

## **Adoptions by persons habitually resident in the British Islands**

Adoptions by persons habitually resident in the British Islands of children habitually resident outside the British Islands are covered by the Adoption and Children Act 2002.

Section 83 of the Adoption and Children Act 2002 (the “Act”) applies where anyone habitually resident in the British Islands

(a) brings, or causes another to bring, a child who is habitually resident outside the British Islands into the United Kingdom for the purpose of adoption by the British resident, or

(b) at any time brings, or causes another to bring, into the United Kingdom a child adopted by the British resident under an external adoption effected within the period of six months ending with that time.

For these purposes, an “external adoption” means an adoption of a child effected under the law of any country or territory outside the British Islands, whether or not the adoption is a full adoption or recognised under UK law (section 83(3)). And an adoption is within the scope of section 83 even if the adoption is by a British resident and another person, i.e. where a couple is adopting and only one of them is habitually resident in the British Islands (section 83(1)).

Please note that the Children and Adoption Act 2006 extends the period at (b) from 6 months to 12 months. This provision came into force on 1 October 2007 and applies to adoptions made on or after that date.

Any prospective adopter in any doubt as to whether or not they are habitually resident in the UK (and therefore as to whether the legislation would apply to them) should seek independent legal advice.

An offence is committed where there has not been compliance with the requirements and conditions set out in the relevant regulations. The relevant regulations are the Adoptions with a Foreign Element Regulations 2005, SI 2005/392 (“the 2005 Regulations”).

The 2005 Regulations require, at regulation 3, that any person intending to bring, or cause another to bring, a child into the United Kingdom in circumstances where section 83 of the Act applies must (a) apply in writing to an adoption agency for an assessment of his suitability to adopt a child and (b) give the agency any information it may require for the purpose of the assessment. (For these purposes, an adoption agency is either a local authority or a voluntary adoption society registered with the Office for Standards in Education, Children's Services and Skills (Ofsted).

The 2005 Regulations also prescribe that prior to the child's entry into the United Kingdom, the prospective adopter(s) must have received written notification from the Secretary of State that a certificate (a ‘Certificate of Eligibility’) has been issued confirming to the relevant foreign authority from which the adopter has applied to adopt:

(i) that the person has been assessed and approved as eligible and suitable to be an adoptive parent; and

(ii) if entry clearance and leave to enter and remain, as may be necessary, is granted and not revoked or curtailed, and an adoption order is made or an overseas adoption is effected, the child will be authorised to enter and reside permanently in the United Kingdom.

Before visiting the child the prospective adopters are required to notify their adoption agency of the details of the child to be adopted, provide them with any information and reports (on the child) and meet with the agency to discuss the proposed adoption. They are required to visit the child in the State of origin (where the prospective adopters are a couple they must both visit) and having visited the child they are required to confirm to the adoption agency that they have visited and that they are content to proceed with the adoption. They must also provide the agency with any additional reports and information received on or after that visit, and notify the adoption agency of the date they expect to bring the child into the UK.

Unless it has been agreed with their adoption agency and the relevant foreign authority that only one of the adopters accompany the child to the UK, they must both do so in the case of a couple adopting. Unless an adoption effected outside the UK is recognised in the UK, they must also notify their local authority within 14 days of the child's entry into the UK of their intention either to adopt the child or not to give the child a home.

Failure to comply with any of the above conditions, which are prescribed by regulation 4 of the 2005 Regulations, is an offence under section 83(7)(b) of the Act.

Offences under section 83 of the Act are punishable on summary conviction to up to six months' imprisonment and/or a fine of up to £5,000 and on conviction on indictment by up to 12 months' imprisonment and/or an unlimited fine.

Where prospective adopters are not habitually resident in the UK, they would need to satisfy the legislation and procedures in the country where they are resident and/or the country from which they are seeking to adopt.

Information on immigration requirements in relation to adoption is available in the Home Office publication *Intercountry Adoption and the Immigration Rules*: <http://www.bia.homeoffice.gov.uk/sitecontent/documents/residency/intercountryadoption.pdf>

Further information on intercountry adoption in general can be found on the DCSF intercountry adoption website: <http://www.dcsf.gov.uk/intercountryadoption/index.shtml>

Information on procedures and requirements for intercountry adoption can be found in Annex C of the Statutory Guidance to the Adoption and Children Act 2002: <http://www.everychildmatters.gov.uk/resources-and-practice/ig00032/>

The Department for Children, Schools and Families is responsible for the legal framework and provides information on procedures in general but does not give advice on individual cases. Consequently, prospective adopters must seek their own legal advice on their status as regards habitual residence, on the application of section 83 and on whether their proposed actions will satisfy the requirements in the Adoption with a Foreign Element Regulations 2005 (The 2002 Act is the law for England and Wales, but similar provisions and restrictions apply in relation to the bringing of children into the UK for (or after) adoption in the law of Scotland and of Northern Ireland.).