

CHAPTER 8**Annex S****SECTION 5B*****IMMIGRATION DIRECTORATES' INSTRUCTIONS*****ASPECTS OF ADOPTION:****CHILDREN COMING FOR ADOPTION AND CHILDREN ADOPTED
THROUGH COURTS IN THE UNITED KINGDOM****1. INTRODUCTION**

Section 55 of the Borders, Citizenship and Immigration Act 2009 requires the UK Border Agency to carry out its existing functions in a way that takes into account the need to safeguard and promote the welfare of children in the UK. It does not impose any new functions, or override existing functions.

Officers must not apply the actions set out in this instruction either to children or to those with children without having due regard to Section 55. The UK Border Agency instruction 'Arrangements to Safeguard and Promote Children's Welfare in the United Kingdom Border Agency' sets out the key principles to take into account in all Agency activities.

Our statutory duty to children includes the need to demonstrate:

- Fair treatment which meets the same standard a British child would receive;
- The child's interests being made a primary, although not the only consideration;
- No discrimination of any kind;
- Asylum applications are dealt with in a timely fashion;
- Identification of those that might be at risk from harm.

A concession for children coming to the U.K. for adoption existed for some time and was brought within the Rules on 2-10-2000. Applications for entry clearance may be made on behalf of children to travel here effectively for the purpose of adoption through the courts in this country. An application will fall into this category where:

* a child has not been adopted overseas by his sponsors; or

* a child has been adopted following the completion of the due legal process overseas, but the Order granted is not recognised as valid for the purposes of United Kingdom law, (i.e. the adoption took place in a "non-designated" country and was not made under the terms of the Hague Convention on adoption); or,

* a child has been entrusted to a prospective adopter(s) under the Hague Convention in another Hague Convention country to enable the child to be brought into the United Kingdom and the Hague Convention adoption process completed in the courts here.

ANNEX Q provides guidance relating to cases involving countries whose adoption orders are recognised in the United Kingdom.

Entry clearance for entry in this capacity should first be obtained from the nearest designated British Diplomatic Post to the child's overseas address before he travels here. Entry clearance officers must first be satisfied on certain conditions before a child is admitted for adoption through the courts here.

2. INFORMATION FOR THE PUBLIC

The public information leaflet, "Inter-country Adoption and the Immigration Rules", details the requirements and procedures involved in obtaining entry clearance to bring a child here "for adoption" through the courts in this country. It is issued free of charge to anyone who requests it. . It is available on our website at www.ind.homeoffice.gov.uk and by following the links to "Applying", "General Caseworking" and "Inter-country Adoption".

The "Inter-country Adoption" leaflet provides a list of documents which should accompany any application on behalf of a child who has already been adopted, or who is coming to this country for adoption through the courts here. The list should not, however, be considered as exhaustive or in any order of priority. Any additional documents or details that may be helpful should also be supplied. It is important to bear in mind that the majority of the documents on the list will be required by the courts here when considering an application to adopt, and therefore are not solely for the benefit of entry clearance officers in considering the immigration application.

3. PROCEDURES FOR HANDLING "FOR ADOPTION" APPLICATIONS

3.1. Documents needed by entry clearance officers

All applications should be accompanied by the documentation specified in the "Inter-country Adoption" leaflet, the child's original birth certificate and, if the child has not been adopted in the courts, permission from the court or administrative authority of that country that the child may come to the United Kingdom for adoption including adoption under the Hague Convention.

All documents produced should be the originals but if they are not, they must be certified by the entry clearance officer or some other professional person, (such as a judge), that they are true copies of the original. Where documents are in a foreign language, the sponsors or their representatives should have arranged for certified translations to have been prepared and presented to the entry clearance officer when the application for entry clearance was being lodged.

3.2. Initial consideration of the case on immigration grounds

Applications are to be considered in the first instance on immigration grounds alone. The factors which are to be taken into account and which have to be satisfied are based on those applied to all adoption cases which fall within the Rules.

3.3. Requirements for limited leave to enter "for adoption"

The requirements to be satisfied in the case of a child seeking limited leave to enter for the purpose of adoption through the courts here are that he:

(i) is seeking limited leave to enter to accompany or join a person or persons who wish to adopt him in the United Kingdom (the "prospective parent(s)"), in one of the following circumstances:

(a) both prospective parents are present and settled in the United Kingdom; or

(b) both prospective parents are being admitted for settlement on the same occasion that the child is seeking admission; or

(c) one prospective parent is present and settled in the United Kingdom and the other is being admitted for settlement on the same occasion that the child is seeking admission; or

(c) one prospective parent is present and settled in the United Kingdom and the other is being given limited leave to enter or remain in the United Kingdom with a view to settlement on the same occasion that the child is seeking admission, or has previously been given such leave; or

(e) one prospective parent is being admitted for settlement on the same occasion that the other is being granted limited leave to enter with a view to settlement, which is also on the same occasion that the child is seeking admission; or

(f) one prospective parent is present and settled in the United Kingdom or is being admitted for settlement on the same occasion that the child is seeking admission, and has had sole responsibility for the child's upbringing; or

(g) one prospective parent is present and settled in the United Kingdom or is being admitted for settlement on the same occasion that the child is seeking admission, and there are serious and compelling family or other considerations which would make the child's exclusion undesirable, and suitable arrangements have been made for the child's care; and

(ii) is under the age of 18; and

(iii) is not leading an independent life, is unmarried, and has not formed an independent family unit; and

(iv) can, and will, be maintained and accommodated adequately without recourse to public funds in accommodation which the prospective parent or parents own or occupy exclusively; and

(v) will have the same rights and obligations as any other child of the marriage; and

(vi) is being adopted due to the inability of the original parent(s) or current carer(s) (or those looking after him immediately prior to him being physically transferred to his prospective parent or parents) to care for him, and there has been a genuine transfer of parental responsibility to the prospective parent or parents; and

(vii) has lost or broken or intends to lose or break his ties with his family of origin; and

(viii) will be adopted in the United Kingdom by his prospective parent or parents, but the proposed adoption is not one of convenience arranged to facilitate his admission to the United Kingdom; and

(ix) holds a valid United Kingdom entry clearance for entry in this capacity.

Guidance in respect of (i)-(iv) above is provided in ANNEX M to Section 3 of this chapter.

Guidance in respect of (v)-(viii) is provided in ANNEX Q

3.4. Requirements for limited leave to enter "for adoption" under the terms of the Hague Convention

The requirements to be satisfied in the case of a child seeking limited leave to enter for the purpose of adoption through the courts here under the terms of the Hague Convention are that he, (see Para 316D-F of the Rules):

(i) is seeking limited leave to enter to accompany or one or two people each of whom is habitually resident in the United Kingdom and wishes to adopt him under the Hague Convention (the "prospective parents");

(ii) is the subject of an agreement made under Article 17(c) of the Hague Convention; and

(iii) has been entrusted to the prospective parents by the competent administrative authority of the country from which he is coming to the United Kingdom for adoption under the Hague Convention; and

(iv) is under the age of 18; and

(v) can, and will, be maintained and accommodated adequately without recourse to public funds in accommodation which the prospective parent or parents own or occupy exclusively; and

(iv) holds a valid United Kingdom entry clearance for entry in this capacity.

Guidance in respect of (v)-(viii) is provided in ANNEX Q

Note regarding (i) above:

It must be noted that although the Rules state that the prospective parents must be "habitually resident" in the United Kingdom, (a term used in the Hague Convention), there is no definition of "habitual residence" in relevant legislation. Immediately prior to the DfES or appropriate Devolved Authority making an Article 17(c) Agreement with the Central Authority of the child's home country, they have agreed to contact IND using agreed pro-formas to allow a check to be made on the immigration or Nationality status of the prospective adopters. Where the prospective adopters are British citizens or have Indefinite Leave to Remain or have evidence that they have acquired Permanent Residency under EU Law, the DfES or Devolved Authority will be advised that they can proceed to make the Agreement. In the unlikely event of the prospective Adopters not having any of these status, the DfES or Devolved Authority must be contacted and advised that the prospective adopters do not have the legal capacity to sponsor the entry of a dependent child under the immigration rules and the agreement must not be made.

4. CHILDREN ALREADY IN THE UNITED KINGDOM

There is no provision in the Immigration Rules which permits a child to remain in the United Kingdom for adoption proceedings to take place. However, discretion to depart from the Immigration Rules may be exercised to children seeking leave to remain in this category provided certain criteria are met. Where a child was admitted with entry clearance endorsed "for adoption", it is not necessary to recheck that the requirements are met and leave may be granted on application as set out in paragraph 4.2.

In all other cases, full enquiries must be made and documentation requested (see paragraph 8) to confirm that all of the requirements in paragraph 4.2 below are met.

4.1. Referral of cases

Caseworkers should refer to CAT in DCOP all cases that involve a child who has been brought to or is now in the United Kingdom for adoption without entry clearance. Before referring, the following information must be on file;

- (a) the child's full name at birth, date and place of birth and nationality; and
- (b) the full names, dates of birth, nationalities or immigration status and address of the prospective adoptive parent(s); and
- (c) the date and method of entry of the child to the United Kingdom and the period of leave granted if applicable; and
- (d) an explanation from the prospective adoptive parent(s) for their failure to obtain entry clearance or the appropriate entry clearance for the child - an explanation is not required from the prospective adoptive parents(s) of children who have been placed in their care by the social services.

4.2. Requirements for limited leave to remain "for adoption"

A child may be granted leave to remain exceptionally, outside of the Immigration Rules, on the basis of ongoing adoption proceedings if he:

- (i) is seeking limited leave to remain with a person or persons who wish to adopt him in the United Kingdom (the "prospective parent(s)"), in one of the following circumstances:
 - (a) both prospective parents are present and settled in the United Kingdom; or
 - (b) one prospective parent is present and settled in the United Kingdom and the other parent is dead; or
 - (c) one prospective parent is present and settled in the United Kingdom and has had sole responsibility for the child's upbringing; or
 - (d) one prospective parent is present and settled in the United Kingdom and there are serious and compelling family or other considerations which would make the child's exclusion undesirable, and suitable arrangements have been made for the child's care; and
- (ii) is under the age of 18; and
- (iii) is not leading an independent life, is unmarried, and has not formed an independent family unit; and
- (iv) can, and will, be maintained and accommodated adequately without recourse to public funds in accommodation which the prospective parent or parents own or occupy exclusively; and

(v) will have the same rights and obligations as any other child of the marriage; and

(vi) is being adopted due to the inability of the original parent(s) or current carer(s) (or those looking after him immediately prior to him being physically transferred to his prospective parent or parents) to care for him, and there has been a genuine transfer of parental responsibility to the prospective parent or parents; and

(vii) has lost or broken or intends to lose or break his ties with his family of origin; and

(viii) will be adopted in the United Kingdom by his prospective parent or parents, but the proposed adoption is not one of convenience arranged to facilitate his admission to the United Kingdom.

Guidance in respect of (1)-(4) above is in Annex M to Section 3 of this chapter.

Guidance in respect of (5)-(8) is in Annex Q.

4.3. Granting leave to remain

If the child was admitted with entry clearance endorsed "for adoption" and all of the requirements of paragraph 4.2 are met, then leave to remain may be granted. If confirmation is received from a court here that they have received and will be processing an application from the prospective adoptive parent(s) to adopt, then 12 months leave may be granted to enable the adoption proceedings to be finalised. Otherwise, only 3 months leave should be granted (INDECS code X3).

For action to take upon the making of an adoption order, see paragraph 6 below.

4.4. Refusing leave to remain

Where the requirements in paragraph 4.2 are not met, the application should be refused (INDECS code X6). It is worth bearing in mind that we would not expect a child to leave the United Kingdom until any adoption proceedings had been concluded but this should not preclude caseworkers from refusing applications.

See paragraph 8.7 below for guidance on refusing applications in this category.

Caseworkers should also give consideration to intervening in the adoption proceedings when invited to do so by the court (see paragraph 5 below).

5. INTERVENTION THIS NEEDS COMPLETE RE-ASSESSMENT

5.1. Background

Under Rule 15(3) of the Adoption Rules 1984, the Secretary of State may apply to the courts to be made party to adoption proceedings involving children who are subject to immigration control and who would become British citizens if an adoption order were made. Normally, British citizenship can only be acquired under the British Nationality Act 1981.

Whilst the courts' first duty is to consider what the best interests of the child are, it has been held that it also has a duty to consider the public interest in maintaining an effective immigration control. For this reason, the Secretary of State may set out his objections to the court in particular cases, including those where a child will still remain subject to immigration control following adoption in the United Kingdom courts.

5.2. Policy

All decisions on whether or not to intervene should be made at Grade 7/AD level.

UKBA should consider intervention in all cases where it is not prepared to grant leave to remain for the purpose of adoption (see paragraph 4.4 above).

5.3. Notification

UKBA should be informed by the courts of all adoption applications involving children who are subject to immigration control. They will either write to us direct or instruct the prospective adoptive parent(s), their solicitors or the guardian ad litem to do so. The guardian ad litem is a person appointed by the court to defend the interests of the child being adopted. The letter will ask us to advise them if the Secretary of State wishes to be made party to the proceedings.

Where an adoption hearing is imminent and we have been unable to make a decision due to the short notice given by the court or the fact that any enquiries we may have begun to make are still in progress, Treasury Solicitors may be asked to seek an adjournment.

5.4. Cases not warranting intervention

The Secretary of State should not intervene in cases where the child:

- (1) is being adopted by a couple one of whom is a natural parent; or
- (2) was admitted in possession of entry clearance endorsed "for adoption"; or
- (3) has been granted or would qualify for indefinite leave to remain or leave in some other capacity where it is accepted that the child's original family is

unable to care for him, eg. as a minor dependant relative or in the absence of parents; or

(4) has been granted or would qualify for leave to remain for the purpose of adoption (see paragraph 4 above).

In these cases, a short letter should be sent to the court advising that the Secretary of State does not wish to intervene.

5.5. Cases warranting intervention

In all cases where we are not prepared to grant leave to remain for the purpose of adoption, the Secretary of State should intervene.

5.6. Procedure

Once it has been agreed at Grade 7/AD level that IND should intervene, a letter should be sent by the SEO to Treasury Solicitors as soon as possible with two copies of the UKBA file. The letter should set out the full immigration history of the child and why it is considered appropriate to intervene and instruct them to make the necessary arrangements for the Secretary of State to be made party to the application.

The letter should be copied to Legal Adviser's Branch with a short covering note inviting them to contact us if they need a copy of the file or any documents.

Treasury Solicitors may advise against proceeding on a particular case. If this is so, the case should be reviewed again at Grade 7/AD level and the decision conveyed to the Treasury Solicitors. If it is agreed not to intervene, the court should be advised of the decision.

If UKBA is to intervene, the Treasury Solicitors will make an application to the court on the Secretary of State's behalf. An affidavit, which sets out the Secretary of State's concerns, will need to be sworn by us at not less than SEO level. The Treasury Solicitors will draft the affidavit in consultation with the official who will swear it. This will be placed before the court at any subsequent hearing. Treasury Solicitors will advise if the official who swore the affidavit is required to attend court. The official may be called upon to answer questions.

Treasury Solicitors will keep caseworkers advised of any developments, change of circumstances and hearing dates. Similarly, caseworkers should advise Treasury Solicitors of any developments by copying to them correspondence which has not already been copied to them.

Where an application or representations are made on behalf of the child after we have intervened, a copy of any proposed refusal or reply should be forwarded to Treasury Solicitors for clearance before being sent out.

Treasury Solicitors will advise us of the outcome of the final adoption hearing. If an adoption order is made, they will let us know if there are any grounds on which to appeal. If an adoption order is not made, then the judge will normally direct the responsible social services department to make arrangements for the child's return to his original family.

5.7. Notifying the Complex Advice Team, DCOP

Caseworkers must notify CAT of all cases where the Secretary of State is invited to intervene using form AD1 (a copy of which is attached at the end of this Annex and stocks of which should be kept locally).

Where a decision has been taken to intervene, caseworkers should keep CAT informed of developments by completing the relevant parts of Section 3 as and when appropriate.

6. ADOPTION ORDERS ISSUED BY COURTS IN THE UNITED KINGDOM.

Under Section 1(5) of the British Nationality Act, 1981, a child who has been adopted through the courts in this country automatically acquires British Citizenship if his adoptive parent (or, if he was adopted by a couple, one or both of his adoptive parents) is a British Citizen on the date the order was made.

INDECS should be notified when children whose stay in the United Kingdom was subject to conditions become British Citizens through adoption in the United Kingdom, otherwise the children will appear as overstayers. The INDECS record should be cleared by inputting a decision with INDECS code 3CA.

This action does not constitute a grant of settlement and no mention of settlement should be made to the child's parents or representatives. If the adoptive parents forward the child's passport for endorsement, a letter should be sent advising them that their child became a British citizen on the date the adoption order was made by virtue of their British citizenship and that the child now qualifies for a British passport, obtainable from the Passport Office. If they travel abroad before they have obtained a British passport, they should take the letter and a copy of the adoption order as evidence that the child is a British citizen for their return to the United Kingdom.

If a child's adoptive parents were not British Citizens on the date the adoption order was issued by a court here, he may, upon application, be granted leave in line with whichever adoptive parent has the lesser period of leave. Should such a child subsequently leave this country and then at a later stage wish to return or, after arrival, remain on the basis of his relationship to his adoptive parent(s), his application should be considered and decided as if he were the natural child of his parent(s).

7. RESIDENCE ORDERS

Residence orders represent a less final relationship than adoption and vest legal custody of a child in the adult caring for him. The carer has most of the rights and duties of a parent and is able to take nearly all the important decisions about the child's upbringing and day to day care. Unlike an adoption order, however, a residence order does not sever a child's legal ties with his natural parents, nor does it involve a change of name. In certain circumstances, if it is felt to be in the child's best interest, the courts may grant a residence order instead of an adoption order.

When an adoption order is made by a court in the United Kingdom in respect of a child from overseas, the child automatically acquires British citizenship on the date of the order providing at least one of the adoptive parents is a British citizen on that date. This is not the case with a residence order. After a residence order has been made the child will remain subject to immigration control.

A court may revoke residence orders at any time on application by the carer, the child's original parent(s), the child's guardian or a local authority. Otherwise the order has effect until the child leaves full-time education.

Usually a residence order involves a clause prohibiting the child's removal from the United Kingdom other than accompanying the carer for a period not exceeding 1 month.

Residence orders have replaced custodianship orders which routinely remained in force until the child reached 18.

7.1. Children already in the United Kingdom - Residence Order already made

On receipt of an application consideration should first be given as to whether the child has any claim to remain in the United Kingdom under paragraph 298(i)(d) of HC 395, (see the main part of this section).

If the requirements of the Rules cannot be met it may be appropriate to exercise discretion and grant the child leave to remain outside the Rules if the following requirements are met:

- the child is under the age of 18, is unmarried, is not leading an independent life and has not formed an independent family unit;
- the adult carer is present and settled in the United Kingdom;
- there will be a genuine transfer of parental responsibility due to the natural parents' inability to care for the child;
- the residence order proceedings were not a matter of convenience arranged to facilitate the child's admission or stay in the United Kingdom; and

- there is adequate maintenance and accommodation for the child without recourse to public funds.

When all of the above criteria are met, it will normally be appropriate to grant leave to remain. If the residence order is intended to be in place for over 4 years it is appropriate to grant leave to remain for 4 years on Code 1 (INDECS code X3).

Cases may arise where the residence order is intended to be of only limited duration. In such circumstances it will be appropriate to grant the child limited leave on Code 1 (INDECS code X3) for 12 months at a time, reviewing the situation after 4 years.

After 4 years if there is no prospect of the child's removal from the United Kingdom in the immediate future indefinite leave to remain should be granted [INDECS code 7DA].

If the above criteria are not met, then the application should be refused. The refusal wording must relate only to the decision taken under the Rules (Paragraph 321). A covering letter should be sent with the refusal notice advising that consideration has been given to the application on an exceptional basis but the Secretary of State is not satisfied that there are any grounds for treating the case exceptionally.

7.2. Children already in the United Kingdom - Residence Order proceedings not yet resolved

Consideration should first be given as to whether the child has any claim to remain here under the Immigration Rules. If the child has no claim to remain, a decision must be made as to whether the Secretary of State should intervene in the residence order proceedings. If the hearing is imminent and it is not possible to make a final decision on intervention because enquiries are incomplete, Treasury Solicitors may be asked to seek an adjournment.

All decisions on whether or not to intervene should be taken at Grade 7/AD level. IND should intervene in all cases where it is not prepared to grant leave to remain for the purpose of residence order proceedings.

It is not appropriate to intervene in cases where the child was admitted in possession of entry clearance endorsed "for adoption" or he has been granted or would qualify for indefinite leave to remain or leave in some other capacity where it is accepted that the child's original family is unable to care for him, eg. as a minor dependant relative or in the absence of parents.

In all other cases, consideration should be restricted to whether the requirements in paragraph 7.1 above are or can be met. If they can, it would not be appropriate to intervene. If they cannot, the Secretary of State should intervene.

See paragraph 5 above for the procedures which should be followed when intervening.

8. ENQUIRIES AND DOCUMENTATION FOR REFERRED CASES AND CHILDREN ARRIVING WITHOUT ENTRY CLEARANCE

The following enquiries should be carried out by UKBA for all cases referred by entry clearance officers and by MMSR for all cases where the child has arrived in the United Kingdom without entry clearance. Entry Clearance Officers contact the DCSF or appropriate Devolved Authority directly to obtain consideration and advice on "for adoption" cases.

8.1. Referral to appropriate Department

* If it is satisfactorily demonstrated that the immigration requirements have been met, the file should be clearly minuted to that effect and then forwarded to the DCSF or appropriate Devolved Authority for consideration and advice (see paragraph 8.2 below).

* Applications must not be referred to the DCSF or appropriate Devolved Authority for their action before the case has been considered on immigration grounds. If a file is forwarded to the DCSF or appropriate Devolved Authority prior to the immigration aspects being considered and deemed to have been satisfied, and the file minuted accordingly, it will be returned unactioned.

* If the immigration requirements are not satisfied, the application should be refused on immigration grounds alone without referral to the DCSF or appropriate Devolved Authority.

8.2. Referral to the DCSF or appropriate Devolved Authority

The DCSF or appropriate Devolved Authority comprise of the Department for Education & Skills in England, the Office of the Welsh Assembly in Wales, the Scottish Executive in Scotland, and the Department of Health, Social Security and Public Safety in Northern Ireland, (DHSSPSNI). The file should be sent to the DCSF or appropriate Devolved Authority appropriate to where the sponsoring "parent" or "parents" live. For instance, if the "parents" live in Swansea, the file should be sent to the Office of the Welsh Assembly, while if they live in Belfast, it should be sent to the DHSSPSNI there. A list of the addresses and telephone numbers of the departments where the files should be sent is provided in paragraph 9 below.

8.3. Action by the DCSF or appropriate Devolved Authority

The DCSF or appropriate Devolved Authority considers the "welfare" aspects of an application. They assess whether or not it would be in the child's best interests to be brought to or to remain in this country for the purpose of

adoption by this particular person/couple, and the likelihood of a court in this country granting an adoption order for this child to the "parent" or "parents".

8.4. Home study assessment reports

The DCSF or appropriate Devolved Authority normally liaises with the appropriate local social services and requests them to provide a "home study report" on the prospective "parent" or "parents". It may well be that the local social services have been able to prepare a report for this purpose in advance, for example where the "parent" or "parents" have commissioned one and paid any fee charged. If this is the case, the time taken by the DCSF or appropriate Devolved Authority to consider and advise entry clearance officers or UKBA on an individual case will undoubtedly be greatly shortened.

Whether or not a local authority chooses to carry out an assessment on the "parent" or "parents" in advance, and if so, to charge a fee, is entirely for the appropriate local authority to decide. It is not something that UKBA has any direct involvement in, or any influence over. Likewise, a local authority does not require our permission to undertake an assessment, or need to have an entry clearance application first referred to them.

It is also entirely up to the local authority to decide whether or not to in any way endorse or accept a home study report which has been completed by a private individual, perhaps a social worker acting in a private capacity, or a non-accredited organisation (such reports are usually referred to as "private home study reports").

There may be instances where a home study report of some kind either accompanies a referred entry clearance application, or is presented to us prior to the immigration aspects being deemed to be satisfied. Should this occur, the case is still to be forwarded to the UKBA or appropriate Devolved Authority if the immigration requirements are first satisfied, irrespective of whom has completed the report or its contents. The information contained in such a report is not sufficient on its own to enable a thorough assessment to be made by the UKBA or appropriate Devolved Authority, and for them to provide us with a carefully considered response. Furthermore, we do not have any means of accurately assessing the report, finding out how recent it is, whether it is genuine, and whether any such recommendation contained is still applicable given the information contained within our file on the particular child in question.

8.5. Cases of exceptional urgency

If exceptional urgency is warranted in a particular case, and most but not all of the required documents are on file, the DCSF or appropriate Devolved Authority may be prepared to instigate their action before all the outstanding documents are received. The case will first, however, need to be discussed with the appropriate department to explain why the case needs to be considered so urgently, why the documents have not yet been produced, and when they are likely to be provided. This course of action should only be

contemplated when it is clear that the immigration requirements have been satisfied.

8.6. Priority for a child who is approaching or is 17 years old

Once a child reaches the age of 18, he cannot be adopted through the courts here irrespective of the stage the proceedings have reached.

By virtue of Section 13(2) of the Adoption Act, 1976 as amended an adoption order cannot be made by a United Kingdom court in respect of a child habitually resident abroad unless he has been living with them in the United Kingdom at all times during the 6 months immediately prior to the date on which the court may grant an adoption order although this planned to be changed in the Adoption and Children Act 2002 Schedule 3 para 95. Thus, where a child is not related to his "parent" or "parents" and was not in any way related to them prior to any overseas adoption order being granted, currently he will have to live with his "parent" or "parents" in this country for at least six months before an adoption order can be granted.

With this in mind, note should be taken of any application involving a child approaching 17 and action taken accordingly so that it does not fall for refusal simply because of the passage of time. A child who has passed his 17th birthday and is not related to his "parent" or "parents" must therefore have his application refused as it will not be possible to achieve the purpose for which he would be coming here.

Where a child is related to his "parent" or "parents" prior to any overseas adoption order being granted, an adoption order may be granted by a United Kingdom court by virtue of Section 13(1)(a) of the Adoption Act, 1976, where he is living in this country with his "parent" or "parents" at all times during the 13 weeks immediately prior to the date on which it is proposed that the order is to be granted. A case can, therefore, in an instance such as this, continue to be considered until a child is much closer to his 18th birthday.

8.7. Children already related to the "parent" or "parents"

If the child is a blood relative of the prospective adoptive parents, then the application may be considered under the provisions of Paragraphs 297 - 303 of HC 395 relating to children joining a parent or relatives other than parents where the child is in exceptional compassionate circumstances abroad.

8.8. Authorisation of entry clearance

Irrespective of any advice offered to us by the DCSF or appropriate Devolved Authority, the final decision as to whether or not to authorise entry clearance rests with ECOs or with UKBA to authorise leave to remain in referred cases. However, it will usually follow that the advice offered by them regarding whether it is in a child's best interests to come here or remain for adoption by the person/couple concerned, and the likelihood of a court here granting an adoption order for a child to the "parent" or "parents", will be accepted.

Provided that the immigration requirements of a particular case are met, and the DCSF or appropriate Devolved Authority provide us with a positive recommendation, it will normally follow that entry clearance should be authorised for a child to travel here 'for adoption', or leave to remain to be granted "for adoption" through the UK courts. The endorsement should be:

"HO/ HOF no. / 360 /FOR ADOPTION"

8.9. Refusal of entry clearance application

If it is decided it would not be appropriate to grant the child entry clearance to travel here or leave to remain for the purpose of adoption through the courts in this country, and he does not qualify for admission under a provision of the Rules, consideration should be given as to whether he can qualify exceptionally outside the Rules on another basis - see ANNEX R to this Section.

When it is decided to refuse an application, refusal of a child coming for adoption through the UK Courts should be under Paragraph 316C of HC 395 if it is not satisfactorily demonstrated that the requirements of 316A (i)-(viii) are met, unless the child is a blood relative (see below).

ANNEX U provides examples of refusal formulae.

For leave to remain "for adoption" cases, a covering letter should accompany the refusal notice making it clear that the application has been considered by the Secretary of State exceptionally outside the Immigration Rules as there are no provisions within the Rules which allow for a child to remain here for the purpose of adoption through the courts in this country. If some form of adoption order has previously been granted overseas, and/or it is has been claimed that the child has already been adopted and is seeking to join or accompany his adoptive "parent(s)" here, reference should be made to the fact that, as the adoption took place in a country whose adoption orders the United Kingdom does not recognise, the sponsor(s) are not, for the purposes of the Immigration Rules, recognised as the child's adoptive parent(s).

The refusal letter should clearly state the basis upon which the application has been considered exceptionally outside the Rules, and the reason(s) why discretion is not being exercised. For instance, if refusal is considered appropriate because the Secretary of State is not satisfied that there is an inability to care for the child through necessity by his original parent(s) or those currently caring for him, and that if he now in the UK, he would be adequately maintained and accommodated without recourse to public funds in accommodation which the "parent(s)" own or occupy exclusively, those reasons should be given. Likewise, if refusal is as a result of advice received from the DfES or appropriate Devolved Authority, their reasons must be given in the letter.

An application should only be refused on the advice of the DfES or appropriate Devolved Authority where specific reasons have been provided,

for instance, the local authority have found the "parent" or "parents" to be unsuitable to adopt a child under 8 years of age, and the child in question is only 9 months old. Furthermore, as there will be a right of appeal against any such refusal, a report detailing this information must be provided by the DfES or appropriate Devolved Authority prior to refusal, and be one which can be made public at any appeal hearing. If such a report is not forthcoming, there will be no option but to set aside the advice of the territorial health department and grant leave to remain as any refusal at appeal could not be defended.

On the rare occasion that an application is made for a child adopted in a "non designated" country to settle with his "adoptive parents" in the United Kingdom and no de facto dependency has arisen, and there is no intention to adopt the child again in the United Kingdom, the application should be refused under Paragraphs 310 and 320(1) of HC 395 (for the refusal wording, see Annex U).

Where the child's application also falls to be refused under the Rules relating to minor dependant relatives, the refusal wording should include a reference to Paragraphs 300 and 297 of HC395.

The appropriate British Diplomatic Post, the "parent" or "parents", and the DfES or appropriate Devolved Authority should all be notified of the decision as soon as possible.

CHECK ADDRESSES BELOW

9. LIST OF ADDRESSES AND TELEPHONE NUMBERS OF THE DCSF & DEVOLVED AUTHORITIES & GOVERNMENT AUTHORITIES IN THE CHANNEL ISLANDS & THE ISLE OF MAN.

England:

DCSF

England:

Inter-country Adoption Team Department for Education and Skills

Area D, Ground Floor

Mowden Hall

Staindrop Road

DARLINGTON

County Durham

DL3 9BG

Tel: 01325 391 700

Fax: 01325 391 396

e-mail: ica.darlington@dfes.gsi.gov.uk

Scotland:

Children and Young People's Group

Scottish Executive

Area 2C
Victoria Quay
EDINBURGH
Scotland
EH6 6QQ
Tel: 0131 244 3663
Fax: 0131 244 3547

Wales:

**Children's Health and Social Care
Directorate**

Welsh Assembly Government

Cathays Park
CARDIFF
Wales
CF10 3NQ
Tel: 02920 823 676 / 823 668
Fax: 02920 823 142

Northern Ireland:

**Department of Health, Social Services
and Public Safety**

Child Care Policy Directorate

Room D1.4
Castle Buildings,
Stormont,
BELFAST,
Northern Ireland.
BT4 3SQ
Tel: 02890 522 942
Fax: 02890 522 500

Isle of Man:

Isle of Man Adoption Service

3 Albany Lane
Douglas
Isle of Man
IM2 3NS
Tel: 01624 686 179 / 678 310
Fax: 01624 678 304
e-mail: general@mcaws.org.im

Guernsey:

States of Guernsey Health and Social Services

Homefinding Services

Garden Hill Resource Centre
The Rohais
St. Peter Port
Guernsey
GY1 1FB
Tel: 01481 713 230
Fax: 01481 700 951

Jersey:

Jersey:
States of Jersey Health and Social Services
Children's Services
Maison Le Pape
The Parade
St. Helier
Jersey
JE2 3PU
Tel: 01534 623 500
Fax: 01534 623 598

BRITISH AGENCIES FOR ADOPTION AND FOSTERING (BAAF)

For medical forms and information about adoption:

**British Agencies for Adoption and
Fostering (BAAF)**
3rd Floor,
Saffron House,
6 – 10 Kirby Street,
LONDON.
EC1N 8TS

Tel: 020 – 7421 – 2600
Fax: 020 – 7421 - 2601

To:

To: CAT DCOP, 14th Floor short corridor, Lunar House

INTERVENTION IN ADOPTION PROCEEDINGS

1. OFFICER: EXTENSION:

GROUP: ROOM:

2. HOME OFFICE REFERENCE:

CHILD'S NAME:

DATE OF BIRTH:

NATIONALITY:

ADOPTIVE PARENT(S) NAMES AND ADDRESS:

.....
.....

3. INVITATION TO INTERVENE RECEIVED ON:

.....

DECISION TO INTERVENE REACHED ON:

DECISION NOT TO INTERVENE ON:

DECISION TO WITHDRAW FROM

INTERVENTION PROCEEDINGS MADE ON:

REASON FOR WITHDRAWING:

.....

DATE OF FINAL HEARING AND OUTCOME OF

INTERVENTION PROCEEDINGS:

4. WAS THE CHILD ADMITTED FOR ADOPTION WITH THE
APPROPRIATE ENTRY CLEARANCE?

.....

IF NOT, ON WHAT BASIS WAS THE CHILD ADMITTED?

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