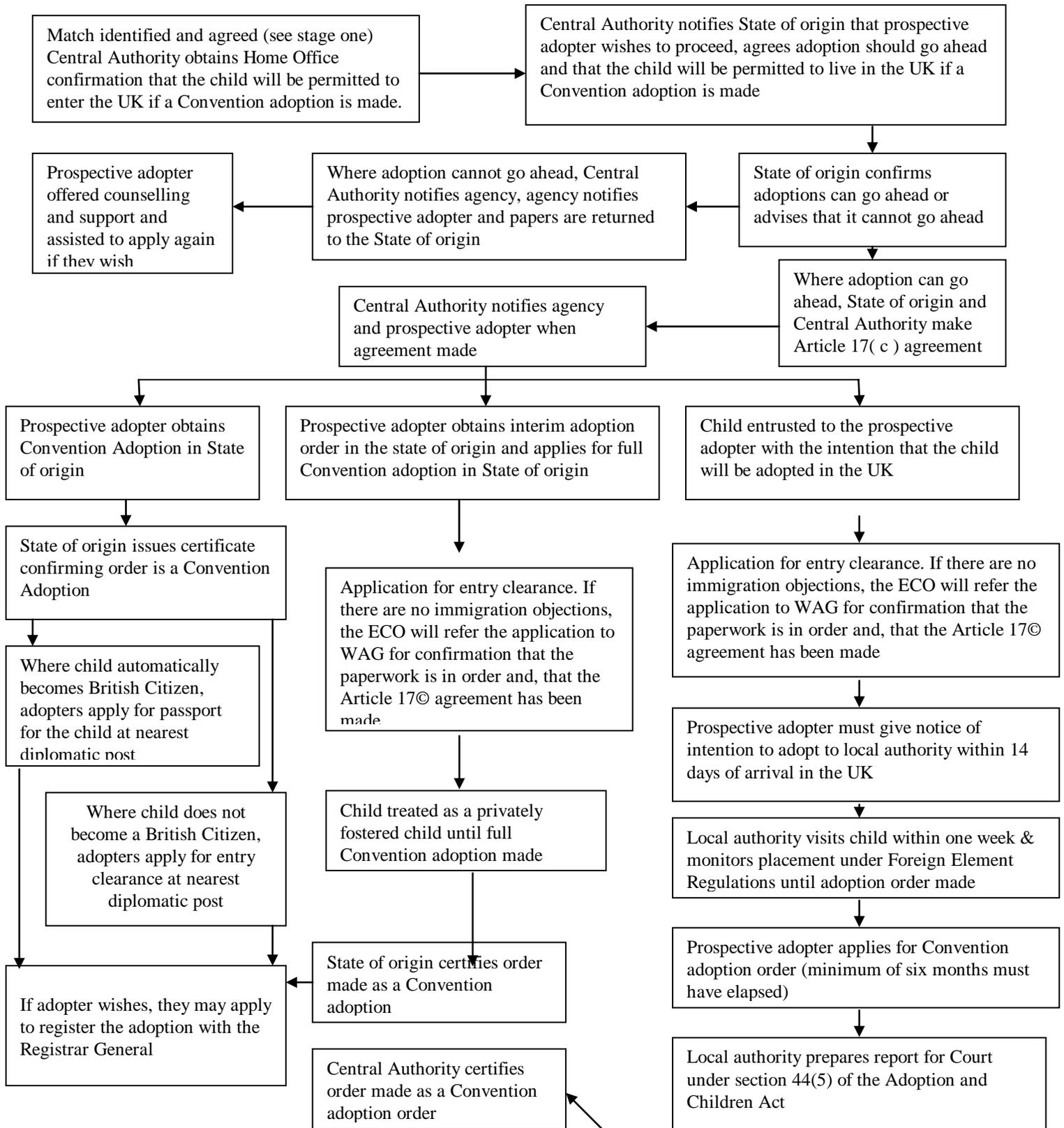
**Stage One – Suitability to Agreed Match (Convention cases)**

[This flow chart has been produced purely as an aide and is not a statement of the law]



**ENGLAND / WALES AS RECEIVING STATE**  
**Stage Two – Agreed Match to Adoption (Convention cases)**

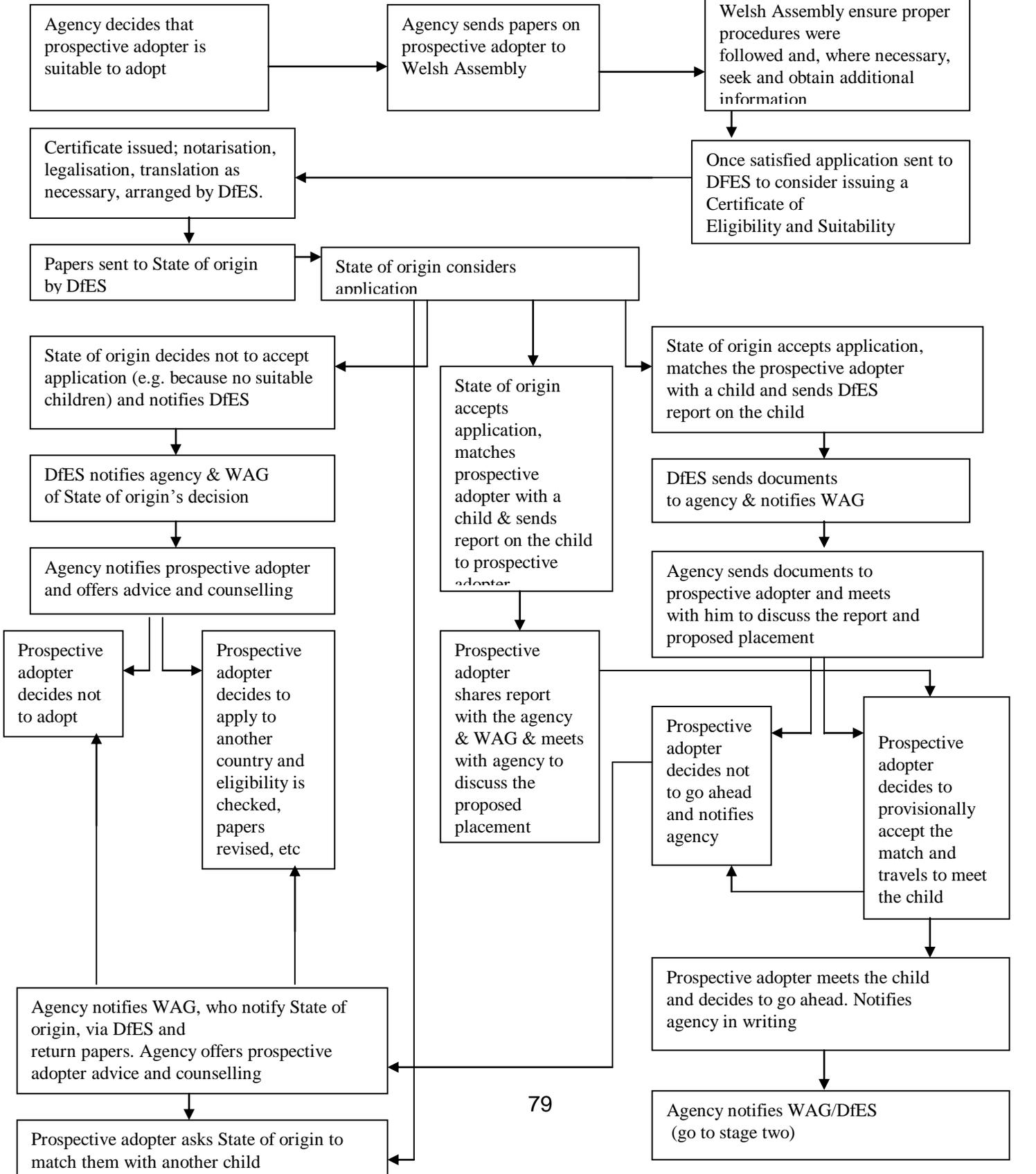
[This flow chart has been produced purely as an aide and is not a statement of the law]



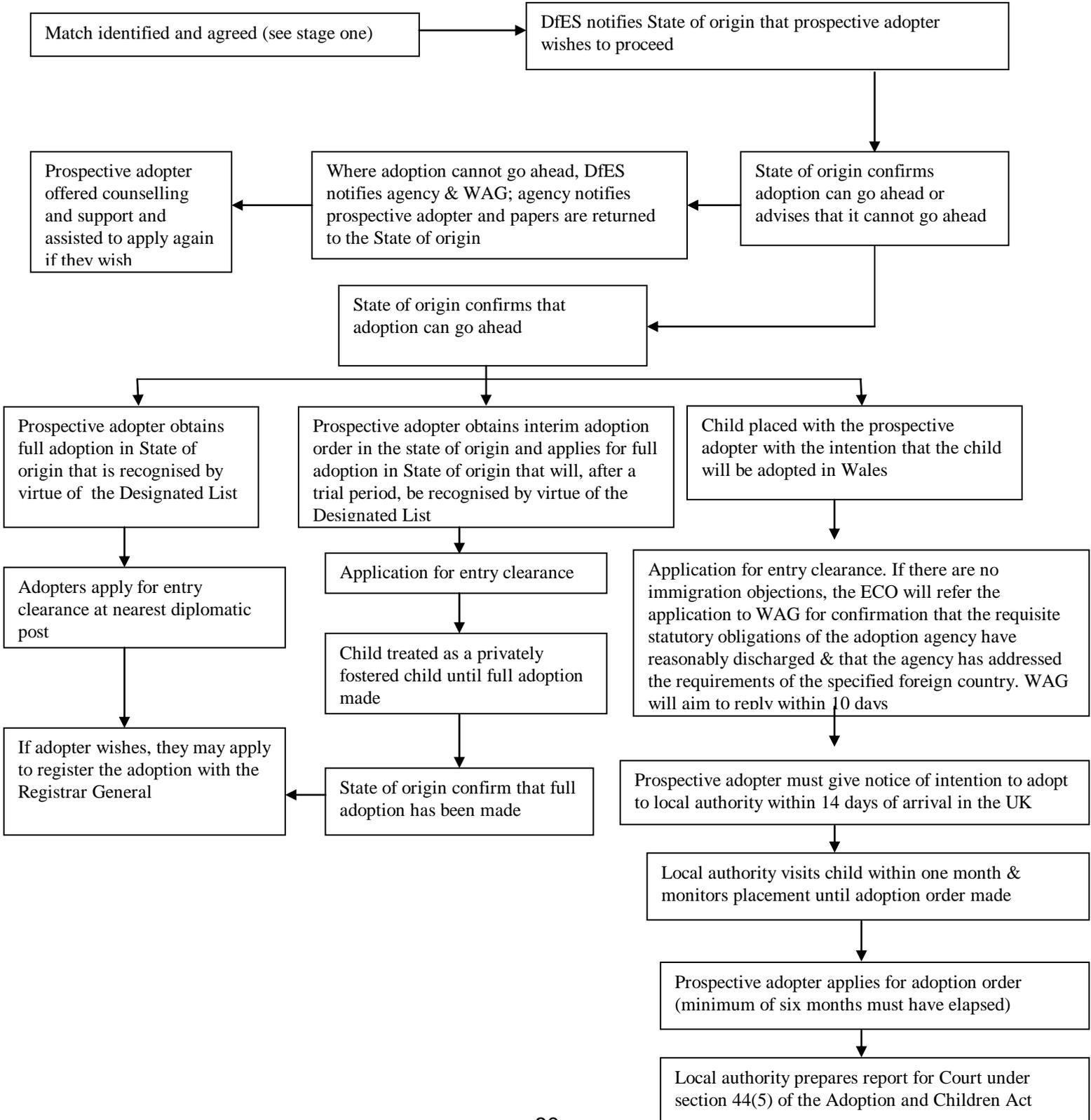
**ENGLAND / WALES AS RECEIVING STATE**

Stage One – Suitability to Agreed Match (non-Cd)  
 [This flow chart has been produced purely as an aide and is

Adoption order made & automatically registered with the Registrar General



**ENGLAND / WALES AS RECEIVING STATE**  
**Stage Two – Agreed Match to Adoption (non-Convention cases)**  
 [This flow chart has been produced purely as an aide and is not a statement of the law]



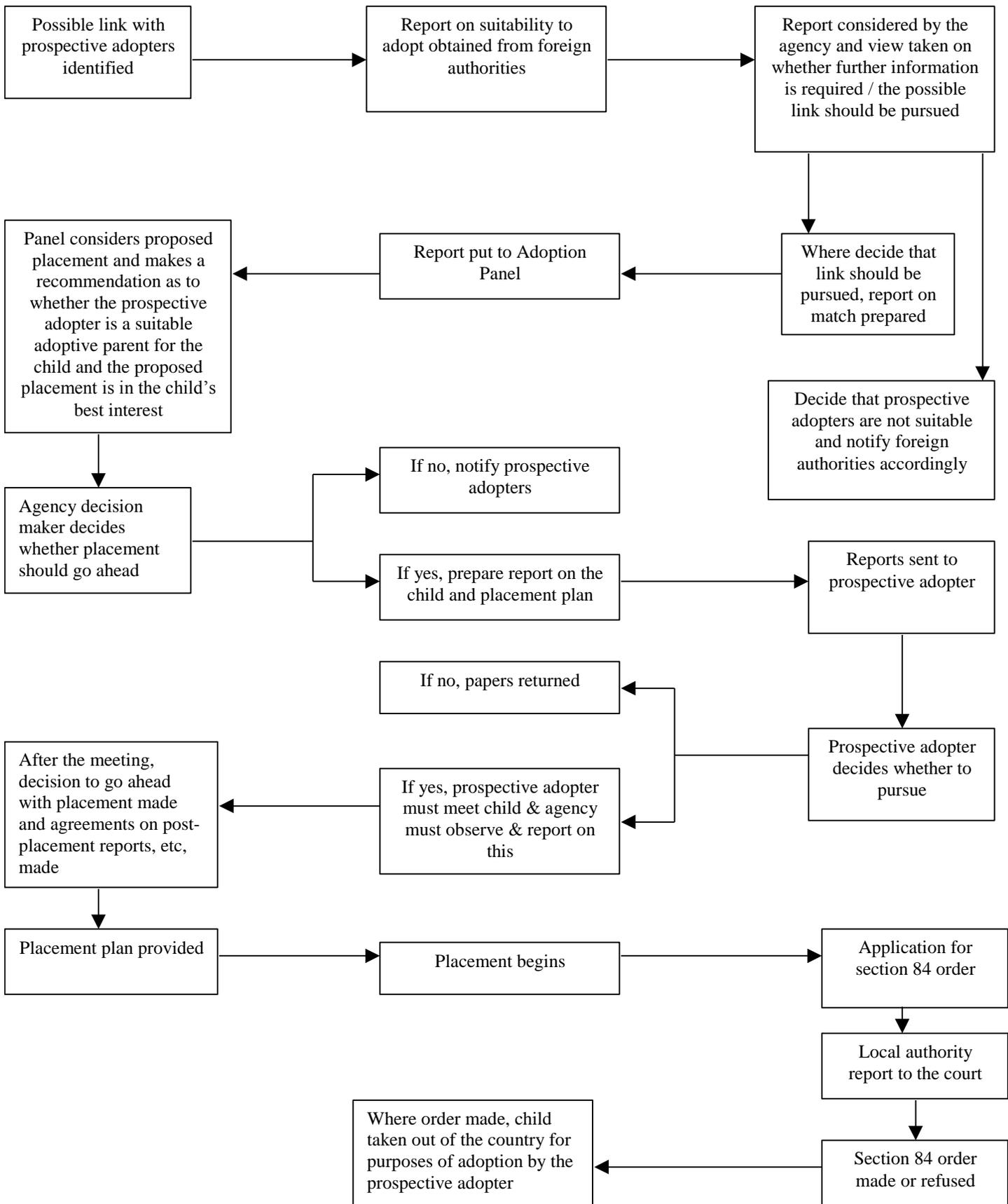


Adoption order made & automatically registered  
with the Registrar General

ENGLAND / WALES AS A STATE OF ORIGIN

Matching and placement (non-Convention cases)

[This flow chart has been produced purely as an aide and is not a statement of the law]



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

**Matching and placement (Convention cases)**

[This flow chart has been produced purely as an aide and is not a statement of the law]

(a) Adopters not pre-identified

(b) Identified adopters

