

Subsidiary Legislation made under ss. 9(1) and 75(6).

Adoption (Foreign Element) Regulations 2024

LN.2024/050

Commencement **18.4.2024**

ARRANGEMENT OF REGULATIONS

Regulation

PART 1 PRELIMINARY

1. Title.
2. Commencement.
3. Interpretation.

PART 2 BRINGING CHILDREN IN AND OUT OF GIBRALTAR

Bringing children into Gibraltar

4. Requirements applicable in respect of bringing or causing a child to be brought into Gibraltar.
5. Conditions applicable in respect of a child brought into Gibraltar.
6. Functions imposed on the Agency.
7. Application of Part III of the Act.
8. Change of name and removal from Gibraltar.
9. Return of the child.
10. Child to live with adopters before application.

Taking children out of Gibraltar

11. Requirements applicable in respect of giving parental responsibility prior to adoption abroad.
12. Application of the Act in respect of orders under section 76.

PART 3

ADOPTIONS UNDER THE CONVENTION

Requirements, procedure, recognition and effect of adoptions where Gibraltar is the receiving state.

13. Application.
14. Requirements applicable in respect of eligibility and suitability.
15. Counselling and information.
16. Procedure in respect of carrying out an assessment.
17. Agency decision and notification.
18. Review and termination of approval.
19. Procedure following decision as to suitability to adopt.
20. Procedure following receipt of the Article 16 Information from the CA of the State of origin.
21. Procedure where proposed adoption is not to proceed.
22. Applicable requirements in respect of prospective adopter entering Gibraltar with a child.
23. Applicable requirements in respect of the Agency before the child enters Gibraltar.
24. Applicable requirements following the child's entry into Gibraltar where no Convention adoption is made.
25. Applicable requirements in respect of prospective adopter following child's entry into Gibraltar.
26. Functions imposed on the agency following the child's entry into Gibraltar.
27. Prospective adopter unable to proceed with adoption.
28. Withdrawal of child from prospective adopter.
29. Breakdown of placement.
30. Convention adoptions subject to a probationary period.
31. Report of Agency investigation.
32. Convention adoption order.
33. Requirements following a Convention adoption order or Convention adoption.
34. Refusal of a court in Gibraltar to make a Convention adoption order.
35. Annulment of a Convention adoption order or a Convention adoption.

Requirements, procedure, recognition and effect of adoptions where Gibraltar is the receiving state.

36. Application.
37. Counselling and information for the child.
38. Counselling and information for the parent or guardian of the child.
39. Requirements in respect of the child's permanence report and information for the adoption panel.
40. Recommendation of adoption panel.
41. Agency decision and notification.

42. Convention list.
43. Receipt of Article 15 Report from the CA of the receiving State.
44. Proposed placement and referral to the adoption panel.
45. Consideration by the adoption panel.
46. Agency's decision in relation to the proposed placement.
47. Preparation of the Article 16 information.
48. Requirements to be met before the child is placed for adoption with prospective adopter.
49. Requirements in respect of giving parental responsibility prior to a proposed Convention adoption.
50. Agency report.
51. Convention adoption order.
52. Requirements following a Convention adoption order or Convention adoption.

Miscellaneous provisions

53. Application, with or without modifications, of the Act.
54. Change of name and removal from Gibraltar.
55. Removal of children.
56. Modifications of the Act in respect of orders under section 76 where child is to be adopted under the Convention.
57. Child to live with adopters before application of Convention adoption order.
58. Notice of intention to adopt.
59. Application for Convention adoption order.
60. Offences.

2023-04

Adoption

2024/050

Adoption (Foreign Element) Regulations 2024

In exercise of the powers conferred on the Minister by sections 9(1), 75(6) of the Adoption Act 2023 and all other enabling powers, the Minister has made these Regulations-

**PART 1
PRELIMINARY**

Title.

1. These Regulations may be cited as the Adoption (Foreign Element) Regulations 2024.

Commencement.

2. These Regulations come into operation on the date of publication and the Minister may appoint different days for different provisions or purposes.

Interpretation.

3. In these Regulations-

“the Act” means the Adoption Act 2023;

“adoption support services” has the meaning given in section 3(1) of the Act;

“adoptive family” has the same meaning as in regulation 28(2)(a) of the Care Agency Regulations;

“adoption panel” means a panel established in accordance with regulation 4 of the Care Agency Regulations;

“the Care Agency Regulations” means the Adoption (Care Agency) Regulations 2024;

“case record” has the same meaning as in regulation 10 of the Care Agency Regulations;

“CA of the receiving State” means, in relation to a Convention country other than Gibraltar, the Central Authority of the receiving State;

“CA of the State of origin” means, in relation to a Convention country other than Gibraltar, the Central Authority of the State of origin;

“the Convention” means the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, concluded at The Hague on 29th May 1993;

“Convention adoption” is given a meaning by virtue of section 61(b) of the Act;

“Convention country” has the same meaning as in section 3(1) of the Act;

“Convention list” means-

- (a) in relation to a relevant Central Authority, a list of children notified to that Central Authority in accordance with regulation 41; or
- (b) in relation to any other Central Authority, a list of children notified to that Authority in accordance with provisions, which correspond to regulation 41.

“prospective adopter’s case record” has the same meaning as in regulation 19(1) of the Care Agency Regulations;

“prospective adopter’s report” has the same meaning as in regulation 22(4) of the Care Agency Regulations;

“receiving State” has the same meaning as in Article 2 of the Convention;

“relevant Central Authority” means the Minister;

“relevant foreign authority” means a person, outside Gibraltar 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 the Agency or to the functions of the Minister in respect of adoptions with a foreign element;

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

PART 2 BRINGING CHILDREN INTO AND OUT OF GIBRALTAR

Bringing Children into Gibraltar

Requirements applicable in respect of bringing or causing a child to be brought into Gibraltar.

4. A person intending to bring, or to cause another to bring, a child into Gibraltar in circumstances where section 75(1) of the Act applies shall-
- (a) apply in writing to the Agency for an assessment of his or her suitability to adopt a child; and
 - (b) give the Agency any information it may require for the purpose of the assessment.

Conditions applicable in respect of a child brought into Gibraltar.

5.(1) This regulation prescribes the conditions for the purposes of section 75(5) of the Act in respect of a child brought into Gibraltar in circumstances where section 75 applies.

- (2) Prior to the child's entry into Gibraltar, the prospective adopter shall-
- (a) receive in writing, notification from the Minister that the Minister has issued a certificate confirming to the relevant foreign authority-
 - (i) that the person has been assessed and approved as eligible and suitable to be an adoptive parent in accordance with Part 4 of the Care Agency Regulations; and
 - (ii) that 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 Gibraltar;
 - (b) before visiting the child in the State of origin-
 - (i) notify the Agency of the details of the child to be adopted;
 - (ii) provide the Agency with any information and reports received from the relevant foreign authority; and
 - (iii) meet with the Agency to discuss the proposed adoption and information received from the relevant foreign authority;
 - (c) visit the child in the State of origin (and where the prospective adopters are a couple each of them); and
 - (d) after that visit-
 - (i) confirm in writing to the Agency that he, she or they have done so and wish to proceed with the adoption;
 - (ii) provide the Agency with any additional reports and information received on or after that visit; and

- (iii) notify the Agency of their expected date of entry into Gibraltar with the child.

(3) The prospective adopter shall accompany the child on entering Gibraltar unless, in the case of a couple, the Agency and the relevant foreign authority have agreed that it is necessary for only one of them to do so.

(4) Except where an overseas adoption is to be effected, the prospective adopter shall within the period of 14 days beginning with the date on which the child is brought into Gibraltar give notice to the Agency-

- (a) of the child's arrival in Gibraltar; and
- (b) of his, her or their intention to apply for an adoption order in accordance with section 39(2) of the Act.

Functions imposed on the Agency.

6.(1) Where notice of intention to adopt has been given to the Agency, the Agency shall-

- (a) if it has not already done so, set up a case record in respect of the child and place on it any information received from the—
 - (i) relevant foreign authority;
 - (ii) adoption agency, if it is not the Agency;
 - (iii) prospective adopter;
 - (iv) entry clearance officer; and
 - (v) Minister;
- (b) send the prospective adopter's general practitioner written notification of the arrival in Gibraltar of the child and send with that notification a written report of the child's health history and current state of health, so far as is known;
- (c) where the child is of compulsory school age, send to the Department of Education, written notification of the arrival of the child in Gibraltar and information, if known, about the child's educational history and whether the child is likely to be assessed for special educational needs;

- (d) ensure that the child and the prospective adopter are visited within one week of receipt of the notice of intention to adopt and thereafter not less than once a month until the review referred to in sub regulation (f) and thereafter at such frequency as the Agency may decide;
 - (e) arrange for a reviewing officer to carry out a review of the child's case not more than four weeks after receipt of the notice of intention to adopt and-
 - (i) visit and, if necessary, review not more than three months after that initial review; and
 - (ii) thereafter not more than six months after the date of the previous visit;
 - (f) when carrying out a review consider-
 - (i) the child's needs, welfare and development, and whether any changes need to be made to meet the child's needs or assist the child's development;
 - (ii) the arrangements for the provision of adoption support services and whether there should be any re-assessment of the need for those services; and
 - (iii) the need for further visits and reviews; and
 - (g) ensure that-
 - (i) advice is given as to the child's needs, welfare and development;
 - (ii) written reports are made of all visits and reviews of the case and placed on the case record; and
 - (iii) on such visits, where appropriate, advice is given as to the availability of adoption support services.
- (2) Part 7 of the Care Agency Regulations shall apply to the case record set up in respect of the child as a consequence of this regulation as if that record had been set up under the Care Agency Regulations.
- (3) In a case where the prospective adopter fails to make an application under section 45 or 46 of the Act within two years of the receipt by the Agency of the notice of intention to adopt the Agency shall review the case.
- (4) For the purposes of the review referred to in sub regulation (3), the Agency shall consider-

- (a) the child's needs, welfare and development, and whether any changes need to be made to meet the child's needs or assist the child's development;
- (b) the arrangements, if any, in relation to the exercise of parental responsibility for the child;
- (c) the terms upon which leave to enter Gibraltar is granted and the immigration status of the child;
- (d) the arrangements for the provision of adoption support services for the adoptive family and whether there should be any re-assessment of the need for those services; and
- (e) in conjunction with the appropriate bodies, the arrangements for meeting the child's health care and educational needs.

Application of Part III of the Act.

7. In the case of a child brought into Gibraltar for adoption in circumstances where section 75 of the Act applies-

- (a) the modifications in regulations 8 to 10 apply;
- (b) section 31(2) and (5) and section 34(3)(a) of the Act shall not apply.

Change of name and removal from Gibraltar.

8. Section 23(2) of the Act shall apply as if from the words "is placed" to "then", there is substituted "enters Gibraltar in the circumstances where section 75(1)(a) of this Act applies".

Return of the child.

9.(1) Section 30 of the Act shall apply with the following modifications.

- (2) Subsections (1), (2) and (3) shall apply as if in each place where-
 - (a) the words "is placed for adoption by the Agency" occur there were substituted "enters Gibraltar in circumstances where section 75(1) applies";

2023-04

Adoption

2024/050

Adoption (Foreign Element) Regulations 2024

- (b) the words “any parent or guardian of the child” occur there were substituted “the Minister”.

Child to live with adopters before application.

10.(1) In a case where the requirements imposed by section 75(5) of the Act have been complied with and the conditions required by section 75(7) of the Act have been met, section 37 shall apply as if-

- (a) subsection (3) is omitted; and
- (b) in subsection (5) the words from “three years” to “preceding” there were substituted “six months”.

(2) In a case where the requirements imposed by section 75(5) of the Act have not been complied with or the conditions required by section 75(7) have not been met, section 37 shall apply as if—

- (a) subsection (3) is omitted; and
- (b) in subsection (5) the words from “three years” to “preceding” there were substituted “twelve months”.

Taking children out of Gibraltar

Requirements applicable in respect of giving parental responsibility prior to adoption abroad.

11. The requirements for the purposes of an order made under section 76 of the Act are that-

- (a) in the case of a child placed by the Agency, the Agency has-
 - (i) confirmed to the Supreme Court that it has complied with the requirements imposed in accordance with Part 3 of the Care Agency Regulations;
 - (ii) submitted to the Supreme Court-
 - (aa) the reports and information referred to in regulation 15(2) and (3) of the Care Agency Regulations;
 - (bb) the recommendations made by the adoption panel in accordance with regulations 16 and 30 of the Care Agency Regulations;

- (cc) the adoption placement report prepared in accordance with regulation 28(2)(c) of the Care Agency Regulations;
 - (dd) the reports of and information obtained in respect of the visits and reviews referred to in regulation 33 of the Care Agency Regulations; and
 - (ee) the report referred to in section 38 of the Act as modified by regulation 12;
- (b) in the case of a child placed by the Agency the relevant foreign authority has-
- (i) confirmed in writing to the Agency that the prospective adopter has been counselled and the legal implications of adoption have been explained to the prospective adopter;
 - (ii) prepared a report on the suitability of the prospective adopter to be an adoptive parent;
 - (iii) determined and confirmed in writing to the Agency that the prospective adopter is eligible and suitable to adopt in the country or territory in which the adoption is to be effected; and
 - (iv) confirmed in writing to the Agency that the child is or will be authorised to enter and reside permanently in that foreign country or territory; and
- (c) in the case of a child placed by the Agency the prospective adopter has confirmed in writing to the Agency that the prospective adopter will accompany the child on taking the child out of Gibraltar and entering the country or territory where the adoption is to be effected, or in the case of a couple, the Agency and relevant foreign authority have confirmed that it is necessary for only one of them to do so.

Application of the Act in respect of orders under section 76.

12.(1) The following provisions of the Act which refer to adoption orders shall apply to orders under section 76 as if in each place where the words “adoption order” appear there were substituted “order under section 76”—

- (a) section 3(5)(a);
- (b) section 14(4);
- (c) section 17(4)(b);

2023-04

Adoption

2024/050

Adoption (Foreign Element) Regulations 2024

- (d) section 18(5)(a) and (b);
- (e) section 19(4);
- (f) section 23(1);
- (g) section 24(4)(a) and (6)(a);
- (h) section 27(5);
- (i) section 37(7);
- (j) section 38;
- (k) section 39(2);
- (l) section 42(1) to (5) and (7);
- (m) section 43;
- (n) section 45(1) and (2);
- (o) section 46(1) to (4);
- (p) section 49(1) to (4);
- (q) section 50(4); and
- (r) section 101(2) and (3)(c).

(2) Section 30(5) of the Act shall apply to orders under section 76 of the Act as if in section 30(5)(b) for the first reference to “adoption order” there were substituted “order under section 76(1)”.

PART 3 ADOPTIONS UNDER THE CONVENTION

Requirements, procedure, recognition and effect of adoptions where Gibraltar is the receiving state.

Application.

13. The provisions in this section of regulations shall apply where a couple or a person, habitually resident in Gibraltar, wishes to adopt a child who is habitually resident in a Convention country outside Gibraltar in accordance with the Convention.

Requirements applicable in respect of eligibility and suitability.

14.(1) A couple or a person who wishes to adopt a child habitually resident in a Convention country outside Gibraltar shall-

- (a) apply in writing to the Agency for a determination of eligibility, and an assessment of his, her or their suitability, to adopt; and
- (b) give the Agency any information it may require for the purposes of the assessment.

(2) The Agency may not consider an application under sub regulation (1) unless at the date of that application-

- (a) in the case of an application by a couple, they have both—
 - (i) attained the age of 21 years; and
 - (ii) been habitually resident in Gibraltar for a period of not less than one year ending with the date of application; and
- (b) in the case of an application by one person, he or she has—
 - (i) attained the age of 21 years; and
 - (ii) been habitually resident in Gibraltar for a period of not less than one year ending with the date of application.

Counselling and information.

15. The Agency may provide a counselling service in accordance with regulation 18(a) of the Care Agency Regulations and shall-

- (a) explain to the prospective adopter the procedure in relation to, and the legal implications of, adopting a child from the State of origin from which the prospective adopter wishes to adopt in accordance with the Convention; and
- (b) provide the prospective adopter with written information about the matters referred to in sub regulation (a).

2023-04

Adoption

2024/050

Adoption (Foreign Element) Regulations 2024

Procedure in respect of carrying out an assessment.

16.(1) Regulation 19 of the Care Agency Regulations shall apply as if the reference to an application in those Regulations was to an application made in accordance with regulation 14.

(2) Where the Agency is satisfied that the requirements in-

(a) regulation 15; and

(b) regulations 20 and 21 of the Care Agency Regulations,

have been met, regulations 22 and 23 of the Care Agency Regulations shall apply.

(3) The Agency shall place on the prospective adopter's case record any information obtained as a consequence of this section of regulations.

(4) The Agency shall include in the prospective adopter's report-

(a) the State of origin from which the prospective adopter wishes to adopt a child;

(b) confirmation that the prospective adopter is eligible to adopt a child under the law of that State;

(c) any additional information obtained as a consequence of the requirements of that State; and

(d) the Agency's assessment of the prospective adopter's suitability to adopt a child who is habitually resident in that State.

(5) The references to information in regulations 22(4) and 23(2) of the Care Agency Regulations shall include information obtained by the Agency or adoption panel as a consequence of this regulation.

Agency decision and notification.

17. The Agency decision-maker (as defined in the Care Agency Regulations) shall make a decision about whether the prospective adopter is suitable to adopt a child in accordance with regulation 24 of the Care Agency Regulations and regulations made under section 40 of the Act.

Review and termination of approval.

18. The Agency shall review the approval of each prospective adopter in accordance with regulation 26 of the Care Agency Regulations unless the Agency has received written notification from the relevant Central Authority that the agreement under Article 17(c) of the Convention has been made.

Procedure following decision as to suitability to adopt.

19.(1) Where the Agency decision-maker has made a decision that the prospective adopter is suitable to adopt a child in accordance with regulation 17, the Agency shall send to the relevant Central Authority-

- (a) written confirmation of the decision and any recommendation the Agency may make in relation to the number of children the prospective adopter may be suitable to adopt, their age range, sex, likely needs and background;
- (b) the criminal record certificate obtained under regulation 20 of the Care Agency Regulations;
- (c) all the documents and information which were passed to the adoption panel in accordance with regulation 22(8) of the Care Agency Regulations;
- (d) the record of the proceedings of the adoption panel, its recommendation and the reasons for its recommendation; and
- (e) any other information relating to the case as the relevant Central Authority or the CA of the State of origin may require.

(2) If the relevant Central Authority is satisfied that the Agency has complied with the duties and procedures imposed by the Care Agency Regulations, and that all the relevant information has been supplied by the Agency, the Central Authority shall send to the CA of the State of origin-

- (a) the prospective adopter's report prepared in accordance with regulation 22 of the Care Agency Regulations;
- (b) the criminal record certificate;
- (c) a copy of the Agency decision-maker's decision and the adoption panel's recommendation.
- (d) any other information that the CA of the State of origin may require; and
- (e) a certificate confirming that the-

2023-04

Adoption

2024/050

Adoption (Foreign Element) Regulations 2024

- (i) prospective adopter is eligible to adopt;
- (ii) prospective adopter has been assessed in accordance with this section of regulations;
- (iii) prospective adopter has been approved as suitable to adopt a child; and
- (iv) the child will be authorised to enter and reside permanently in Gibraltar if entry clearance, and leave to enter or remain as may be necessary, is granted and not revoked or curtailed and a Convention adoption order or Convention adoption is made.

(3) The relevant Central Authority shall notify the Agency and the prospective adopter in writing that the certificate and the documents referred to in sub regulation (2) have been sent to the CA of the State of origin.

Procedure following receipt of the Article 16 Information from the CA of the State of origin.

20.(1) Where the relevant Central Authority receives from the CA of the State of origin, the Article 16 Information relating to the child whom the CA of the State of origin considers should be placed for adoption with the prospective adopter, the relevant Central Authority shall send that Information to the Agency.

- (2) The Agency shall consider the Article 16 Information and-
 - (a) send the Article 16 Information to the prospective adopter;
 - (b) meet with the prospective adopter to discuss-
 - (i) the Article 16 Information;
 - (ii) the proposed placement;
 - (iii) the availability of adoption support services; and
 - (c) if appropriate, offer a counselling service and further information as required.
- (3) Where-
 - (a) the procedure in sub regulation (2) has been followed;

- (b) the prospective adopter (and where the prospective adopters are a couple each of them) has visited the child in the State of origin; and
- (c) after that visit to the child, the prospective adopter has confirmed in writing to the Agency that-
 - (i) he, she or they have visited the child;
 - (ii) he, she or they have provided the Agency with additional reports and information received on or after that visit; and
 - (iii) he, she or they wish to proceed to adopt that child,

the Agency shall notify the relevant Central Authority in writing that the requirements specified in sub regulations (a) to (c) have been satisfied and at the same time it shall confirm that it is content for the adoption to proceed.

(4) Where the relevant Central Authority has received notification from the Agency under sub regulation (3), the relevant Central Authority shall-

- (a) notify the CA of the State of origin that-
 - (i) the prospective adopter wishes to proceed to adopt the child;
 - (ii) it is prepared to agree with the CA of the State of origin that the adoption may proceed; and
- (b) confirm to the CA of the State of origin that-
 - (i) in the case where the requirements specified in section 1(5A) of the British Nationality Act 1981 are met that the child will be authorised to enter and reside permanently in Gibraltar; or
 - (ii) in any other case, if entry clearance and leave to enter and remain, as may be necessary, is granted and not revoked or curtailed and a Convention adoption order or a Convention adoption is made, the child will be authorised to enter and reside permanently in Gibraltar.

(5) The relevant Central Authority shall inform the Agency and the prospective adopter when the agreement under Article 17(c) of the Convention has been made.

(6) For the purposes of this regulation and regulation 21 “the Article 16 Information” means-

- (a) the report referred to in Article 16(1) of the Convention including information about the child's identity, adoptability, background, social environment, family history, medical history including that of the child's family and any special needs of the child;
- (b) proof of confirmation that the consents of the persons, institutions and authorities whose consents are necessary for adoption have been obtained in accordance with Article 4 of the Convention; and
- (c) the reasons for the CA of the State of origin's determination on the placement.

Procedure where proposed adoption is not to proceed.

21.(1) If, at any stage before the agreement under Article 17(c) of the Convention is made, the CA of the State of origin notifies the relevant Central Authority that it has decided the proposed placement should not proceed-

- (a) the relevant Central Authority shall inform the Agency of the CA of the State of origin's decision;
- (b) the Agency shall then inform the prospective adopter and return the Article 16 Information to the relevant Central Authority; and
- (c) the relevant Central Authority shall then return those documents to the CA of the State of origin.

(2) Where at any stage before the Agency receives notification of the agreement under Article 17(c) of the Convention the approval of the prospective adopter is reviewed under regulation 26 of the Care Agency Regulations, and as a consequence, the Agency determines that the prospective adopter is no longer suitable to adopt a child-

- (a) the Agency shall inform the relevant Central Authority and return the documents referred to in regulation 20(1);
- (b) the relevant Central Authority shall notify the CA of the State of origin and return those documents.

(3) If, at any stage before the child is placed with the prospective adopter, the prospective adopter notifies the Agency that the prospective adopter does not wish to proceed with the adoption of the child-

- (a) that Agency shall inform the relevant Central Authority and return the documents to the relevant Central Authority; and

- (b) the relevant Central Authority shall notify the CA of the State of origin of the prospective adopter's decision and return the documents to the CA of the State of origin.

Applicable requirements in respect of prospective adopter entering Gibraltar with a child.

22. Following any agreement under Article 17(c) of the Convention, the prospective adopter shall-

- (a) notify the Agency of the prospective adopter's expected date of entry into Gibraltar with the child;
- (b) confirm to the Agency when the child is placed with him by the competent authority in the State of origin; and
- (c) accompany the child on entering Gibraltar unless, in the case of a couple, the Agency and the CA of the State of origin have agreed that it is necessary for only one of them to do so.

Applicable requirements in respect of the Agency before the child enters Gibraltar.

23. Where the Agency is informed by the relevant Central Authority that the agreement under Article 17(c) of the Convention has been made and the adoption may proceed, before the child enters Gibraltar the Agency shall-

- (a) send the prospective adopter's general practitioner written notification of the proposed placement and send with that notification a written report of the child's health history and current state of health, so far as it is known;
- (b) where the child is of compulsory school age, send the Department of Education, written notification of the proposed arrival of the child into Gibraltar and information about the child's educational history if known and whether the child is likely to be assessed for special educational needs.

Applicable provisions following the child's entry into Gibraltar where no Convention adoption is made.

24. Regulations 25 to 28 apply where-

- (a) following the agreement between the relevant Central Authority and the CA of the State of origin under Article 17(c) of the Convention that the adoption may

2023-04

Adoption

2024/050

Adoption (Foreign Element) Regulations 2024

proceed, no Convention adoption is made, or applied for, in the State of origin;
and

- (b) the child is placed with the prospective adopter in the State of origin who then returns to Gibraltar with that child.

Applicable requirements in respect of prospective adopter following child’s entry into Gibraltar.

25. A prospective adopter shall within the period of 14 days beginning with the date on which the child enters Gibraltar give notice to the Agency-

- (a) of the child’s arrival in Gibraltar and
- (b) of the prospective adopter’s intention-
 - (i) to apply for an adoption order in accordance with section 41(2) of the Act;
or
 - (ii) not to give the child a home.

Functions imposed on the Agency following the child’s entry into Gibraltar.

26.(1) Where notice is given to the Agency in accordance with regulation 25, the functions imposed on the Agency by virtue of regulation 6 shall apply subject to the modifications in sub regulation (2).

(2) Regulation 6(1) shall apply as if-

- (a) in sub regulation (1) (a)-
 - (i) in head (i) for the words “relevant foreign authority” there is substituted “CA of the State of origin and competent foreign authority”;
 - (ii) in head (v) there is substituted “the relevant Central Authority”; and
- (b) sub regulations (1)(b) to (d) were omitted.

Prospective adopter unable to proceed with adoption.

27. Where the prospective adopter gives notice to the Agency that the prospective adopter does not wish to proceed with the adoption and no longer wishes to give the child a home, the Agency shall-

- (a) receive the child from the prospective adopter before the end of the period of seven days beginning with the giving of the notice; and
- (b) give notice to the relevant Central Authority of the decision of the prospective adopter not to proceed with the adoption.

Withdrawal of child from prospective adopter.

28.(1) Where the Agency are of the opinion that the continued placement of the child is not in the child's best interests-

- (a) the Agency shall give notice to the prospective adopter of their opinion and request the child be placed with them; and
- (b) subject to sub regulation (3), the prospective adopter shall, not later than the end of the period of seven days beginning with the date on which notice was given, place the child with the Agency.

(2) Where the Agency has given notice under sub regulation (1), the Agency shall at the same time notify the relevant Central Authority that they have requested the child be placed with the Agency.

(3) Where notice is given under sub regulation (1) but-

- (a) an application for a Convention adoption order was made prior to the giving of that notice; and
- (b) the application has not been disposed of,

the prospective adopter is not required by virtue of sub regulation (1) to place the child with the Agency unless the court so orders.

(4) This regulation does not affect the exercise by the Agency or other person of any power conferred by any enactment or the exercise of any power of arrest.

Breakdown of placement.

29.(1) This regulation applies where-

- (a) notification is given by the prospective adopter under regulation 27;
- (b) the child is withdrawn from the prospective adopter under regulation 28;

2023-04

Adoption

2024/050

Adoption (Foreign Element) Regulations 2024

- (c) an application for a Convention adoption order is refused;
 - (d) a Convention adoption which is subject to a probationary period cannot be made; or
 - (e) a Convention adoption order or a Convention adoption is annulled pursuant to section 81(1) of the Act.
- (2) Where the Agency is satisfied that it would be in the child's best interests to be placed for adoption with another prospective adopter habitually resident in Gibraltar they shall take the necessary measures to identify a suitable adoptive parent for that child.
- (3) Where the Agency have identified and approved another prospective adopter who is eligible, and has been assessed as suitable, to adopt in accordance with these Regulations-
- (a) the Agency shall notify the relevant Central Authority in writing that-
 - (i) another prospective adopter has been identified; and
 - (ii) the provisions in regulations 15, 16 and 17 have been complied with; and
 - (b) the requirements specified in regulations 19 and 20 have been complied with.
- (4) Where the relevant Central Authority has been notified in accordance with sub regulation (3)(a)-
- (a) it shall inform the CA of the State of origin of the proposed placement; and
 - (b) it shall agree the placement with the CA of the State of origin in accordance with the provisions in this section of regulations.
- (5) Subject to sub regulation (2), where the Agency is not satisfied it would be in the child's best interests to be placed for adoption with another prospective adopter in Gibraltar, it shall liaise with the relevant Central Authority to arrange for the return of the child to his State of origin.
- (6) Before coming to any decision under this regulation, the Agency decision-maker shall have regard to the wishes and feelings of the child, having regard to the child's age and understanding, and where appropriate, obtain the child's consent in relation to measures to be taken under this regulation.

Convention adoptions subject to a probationary period.

30.(1) This regulation applies where-

- (a) the child has been placed with the prospective adopters by the competent authority in the State of origin and a Convention adoption has been applied for by the prospective adopters in the State of origin but the child's placement with the prospective adopter is subject to a probationary period before the Convention adoption is made; and
- (b) the prospective adopter returns to Gibraltar with the child before that probationary period is completed and the Convention adoption is made in the State of origin.

(2) The Agency shall, if requested by the competent authority of the State of origin, submit a report about the placement to that competent authority and such a report shall be prepared within such timescales and contain such information as the competent authority may reasonably require.

Report of Agency investigation.

31. The report of the investigation which the Agency shall submit to the court in accordance with section 39(5) of the Act shall include-

- (a) confirmation that the Certificate of eligibility and approval has been sent to the CA of the State of origin in accordance with regulation 19;
- (b) the date on which the agreement under Article 17(c) of the Convention was made; and
- (c) details of the reports of the visits and reviews made in accordance with regulation 6 as modified by regulation 26.

Convention adoption order.

32. An adoption order shall not be made as a Convention adoption order unless-

- (a) in the case of-
 - (i) an application by a couple, both members of the couple have been habitually resident in Gibraltar for a period of not less than one year ending with the date of the application; or
 - (ii) an application by one person, the applicant has been habitually resident in Gibraltar for a period of not less than one year ending with the date of the application;

- (b) the child to be adopted was, on the date on which the agreement under Article 17(c) of the Convention was made, habitually resident in a Convention country outside Gibraltar; and
- (c) in a case where one member of a couple (in the case of an application by a couple) or the applicant (in the case of an application by one person) is not a British citizen, His Majesty's Government of Gibraltar has confirmed that the child is authorised to enter and reside permanently in Gibraltar.

Requirements following a Convention adoption order or Convention adoption.

33.(1) Where the relevant Central Authority receives a copy of a Convention adoption order made by a court in Gibraltar the relevant Central Authority shall issue a certificate in the form set out in Schedule 2 certifying that the adoption has been made in accordance with the Convention.

(2) A copy of the certificate issued under sub regulation (1) shall be sent to the-

- (a) CA of the State of origin;
- (b) adoptive parent; and
- (c) Agency.

(3) Where a Convention adoption is made and the relevant Central Authority receives a certificate under Article 23(18) of the Convention in respect of that Convention adoption, the relevant Central Authority shall send a copy of that certificate to the-

- (a) adoptive parent; and
- (b) Agency.

Refusal of a court in Gibraltar to make a Convention adoption order.

34. Where an application for a Convention adoption order is refused by the court or is withdrawn, the prospective adopter shall place the child with the Agency within the period determined by the court.

Annulment of a Convention adoption order or a Convention adoption.

35. Where a Convention adoption order or a Convention adoption is annulled under section 81(1) of the Act and the relevant Central Authority receives a copy of the order from the court, it shall forward a copy of that order to the CA of the State of origin.

Requirements, procedure, recognition and effect of adoptions in Gibraltar where Gibraltar is the state of origin.

Application.

36. The provisions in this section of regulations shall apply where a couple or a person habitually resident in a Convention country outside Gibraltar, wishes to adopt a child who is habitually resident in Gibraltar in accordance with the Convention.

Counselling and information for the child.

37.(1) Where the Agency is considering whether a child is suitable for an adoption in accordance with the Convention, it shall provide a counselling service for and information to that child in accordance with regulation 11 of the Care Agency Regulations and it shall-

- (a) explain to the child in an appropriate manner the procedure in relation to, and the legal implications of, adoption under the Convention for that child by a prospective adopter habitually resident in the receiving State; and
- (b) provide the child with written information about the matters referred to in sub regulation (a).

(2) Sub regulation (1) does not apply if the Agency is satisfied that the requirements set out in that sub regulation have been carried out in respect of the prospective adopter by another agency.

Counselling and information for the parent or guardian of the child.

38.(1) The Agency may provide a counselling service and information in accordance with regulation 12 of the Care Agency Regulations for the parent or guardian of the child and, where regulation 12(3) of the Care Agency Regulations applies, for the father.

(2) The Agency shall also-

- (a) explain to the parent or guardian, and, where regulation 13(4) of the Care Agency Regulations applies, the father the procedure in relation to, and the legal implications of, adoption under the Convention by a prospective adopter in a receiving State; and

2023-04

Adoption

2024/050

Adoption (Foreign Element) Regulations 2024

- (b) provide him with written information about the matters referred to in sub-regulation (2)(a).

Requirements in respect of the child's permanence report and information for the adoption panel.

39.(1) The child's permanence report which the Agency is required to prepare in accordance with regulation 15 of the Care Agency Regulations shall include-

- (a) a summary of the possibilities for placement of the child within Gibraltar; and
 - (b) an assessment of whether an adoption by a person in a particular receiving State is in the child's best interests.
- (2) The Agency shall send-
- (a) if received, the Article 15 Report; and
 - (b) their observations on the Article 15 Report,

together with the reports and information referred to in regulation 15(2) of the Care Agency Regulations to the adoption panel.

Recommendation of adoption panel.

40. Where an adoption panel make a recommendation in accordance with regulation 17(1) of the Care Agency Regulations it shall consider and take into account the Article 15 Report, if available, and the observations thereon together with the information passed to it as a consequence of regulation 39.

Agency decision and notification.

41. Where the Agency decision-maker decides in accordance with the Care Agency Regulations that the child should be placed for an adoption in accordance with the Convention it shall notify the relevant Central Authority of-

- (a) the name, sex and age of the child;
- (b) the reasons why they consider that the child may be suitable for such an adoption;
- (c) whether a prospective adopter has been identified and, if so, provide any relevant information; and

- (d) any other information the relevant Central Authority may require.

Convention list.

42.(1) The relevant Central Authority is to maintain a Convention list of children who are notified to it under regulation 41 and shall make the contents of that list available for consultation.

(2) Where the Agency-

- (a) places for adoption a child whose details have been notified to the relevant Central Authority under regulation 41; or
- (b) determines that an adoption in accordance with the Convention is no longer in the best interests of the child,

it shall notify the relevant Central Authority accordingly and the relevant Central Authority shall remove the details relating to that child from the Convention list.

Receipt of the Article 15 Report from the CA of the receiving State.

43.(1) This regulation applies where-

- (a) the relevant Central Authority receives a report from the CA of the receiving State which has been prepared for the purposes of Article 15 of the Convention (“the Article 15 Report”);
- (b) the Article 15 Report relates to a prospective adopter who is habitually resident in that receiving State; and
- (c) the prospective adopter named in the Article 15 Report wishes to adopt a child who is habitually resident in Gibraltar.

(2) Subject to sub regulation (3), if the relevant Central Authority is satisfied the prospective adopter meets the following requirements-

- (a) the age requirements as specified in section 45 of the Act in the case of adoption by a couple, or section 46 of the Act in the case of adoption by one person; and
- (b) in the case of a couple, both are, or in the case of adoption by one person, that person is habitually resident in a Convention country outside Gibraltar,

the relevant Central Authority shall consult the Convention list.

(3) Where a prospective adopter has already been identified in relation to a proposed adoption of a particular child and the relevant Central Authority is satisfied that prospective adopter meets the requirements referred to in sub regulation (2)(a) and (b), the relevant Central Authority-

- (a) need not consult the Convention list; and
- (b) shall send the Article 15 Report to the Agency.

(4) Where the relevant Central Authority identifies a child on the Convention list who may be suitable for adoption by the prospective adopter, the relevant Central Authority shall send the Article 15 Report to the Agency.

Proposed placement and referral to adoption panel.

44.(1) Where the Agency is considering whether a proposed placement should proceed in accordance with the procedure provided for in regulation 29 of the Care Agency Regulations it shall take into account the Article 15 Report.

(2) Where the Agency refers the proposal to place the child with the particular prospective adopter to the adoption panel in accordance with regulation 28 of the Care Agency Regulations, it shall also send the Article 15 Report to the panel.

Consideration by adoption panel.

45. The adoption panel shall take into account when considering what recommendation to make in accordance with regulation 29(1) of the Care Agency Regulations the Article 15 Report and any other information passed to it as a consequence of the provisions in this section of regulations.

Agency's decision in relation to the proposed placement.

46.(1) Regulation 30 of the Care Agency Regulations shall apply as if sub regulation (3) of that regulation was omitted.

(2) As soon as possible after the Agency decision-maker makes his or her decision, he or she shall notify the relevant Central Authority of his or her decision.

(3) If the proposed placement is not to proceed-

- (a) the Agency shall return the Article 15 Report and any other documents or information sent to it by the relevant Central Authority to the relevant Central Authority; and
- (b) the relevant Central Authority shall then send that Report, any such documents or such information to the CA of the receiving State.

Preparation of the Article 16 Information.

47.(1) If the Agency decision-maker decides that the proposed placement should proceed, the Agency shall prepare a report for the purposes of Article 16(1) of the Convention which shall include-

- (a) the information about the child which is specified in Schedule 1 to the Care Agency Regulations; and
 - (b) the reasons for the the decision.
- (2) The Agency shall send the following to the relevant Central Authority-
- (a) the report referred to in sub regulation (1);
 - (b) details of any placement order or other orders, if any, made by the courts; and
 - (c) confirmation that the parent or guardian consents to the proposed adoption.
- (3) The relevant Central Authority shall then send the documents referred to in sub regulation (2) to the CA of the receiving State.

Requirements to be met before the child is placed for adoption with prospective adopter.

48.(1) The relevant Central Authority may notify the CA of the receiving State that it is prepared to agree that the adoption may proceed provided that CA has confirmed that-

- (a) the prospective adopter has agreed to adopt the child and has received such counselling as may be necessary;
- (b) the prospective adopter has confirmed that the prospective adopter will accompany the child to the receiving State, unless in the case of a couple, the Agency and the CA of the receiving State have agreed that it is only necessary for one of them to do so;
- (c) it is content for the adoption to proceed;

2023-04

Adoption

2024/050

Adoption (Foreign Element) Regulations 2024

- (d) in the case where a Convention adoption is to be effected, it has explained to the prospective adopter the need to make an application under section 76(1) of the Act; and
 - (e) the child is or will be authorised to enter and reside permanently in the Convention country if a Convention adoption is effected or a Convention adoption order is made.
- (2) The relevant Central Authority may not make an agreement under Article 17(c) of the Convention with the CA of the receiving State unless-
- (a) confirmation has been received in respect of the matters referred to in sub regulation (1); and
 - (b) the Agency has confirmed to the relevant Central Authority that-
 - (i) it has met the prospective adopter and explained the requirement to make an application for an order under section 76 of the Act before the child can be removed from Gibraltar;
 - (ii) the prospective adopter has visited the child; and
 - (iii) the prospective adopter is content for the adoption to proceed.
- (3) The Agency may not place a child for adoption unless the agreement under Article 17(c) of the Convention has been made and the relevant Central Authority shall advise the Agency when that agreement has been made.
- (4) In this regulation, the reference to “prospective adopter” means in the case of a couple, both of them.

Requirements in respect of giving parental responsibility prior to a proposed Convention adoption.

49. In the case of a proposed Convention adoption, the requirements for an order made under section 76 of the Act are-

- (a) the competent authorities of the receiving State have-
 - (i) prepared a report for the purposes of Article 15 of the Convention;

- (ii) determined and confirmed in writing that the prospective adoptive parent is eligible and suitable to adopt;
 - (iii) ensured and confirmed in writing that the prospective adoptive parent has been counselled as may be necessary; and
 - (iv) determined and confirmed in writing that the child is or will be authorised to enter and reside permanently in that State;
- (b) the report required for the purposes of Article 16(1) of the Convention has been prepared by the Agency;
- (c) the Agency confirms in writing that it has complied with the requirements imposed upon it under Part 3 of the Care Agency Regulations and this section of regulations;
- (d) the Agency has obtained and made available to the court-
- (i) the reports and information referred to in regulation 15(1) and (2) of the Care Agency Regulations;
 - (ii) the recommendation made by the adoption panel in accordance with regulations 16 and 30 of the Care Agency Regulations; and
 - (iii) the adoption placement report prepared in accordance with regulation 28(2) of the Care Agency Regulations;
- (e) the Agency includes in their report submitted to the court in accordance with section 38(a) or 39(5) of the Act as modified respectively by regulation 12, details of any reviews and visits carried out as consequence of Part 6 of the Care Agency Regulations; and
- (f) the prospective adopter has confirmed in writing that the prospective adopter will accompany the child on taking the child out of Gibraltar to travel to the receiving State or in the case of a couple the Agency and competent foreign authority have confirmed that it is necessary for only one of them to do so.

Agency report.

50. In the case of a proposed application for a Convention adoption order, the report which the Agency shall submit to the court in accordance with section 38(a) or 39(5) of the Act shall include a copy of the-

- (a) Article 15 Report;

- (b) report prepared for the purposes of Article 16(1); and
- (c) written confirmation of the agreement under Article 17(c) of the Convention.

Convention adoption order.

51. An adoption order shall not be made as a Convention adoption order unless-

- (a) in the case of-
 - (i) an application by a couple, both members of the couple have been habitually resident in a Convention country outside Gibraltar for a period of not less than one year ending with the date of the application; or
 - (ii) an application by one person, the applicant has been habitually resident in a Convention country outside Gibraltar for a period of not less than one year ending with the date of the application;
- (b) the child to be adopted was, on the date on which the agreement under Article 17(c) of the Convention was made, habitually resident in Gibraltar; and
- (c) the competent authority has confirmed that the child is authorised to enter and remain permanently in the Convention country in which the applicant is habitually resident.

Requirements following a Convention adoption order or Convention adoption.

52.(1) Where the relevant Central Authority receives a copy of a Convention adoption order made by a court in Gibraltar, the relevant Central Authority shall issue a certificate in the form set out in Schedule 2 certifying that the adoption has been made in accordance with the Convention.

(2) A copy of the certificate shall be sent to the-

- (a) CA of the receiving State; and
- (b) Agency.

(3) Where a Convention adoption is made and the relevant Central Authority receives a certificate under Article 23 in respect of that Convention adoption, the relevant Central Authority shall send a copy of that certificate to the Agency.

*Miscellaneous provisions***Application, with or without modifications, of the Act.**

53.(1) Subject to the modifications provided for in this section of regulations, the provisions of the Act shall apply to adoptions within the scope of the Convention so far as the nature of the provision permits and unless the contrary intention is shown.

Change of name and removal from Gibraltar.

54. In a case falling within regulations 4 to 10, section 23(2) of the Act shall apply as if-

- (a) at the end of sub section (2)(a), “or” was omitted;
- (b) at the end of sub section (2)(b) there were inserted “or (c) a child is placed by a competent foreign authority for the purposes of an adoption under the Convention,”; and
- (c) at the end of subsection (2) there were inserted “or the competent foreign authority consents to a change of surname.”.

Removal of children.

55.(1) In a case falling within regulations 4 to 10, sections 31 to 35 of the Act shall not apply.

(2) In a case falling within regulations 11 and 12-

- (a) section 31 of the Act shall apply, as if-
 - (i) for the words “an adoption order” in sub sections (1)(a) and (c) there were substituted “a Convention adoption order”; and
 - (ii) subsection (2) was omitted; and
- (b) section 34 of the Act shall apply as if subsection (3)(a) was omitted.

Modifications of the Act in respect of orders under section 76 where child is to be adopted under the Convention.

56. The modifications set out in regulation 12 shall apply in the case where a couple or person habitually resident in a Convention country outside Gibraltar intend to adopt a child who is habitually resident in Gibraltar in accordance with the Convention.

2023-04

Adoption

2024/050

Adoption (Foreign Element) Regulations 2024

Child to live with adopters before application for a Convention adoption order.

57. Section 37 of the Act shall apply as if-

- (a) subsections (1)(b) and (3) to (6) were omitted; and
- (b) in subsection (2) from the word “If” to the end of paragraph (b) there were substituted “In the case of an adoption under the Convention,”.

Notice of intention to adopt.

58. Section 39 of the Act shall apply as if subsection (3) was omitted.

Application for Convention adoption order.

59. Section 44 of the Act shall apply as if-

- (a) in subsection (1), the words from “but only” to the end were omitted;
- (b) subsections (2) and (3) were omitted.

Offences.

60. Any person who contravenes or fails to comply with-

- (a) regulation 27;
- (b) regulation 28; and
- (c) regulation 34

is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding three months, or a fine not exceeding level 5 on the standard scale, or both.