
Adoption Reports and Adoptions with a Foreign Element

Draft Regulations and Guidance

Consultation Response

Please contact

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NB These comments should be read in conjunction with the response contained in the Consultation Response Form

The British Association for Adoption and Fostering (BAAF Adoption & Fostering) is the leading charity and membership organisation in fostering and adoption in the UK, we:

- promote the highest standards of child-centred policies and services
- speak out on behalf of looked-after children
- influence UK-wide policy and legislation
- provide much-needed information and advice
- promote greater public understanding of adoption and fostering
- support our members in their work

BAAF's main activities are the development, promotion and advocacy of best policy and practice; the provision of advice and information to our members and to the general public; training, consultancy and seminars; child placement services including the publication of our flagship monthly newspaper, *Be My Parent*. We also publish a quarterly professional journal, *Adoption and Fostering*, books and guides for professionals, academics, parents and carers and research studies. The main users of our services are our members comprising local authorities across England, Scotland and Wales, voluntary adoption agencies, independent fostering agencies and also individual social work, legal and medical professionals and carers. We are currently developing our service to Northern Ireland.

ADDITIONAL COMMENTS - DRAFT REGULATIONS AND GUIDANCE ON ADOPTIONS WITH A FOREIGN ELEMENT

Guidance

- Page 50 Para 20** 3rd bullet point: some words are obviously omitted here. It is not clear what this sentence is trying to say.
- Page 54 Para 4** Much of the information to be given to enquirers will need to be in writing. There could well be a place for some standard leaflets.
Individual local authorities are not necessarily well placed to provide the information outlined in the 3rd bullet point. It would be a more efficient use of resources for this information to be made available by the Central Authority.
- Page 55 Para 5** The duty in the regulation is to explain the *legal implications and procedure*. This is not precisely the same as "the law relating to adoption."
- Page 63 Para 3** We have commented in our response to the draft Adoption Agency Regulations on the "counselling out"

- process, and the need for possible involvement of the panel. In addition it would be helpful here to mention the agency's complaints procedure, and other avenues available to applicants who are dissatisfied.
- Page 68 Para 26** The guidance needs to address also the procedure to be followed when applicants are approved for children already know to them. This is mentioned in chapter 13, paragraph 13 and it is not clear why it is not mentioned here.
- Page 72 Para 3** CRB Certificate. This requirement is likely to fall foul of the CRB procedures.
- Page 77 Para 15** It is important to make it absolutely clear that a joint adoption cannot proceed unless BOTH applicants have met the child.
- Page 78 Para 17** This implies that the choice of procedure will be for the applicants, subject to the rules of the state of origin. Surely it is likely that in most cases the rules of the country of origin will dictate the route to follow, and the applicants will not have a choice?
- Page 79 Para 27** 1st bullet point - It will be helpful at this point to ensure that the information is shared with the agency medical adviser. The duty to notify the g.p. needs to take into account the fact that the adopters may have separate general practitioners and both should be notified. Obviously a request needs to be made also to one of them to accept the child on his or her list.
2nd bullet point – When the notification is made to the PCT it needs to be clear what action the Trust is expected to take, and to whom the information will be passed.
- Page 80 Para 32** While this paragraph is important, clearly this is a matter to be considered at the outset. The advice needs to be included in chapters 3 and 4.
- Page 80 Para 34** 1st bullet point – It is quite unacceptable that, in a convention adoption, with all the elaborate safeguards and procedures involved in reaching an Article 17C agreement, the Entry Clearance Officer may still impose his or her own judgment and declare that the adoption is not a genuine one.
- Page 83 Para 40** **(and page 26 para 90)** Line two – “may” should read “must”.
- Page 83 Para 44** Although no further action is required in respect of the adoption itself, the adopters should be encouraged to keep the agency informed, and the local authority needs to ensure that they receive information about the availability of adoption support services, and how to access them.
- Page 86 Paras8-10** This is confusing. Regulation 7(2) requires the prospective adopters to notify the **agency** about the child. There is no provision at this stage for the intervention of

- the DfES. Paragraph 10 says that the adopters “should” share information with the agency as soon as possible, but this is a **requirement. (The same applies to paragraphs 8-10 on page 94)**
- Page 82 Para 36** (and page 96 Para 96) It would be helpful to cross refer here to paragraph 6 of Chapter 13 and the l.a. duty to carry out a review in accordance with regulation 8.
- Page 96 Para 23** This is incorrect. Section 42 refers to the timing of the making of an application for an adoption order, not the making of the order itself. The correct information is given in Paragraph 68 page 133.
- The position is, however, unsatisfactory. While we would not want the law to treat applications by those who have flouted the regulations in the same way as those by people who have followed the proper procedures, it is essential for the safeguarding of the welfare of the child to have such cases brought within the jurisdiction of the High Court as soon as possible. Case law has pointed to the importance of pursuing all the necessary enquiries in such cases without delay. Except in those cases which warrant the immediate removal of the child, it is likely to be beneficial to have judicial supervision, with a children’s guardian appointed for the child. Possibly the appropriate course would be to invoke the inherent jurisdiction of the High Court. This would then enable the court to attach conditions – if appropriate – to the child’s remaining with the prospective adopters.
- Page 109 Para 24** It may not be lawful in the country concerned for the English local authority to undertake an assessment of the prospective adopters.
- Page 116 Para 41** It should surely be the responsibility of the placing local authority, rather than of the prospective adopters, to arrange supervision and monitoring of the placement.
- Page 120 Para 5** There needs to be a requirement in the regulations for the adopters to notify the local authority of any change of address.
- Page 120 Para 6** The requirement for review needs to be strengthened. Although this has resource implications we would propose that reviews should be conducted at the same intervals as for agency adoption placements. If this is not accepted then at least there must be a review within a year. It will be helpful to ensure that the agency medical adviser is involved.

HEALTH ISSUES

- Page 128 Para 41** Where possible, of course, the information gathered needs to include a family health history.

Para 42 2nd bullet point - The information may be not only of a poor quality, but may include misdiagnosis which can be corrected.

Page 129 Para 46 If the responsibility for deciding what assessment to request is placed on the adopters they must have appropriate advice. While advice from the DfES will no doubt cover many issues, there will be a need also in appropriate cases to have access to specialist advice, for example from a specialist in tropical diseases.

Para 48 The information contained here is insufficient and/or misleading in places.
HIV status may well be an issue in other countries too, including China, south east Asia and Russia and other eastern European countries.
Hepatitis B and C There is a high incidence of Hep B carrier status in other parts of the world including China, and of Hep C in North Africa.
Iodine deficiency – In fact this is not tested for in the UK. The test undertaken is for congenital hypothyroidism which is different.
Parasites - should include reference to intestinal parasites
Other omissions: Malaria, haemoglobinopathies, developmental issues, need to be mentioned also. There is a danger that other matters not mentioned in the list given in this paragraph – including obvious issues such as hearing and sight - may be considered unimportant.

Page 130 Para 50 There is sufficient evidence from the United States¹ to suggest that it is appropriate that all children should be offered a comprehensive health assessment once they arrive in the UK.

Page 131 Para 52 Further reading – it would be useful to include here the BAAF practice note 46 “Health Screening of children adopted from abroad.” Attention should also be drawn to the Intercountry Adoption medical form, BAAF Form ICA-UK.

Precautions for adopters and their families: Adopters should seek advice from their GP before travelling abroad, and should consider the need for Hep B immunisation for themselves and close family members.

¹ Albers et al (1997) “Health of children adopted from the former Soviet Union and Eastern Europe; comparison with pre-adoptive medical records”, JAMA, 278, (II), pp 922-924

Draft Regulations

- Regulation 2** Would it be helpful to include a definition of “The Convention”, and of “accredited body”, and perhaps the term “overseas adoption”?
- Regulation 3** 3(a) should surely talk about the applicant’s suitability to adopt a child, rather than “the” child (see 5(d))
- Regulation 5** (a) redundant “from” at end
(b) presumably the eligibility requirements referred to here are those of the country of origin?
(c) suggest “to comply with” rather than “as a consequence of”
- Regulation 6** (a)(iii) Can “he” refer both to the Secretary of State and the National Assembly for Wales?
- Regulation 7** (c) “in writing” – members have asked for clarification as to whether this includes emails and or faxes?
(e) “must receive” – the adopter is not well placed to compel the Secretary of State to issue the certificate! Perhaps this should read “have received”. The National Assembly for Wales is not mentioned in this context, yet in regulation 30 the certificate will be issued by the NAW in Welsh cases. Presumably the same is intended for non-Convention adoptions?
- Regulation 8** Should the duty to visit etc not be accompanied by a duty for the local authority to satisfy itself as to the child’s welfare?
(d) “care and maintenance” is an unfortunate phrase. Perhaps “advice on the care of and services available for” would be better
(4) the provisions for review need to include proper means of ensuring that the adopters’ views and the child’s wishes and feelings are considered, and for confirming the outcome of the review in writing, as is required for looked after children reviews. This is obviously particularly important in respect of (a) – any necessary changes. (But the contents of this regulation underline the importance of holding the review – as proposed in our comments already – much sooner than after two years.)
(5) second line, for “an” substitute “the”.
(b) should include “address” (and is not “sex” rather than “gender” the appropriate term here?)
- Regulation 10** (3) Change of name. If the foreign authority has given such leave, how will this be expected to be evidenced?
- Regulation 14** Section 42 of the Act is amended. The guidance paragraph 4, page 120) implies that it is intended to amend section 44 as well, whereas the regulations only amend this in respect of Convention adoptions.

- Regulation 16** (e) Suggest this should read “the adoption agency must, before the child is placed with the prospective adopters, send –
- (i) to the relevant foreign medical authorities, if ascertainable, details of the proposed placement together with a written report on the child’s health; and
 - (ii) to the relevant foreign authority details of the proposed placement with any relevant information in respect of the child.”
- Regulation 17** (a) Provision needs to be made also for reports by a local authority in a non agency case. Suggest “such details as specified” be replaced by “the details specified”.
(e) Should not there also be confirmation that the duties under these regulations, particularly 16(a) have been complied with?
- Regulation 18** (3)(n) Why not also section 52(5) and (6)?
- Regulation 19** Is there any significance in the choice of the words “made” and “effected” here?
- Regulation 22** (1)(d) Presumably the proviso is meant to refer to (3) not (2)?
- Regulation 30** The confirmation of suitability needs to refer to the applicant’s suitability to adopt a child from the country in question. (In fact the draft certificate in Schedule 1 does include this information).
- Regulation 33** Any such agreement should be given in writing.
- Regulation 39** There are anxieties here. In only this respect is the placement treated as an agency placement. It is proposed that the local authority should have power to insist on the child’s removal without the need to apply for a court order, yet it has no parental responsibility. Nor is it satisfactory that in anything other than conditions which would warrant the grant of an emergency protection order the relevant Central Authority should merely be given notice that the child is to be removed rather than being consulted about the proposal.
- Regulation 42** (1)(b) The child is not precisely “returned” to the care of the local authority, since he or she has never been looked after by the authority before.
This whole procedure is fraught with contradictions. Should the relevant foreign authority not be consulted before the local authority decides to proceed with identifying an alternative placement in this country?
If the local authority were then to place the child with an alternative family for adoption, this would surely be an agency adoption placement?
In (2) should not “British Islands” be substituted for “United Kingdom”?
(5) This does not read well. At the very least, the word “that” should be inserted after “satisfied” in the first line. It

would be clearer also if the duty placed on the local authority were to “agree with the Central Authority in the State of Origin the arrangements for the return of the child to his State of Origin.”

(6) Since – presumably – this qualification is intended to apply to all decisions taken under the whole of this regulation, it would be better either to insert this proviso earlier, or to cross refer to it internally where necessary.

Regulation 43

Regulation 48

(2) “period” rather than “timescale” (as in (1))

Might more satisfactorily read “The court may only make a Convention adoption order where it is satisfied that the requirements in this Chapter have been met.”(similar comment applies to regulation 64)

Regulation 49

Regulation 52

(c) insert “local” before “authority”.

(1)(a) amend to read “..to the child in a manner appropriate to his age and understanding..”

(1)(b) Some adjustment is needed of the punctuation here!

Regulation 59

(2) “or other orders” is somewhat wide – perhaps this should be qualified.

(4)(c) Is “Convention” needed here?

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