



Intercountry Adoption and the 1993 Hague Convention

Who is this leaflet for?

This leaflet is intended for anyone who is thinking of applying to a family court in England and Wales for an adoption order under the Adoption and Children Act 2002 where:

- the child, before being brought to the UK for adoption, was habitually resident in a country or territory outside the British Islands;
- the child to be adopted is habitually resident outside the British Islands;
- the prospective adopters are habitually resident outside the British Islands.

“The British Islands” means England, Wales, Scotland, Northern Ireland, the Channel Islands and the Isle of Man.

This leaflet will tell you:

- what intercountry adoption is;
- what the 1993 Hague Convention is;
- who may apply to adopt a child;
- what information the court will need; and
- how the court will deal with your application.

It is not a definitive statement of the law. If you are thinking about adopting a child, you should get advice from: your local authority social services department, an approved adoption agency, a solicitor, a law centre or legal advice centre, or a Citizen’s Advice Bureau.

You can find information about adoption at <https://www.gov.uk/child-adoption> or by visiting websites of the British Association for Adoption and Fostering (BAAF) <http://www.baaf.org.uk/> and First4Adoption <http://www.first4adoption.org.uk/>.

You may be able to get free legal aid advice. Further information is available at www.gov.uk/legal-aid.

Note: Throughout the remainder of this leaflet the term ‘permanent home’ is used in place of ‘habitual residence’. This is for ease of reading, but it should be remembered that this alternative term does not exactly match the meaning of habitual residence. Habitual residence is a legal concept which is undefined in statute and subject to case law, and it is possible to be habitually resident in more than one country. If you are in any doubt about your residence status, you should seek independent legal advice as to your habitual residence as early as possible in the adoption process.

What is an intercountry adoption?

An intercountry adoption is the adoption of a child habitually resident in one country by an individual/s habitually resident in another country.

There are two types of inbound intercountry adoptions: those made under the terms of the Hague Convention and ‘other’.

The adoption may be:

- a Convention adoption – where the child and the adopters are habitually resident in different countries both of which are contracting States to (that is, the States which have “ratified” or “acceded to”) the 1993 Hague Convention and the adoption is effected under the Convention;
- “Other” – “Other” are intercountry adoptions not effected under the terms of the Convention.

If I adopt a child abroad, do I need to apply for an adoption order in the UK?

In some cases a full adoption effected outside the UK will be recognised under UK law.

A full adoption effected under the Convention validly certified by the relevant Central Authority under Article 23 of the Hague Convention is recognised under UK law.

On 3rd January 2014 England and Wales revoked The Adoption (Designation of Overseas Adoptions) Order 1973 (the ‘designated list’) and introduced The Adoption (Recognition of Overseas Adoptions) Order 2013 (the ‘2013 Order’). The 2013 Order names those countries whose domestic adoption orders made on or after 3rd January 2014 will be automatically recognised in the England and Wales.

An adoption effected prior to 3rd January 2014 in a country that was named on the designated list will be recognised under UK law, so there is no need to apply for an adoption order in respect of the child in the UK to gain that recognition.

An adoption effected on or after 3rd January 2014 in a country named on the 2013 Order will be recognised in England and Wales and there is no need to readopt here to gain that recognition.

Scotland and Northern Ireland have their own legislation recognising adoptions.

If you think this may apply to your circumstances, you should seek advice from a solicitor, a legal advice or law centre, your local authority or an approved adoption agency.

This guide is mostly concerned with applications for a Convention adoption order made to a court in England and Wales. Further information about other types of intercountry adoption applications can be obtained from your local authority or a voluntary adoption agency that deals with intercountry adoption. Details of local authorities and voluntary adoption agencies is available at <https://www.gov.uk/child-adoption/adopting-a-child-from-overseas>.

You can find the names of countries that are on the designated list and the 2013 Order at <https://www.gov.uk/intercountry-adoption-information-for-adoption-agencies#list-of-designated-countries>.

What is the “Hague Convention”?

The “Hague Convention” refers to the Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption. The Convention provides a framework for the process of intercountry adoptions which is aimed at protecting the best interests of the child and establishes a system of co-operation between contracting countries to prevent the abduction, sale, or the trafficking of children.

The framework set out in the Convention was incorporated in UK adoption law under the Adoption (Intercountry Aspects) Act 1999. The Adoption and Children Act 2002 incorporates many of the provisions of the 1999 Act and extends them, with new safeguards and penalties. Regulations made under the 2002 Act (The Adoptions with a Foreign Element Regulations 2005) set out the requirements and procedures relating to the adoption of children from abroad by prospective adopters habitually resident in England and Wales and the adoption of children habitually resident in England and Wales by people habitually resident abroad. These regulations are aimed at ensuring that children are not brought to, or taken out of, the UK for adoption (including Convention adoptions) without appropriate safeguards and approval by the proper authorities.

What do the terms “full adoption” and “simple adoption” mean?

Under a **full adoption**, the child is to be treated in law as not being the child of any person other than the adopter or adopters. In a **simple adoption**, although a new and permanent legal relationship is created between the adopters and the child, not all ties with the birth parents are totally severed.

United Kingdom law only recognises and grants full adoptions, but the Convention provides for the recognition of both types of adoption. The UK may convert a simple adoption into a full adoption, provided the birth parents and the other parties have given their consent. In any case where the issue of simple adoption may arise, the birth parents will be informed of the effect of such an order in UK law and their consent sought to a full adoption. The 2002 Act also provides a method for the High Court to give a direction whether, and to what extent, a child adopted under a simple adoption should be treated as if he or she were not the child of any person other than the adopter(s).

If you have any questions about full or simple adoption orders or about the law in the child’s country of origin, you should seek advice from a solicitor, a legal advice or law centre, your local authority or an approved adoption agency.

Which countries are signatories to the Hague Convention?

An up to date list of countries that have signed up to the Hague Convention is available from http://hcch.e-vision.nl/index_en.php?act=conventions.status&cid=69.

If I want to adopt a child from another country, what do I have to do?

In any type of intercountry adoption, all adopters have to go through the same assessment and approval process.

Your first step should be to contact your local authority social services department or a voluntary adoption agency that has been approved for intercountry adoption. The local authority or adoption agency will ask you to complete the necessary forms and will then carry out a number of checks about you and the home that will be provided for the child. They will also help you consider the implications and identify the qualities needed to bring up a child from another culture/country.

Details of local authorities and voluntary adoption agencies is available at
<https://www.gov.uk/child-adoption/adopting-a-child-from-overseas>.

What happens next in the case of a Convention adoption application?

If you are assessed as eligible and suitable to adopt from your chosen country, your application will be forwarded to the Department for Education if you live in England, or to the Welsh Government if you live in Wales. These two Government Departments are "Central Authorities" with respect to intercountry adoptions.

The Central Authority is responsible for checking that your application complies with the relevant legal requirements and that all necessary information has been provided, before forwarding it to the relevant Central Authority in the country from which you wish to adopt. If the Central Authority in that country approves your application and you are matched with a suitable child the Central Authority in England and Wales will process the paperwork in respect of the child and advise you of the procedures.

Some adoptions effected under the Hague Convention will be finalised and validly certified by the relevant Central Authority under Article 23 of the Hague Convention overseas. Others will be finalised here. In cases where the adoption will be finalised here, and you decide to adopt the child in the UK, you must accompany the child to the UK and, within 14 days of arrival, give notice to the local authority within whose area you live of your intention to apply for a Convention adoption order.

Important: This leaflet provides only a very brief outline of the procedures. In some cases, the process may be lengthy and can be complicated. In all cases you must comply with the procedures set out for Convention cases in the Adoptions with a Foreign Element Regulations 2005. If you do not, it could mean that one or both of the Central Authorities in the contracting States will be unable to provide the agreements required by the Convention and you will not be able to obtain a Convention adoption order. If you do not comply with the regulations you could also be committing a criminal offence. **It is important therefore that you seek advice from your local authority or a voluntary adoption agency that deals with intercountry adoption and if appropriate seek advice from a solicitor.**

Where in England and Wales do I start my application for a Convention adoption order?

You should make your application to the nearest court that deals with adoption matters.

You can find the full list of courts, and information about what type of work they do, online at courttribunalfinder.service.gov.uk.

Who may apply for a Convention adoption order?

A couple may apply to a family court in England and Wales for an adoption order provided:

- at the time the adoption order is made, both members of the couple are at least 21 years of age; and
- both have had their permanent home in the British Islands for at least one year immediately before the application; or
- their permanent home is in a Convention country outside the British Islands on the date the application is made to the court.

A ‘couple’ means two people who are living in an enduring family relationship. They may be of different sexes or the same sex, married, unmarried or civil partners.

One person may apply to adopt alone provided:

- at the time the adoption order is made, they are at least 21 years of age; and
- they have had their permanent home in the British Islands for at least one year when the application is made; or
- their permanent home is in a Convention country outside the British Islands on the date the application is made to the court.

and

- they are not married/do not have civil partner; or
- they are married or have a civil partner and are able to satisfy the court that:
 - their spouse or civil partner cannot be found;
 - they have separated from their spouse or civil partner and are living apart, and the separation is likely to be permanent; or
 - their spouse or civil partner is physically incapable of making an application or lacks capacity (within the meaning of the Mental Capacity Act 2005) to do so.

In addition, the court cannot make a Convention adoption order unless:

- the child has lived with you or, in the case of an application by a couple, with one or both of you, for at all times during the 10 weeks immediately preceding the application;
- where the UK is to be the state in which the child is to have his or her permanent home and the applicant, or one of the applicants, is not a British Citizen, the Home Office has confirmed that the child is authorised to enter and reside permanently in the UK.

Will I have to pay a fee?

A fee is payable for all adoption applications. Please ask the court staff for details or for a copy of the leaflet **EX50 – Civil and Family Court Fees**, which is also available on our website at hmctsformfinder.justice.gov.uk.

Your financial situation may mean that you do not have to pay a court fee, for example, if you are receiving a particular means-tested benefit or you would suffer financial hardship if you pay the fee. The combined booklet and application form **EX160A Court and Tribunal Fees – Do I have to pay them?** gives more information. This is available from the family court or from our website.

What forms and documents will the court need?

The court will need:

- Your completed form **A59 Application for a Convention adoption order**, and three copies; and
- where the UK is the child's place of birth, a certified copy of the full birth certificate for the child or, if the child has previously been adopted, a certified copy of the entry in the Adopted Children Register;
- where the child was born outside the UK, a certified copy of the child's original birth certificate, any abandonment certificate/declaration, or where the child has been adopted, a certified copy of the entry in the register of adoptions as recognised in the State of Origin or a certified copy of the adoption certificate.

You may also have to provide any of the following, depending on your circumstances:

- if you were a party to the proceedings, a copy of any other final order relating to the child that has effect and, if possible, a copy of any maintenance agreement or maintenance award relating to the child;
- if you were a party to the proceedings, a copy of any final order relating to a full, half or step brother or sister of the child that has effect;
- where a parent of the child has died, a certified copy of the death certificate;
- if you are submitting evidence of your marriage or civil partnership, a certified copy of your marriage certificate or certificate of civil partnership;
- if your spouse or civil partner has died, a certified copy of the death certificate;
- if you are divorced or your civil partnership has been dissolved, a copy of any decree absolute or decree of nullity of your marriage or a copy of any dissolution order or nullity order of your civil partnership;
- any documentary evidence supporting the reasons why you are applying to adopt the child without your spouse or civil partner, such as a decree of judicial separation;
- where the child is coming to live in the UK and you are (or in the case of a couple, one of you is) not a British Citizen, confirmation from the Home Office that the child is authorised to enter and reside permanently in the UK;

- if your name as entered on the application form is different from the name shown on any evidence of marriage or civil partnership you are sending with your application, any documentary evidence to explain the difference.

This is not an exhaustive list of the documents the court may need. You will find a list of documents to be attached on the application form A59. You may obtain copies of form A59 from any family court that deals with adoption matters. You can find the full list of courts, and information about what type of work they do, online at courttribunalfinder.service.gov.uk.

Where can I get a copy of a certificate of death, marriage or civil partnership or the child's full birth certificate if I do not have one?

If you were married in England or Wales, or the child was born in England or Wales, you can get a certified copy from:

- The office of the Register of Births, Marriages and Deaths for the district in which you were married, or the district in which the child was born. You can get the address from the telephone book.
- Certificate Services Section, General Register Office, PO Box 2, Southport, PR8 2JD (Telephone: 0300 123 1837) or you can order a replacement certificate online at www.gro.gov.uk.

If your civil partnership was registered in England or Wales, you should contact the registration authority where the civil partnership was registered.

If you were married or registered your civil partnership in Scotland or Northern Ireland, or the child you wish to adopt was born in either of these countries, you may obtain further information from:

- The General Register Office for Scotland, New Register House, 3 West Register Street, Edinburgh, EH1 3YT (Telephone: 0131 334 0380) or
- The General Register Office, Oxford House, 49-55 Chichester Street, Belfast, BT1 4HL (Telephone 0300 200 7890)

Note: You will have to pay a fee to receive a copy certificate. The office that you contact will tell you how much it is.

What will happen when I have left the application with the court?

Every case is different and the court's decision about the next steps will depend on the details of your application, but it is likely that some or all of the following will happen:

- the court will ask for an officer from the Children and Family Court Advisory Support Service (CAFCASS or CAFCASS CYMRU) to be appointed to act as a Children's Guardian;
- the court will ask the adoption agency or local authority to prepare a report which will provide details about the child, you and your family, any parent or guardian of the child, and any other background information that will help the court;

- the court will arrange a hearing (called a “first directions hearing”). This will usually take place about four weeks after your application has been received. Details of the hearing will be sent to you, or your solicitor if you have one, the child’s parents, any other person with parental responsibility for the child and any person preparing a report for the court or acting on behalf of the local authority, adoption agency or the child.

What is the job of a Children’s Guardian?

Whenever an application for a Convention adoption order is made, the court will appoint a Children’s Guardian to act on behalf of the child (unless the court is satisfied that it is not necessary to do so to safeguard the interests of the child). The Children’s Guardian must make a report to the court advising on the interests of the child and give any other advice the court asks for.

What is a First Directions Hearing?

A First Directions Hearing is an appointment at which the judge will consider your application and make decisions (known as directions) about such matters as:

- whether there are any errors or omissions in your application or supporting documents that need to be corrected;
- whether the requirements of the 2002 Act and the Adoptions with a Foreign Element Regulations 2005 have been complied with;
- if not all relevant documents are in English, the timetable for translating any outstanding documents;
- the timetable for filing any reports from an adoption agency, local authority or CAFCASS/CAFCASS CYMRU, and any other evidence;
- the disclosure of information to the applicants and the parents or guardians of the child;
- whether a further directions hearing is necessary; and
- if possible, the date and place of the final hearing. It is at the final hearing that the adoption order is made, if that is what the court decides.

A copy of the order explaining what directions the court has made will be sent to you or your solicitor if one is acting for you.

Once directions have been given, the court will monitor the progress of your case to make certain that the timetable and any directions are complied with.