



RESEARCH PAPER 99/45
22 APRIL 1999

Adoption (Intercountry Aspects) Bill

Bill 18 of 1998-99

The *Adoption (Intercountry Aspects) Bill* is a Private Member's Bill, introduced by Mark Oaten MP, that has Government support. The main purpose of the Bill is to regulate intercountry adoption in general and to make provision for the implementation of the 1995 Hague Convention on intercountry adoption in particular. The Second Reading Debate is due to take place on 23 April. This Paper provides background information relating to the Bill's provisions and briefly outlines them.

Jo Roll

SOCIAL POLICY SECTION

HOUSE OF COMMONS LIBRARY

Recent Library Research Papers include:

List of 15 most recent RPs

99/30	Referendums: Recent Developments	16.03.99
99/31	Unemployment by Constituency - February 1999	17.03.99
99/32	The resignation of the European Commission	16.03.99
99/33	The <i>Access to Justice Bill</i> [HL]: Legal aid [Bill 67 of 1998-99]	22.03.99
99/34	Kosovo: NATO and Military Action	24.03.99
99/35	The Control of High Hedges	25.03.99
99/36	The Right to Buy	30.03.99
99/37	Economic Indicators	01.04.99
99/38	Genetically Modified Crops and Food	31.03.99
99/39	The <i>Health Bill</i> [HL] [Bill 77 of 1998-99]	08.04.99
99/40	The <i>Youth Justice and Criminal Evidence Bill</i> [HL] [Bill 74 of 1998-99]	14.04.99
99/41	The <i>Football (Offences and Disorder) Bill</i> [Bill 17 of 1998-99]	14.04.99
99/42	The Road Haulage Industry: costs and taxes	19.04.99
99/43	<i>Disability Rights Commission Bill</i> [HL] [Bill 73 of 1998-99]	20.04.99
99/44	Unemployment by Constituency - March 1999	21.04.99

Research Papers are available as PDF files:

- *to members of the general public on the Parliamentary web site,
URL: <http://www.parliament.uk>*
- *within Parliament to users of the Parliamentary Intranet,
URL: <http://hcl1.hclibrary.parliament.uk>*

Library Research Papers are compiled for the benefit of Members of Parliament and their personal staff. Authors are available to discuss the contents of these papers with Members and their staff but cannot advise members of the general public.

Users of the printed version of these papers will find a pre-addressed response form at the end of the text.

CONTENTS

I	Background	5
	A. Adoption Review: intercountry aspects	5
	B. A controversial issue	9
	C. International Regulation	12
II	The Bill	15
	A. Overview	15
	B. Provisions	16
	Appendix	18

I Background

A. Adoption Review: intercountry aspects

The present Bill is one of the outcomes of the broader review of adoption law set in motion in 1989 by Kenneth Clarke, then Secretary of State for Health.¹ The review was part of the Lord Chancellor's rolling programme of family law reform and was a response to the general changes in both law and practice that had taken place since the previous review of adoption law.²

The review happened to coincide with a sharp increase in intercountry adoptions associated with the collapse of the Ceausescu regime in Romania and the publicity surrounding the plight of Romanian orphans in January 1990. The Department of Health says that before 1990 there were few intercountry adoption and many of these concerned children adopted by birth relatives.³

The Department estimates that there are now about 400 adoptions each year of children from overseas by adopters living in the UK, over 300 that are through approved channels and about 100 that are not.⁴ The countries from which they are adopted has changed, partly as attention has focussed on the plight of children in other countries and partly as a result of Romanian concerns about illegal trafficking of children from that country, which led first to a ban, and then to controls over, adoption of children from Romania.⁵

As a result of the rise in intercountry adoption, it became one of the major aspects of the adoption review. Numerous background papers and research papers were published by the interdepartmental working group that Kenneth Clarke had set up, including a discussion paper on intercountry adoption published in January 1992 and a background paper on international perspectives in September 1990.⁶

The report of the working group, which was published as a consultation document in October 1992, recommended 45 changes to the adoption process, the duties of adoption agencies and the courts.⁷ But the group did not believe that the central nature of adoption in this country should be changed. This meant the retention of "full" adoption, which creates a new and irrevocable legal relationship between the child and its adoptive parents

¹ See, for example, Department of Health, Welsh Office, *Adoption - A Service for Children: adoption bill - a consultative document*, March 1996, which refers to the origins of the review

² Houghton Committee Report on the adoption of children 1972

³ *Adoption (Intercountry Aspects) Bill, Explanatory Notes* for Bill 18 of 1998/99, 14 April 1999

⁴ As above

⁵ An outline of intercountry adoption in postwar Europe and the changing patterns of adoption over time is discussed in Rob Sykes and Pete Alcock, *Developments in European Social Policy: Convergence and Diversity*, Chapter 7, *Intercountry adoption in Europe after the Hague Convention* by Peter Selman

⁶ These are referred to in the consultative document referred to above. There were also some background Papers published by the Scottish Office, including one on intercountry adoption published in 1995

⁷ Department of Health Press Release, *Review of Adoption Law Published* October 1992

that severs all legal ties between the child and his birth parents - a recommendation that has implications for intercountry as well as internal adoptions.

A White Paper relating to England and Wales followed. Its main recommendations are listed below include several on intercountry adoption (highlighted in italics:

- a new framework for domestic adoption law to make explicit the fact that the first duty in adoption is to the child
- proposals to allow children aged 12 or more the right to participate in their own adoption proceedings and to accept or reject an adoption
- simpler alternatives to adoption for step-parents, relatives or long-term foster parents
- new guidance to emphasise a common sense approach to such matters as the suitable age adopting parents and transracial adoption. Potential adoptive parents should be judged above all by the care and affection they can offer the child.
- *improved safeguards to deal with complaints about the handling of adoption cases, including a new complaints procedure and more independent assessment, streamlined arrangements for adopting from overseas and new safeguards when the Hague Convention on inter-country adoption comes in. There will be a new criminal offence for those who try to avoid the safeguards.*⁸

Announcing the White Paper in the House of Commons, Virginia Bottomley said:

"... Adoption is about creating a loving and stable family upbringing which best provides for the child. The basic framework for adopting children remains sound. Given their fundamental importance to the life of the child, all adoptions will continue to be authorised by the courts, advised as appropriate by social services authorities or adoption agencies, which are in turn advised by adoption panels.

However, there is a need to bring the legislation up to date. The law in this field was last changed in 1975. Adoption today is very different from 20 years ago. The number of adoptions has more than halved in the intervening period. Fewer babies and toddlers are adopted and a greater proportion of adoptions are of older children. Half of all adoptions today arise as a result of remarriage, when a step-parent wishes to establish a legal relationship with the natural child of his or her spouse. More people are interested in adopting children from abroad. The White Paper has been written against this background. It sets out a modern framework for adoption to take account of the way we live now...

...

⁸ *Adoption - The Future*, Cm 2288, November 1993. This summary of the recommendations is taken from the press notice issued by the Department of Health 3 November 1993.

Recent years have seen a steady growth in inter-country adoptions. That reflects both international events and the fact that, while the number of children available for domestic adoption has declined, the number of people wishing to adopt has not.

Those who want to adopt children from abroad should have their wishes respected. In all suitable cases, such adoptions should be facilitated. However, the procedures must be proper. They must prevent abuse. We must aim for the same high level of protection and benefits for the child as in domestic adoptions.

Earlier this year, the Government were represented in the preparation of a new Hague Convention on Intercountry Adoption. Adoptions between countries which ratify the convention should become much simpler than at present without losing any safeguards.

In particular, there will be no need to duplicate adoption orders in both countries involved. Immigration clearance for the child will become an integral part of the adoption process. The United Kingdom will ratify the convention once Parliament has enacted the necessary legislation..."⁹

Three years later, in March 1996, the Department of Health and the Welsh Office followed up the White Paper with a consultation document and a draft Bill.¹⁰ The draft Bill included provisions on intercountry adoption. A formal Bill was not presented to Parliament before the General Election of May 1997 and there was no mention of adoption legislation in either of the Queen's Speeches of the new Labour Government. However, the present Bill is based on the proposals for intercountry adoption in the 1996 consultative document¹¹ and thus starts to implement one aspect of the adoption review.

The 1996 consultation document sought views on two topics. One was how to deal with adoptions from countries that do not recognise "full" adoptions but instead have some form of "simple" adoption that does not have the effect of totally severing all ties from the birth parents. Provisions on this are included in the present Bill and follow the previous Government's favoured option. (See Part II of this Paper) The other was on the outline of draft regulations to implement the Hague Convention on Intercountry Adoptions, which were published in the consultation document. The present Bill provides for such Regulations to be made and the consultation document may therefore provide an indication of what these might contain.

Although they did not find time for their own legislation, the previous and present government have between them issued nine separate documents since 1990 giving

⁹ HC Deb 3 November 1993 c 341-2

¹⁰ Department of Health, Welsh Office, *Adoption - A Service for Children: adoption bill - a consultative document*, March 1996. Separate consultation documents were issued by the Scottish Office, including one on proposals for intercountry adoption

¹¹ Department of Health, *Adoption (Intercountry Aspects) Bill Regulatory Impact Assessment*, April 1999

guidance on adoption issues.¹² These include guidance designed to implement some of the recommendations resulting from the adoption review. The latest, issued under the present Government, contains a section on intercountry adoption, which sets out the present Government's thinking on the subject and provides an indication of some of the problems that have arisen. The relevant extract is reproduced below:

"INTERCOUNTRY ADOPTION

Children in need

50. Many children living abroad, for whatever reason, have been abandoned or relinquished for adoption by their birth parents. Their chances of being adopted or otherwise cared for by substitute families in their own country are often remote. Both the 1989 United Nations Convention on the Rights of the Child and the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption acknowledge the right of a child to belong to a family and recognises that intercountry adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her state of origin. The realistic alternative for the vast majority of these children is a childhood spent in institutional care.

The nature of intercountry adoption

51. The primary purpose of intercountry adoption is to provide a child with a family where this cannot be provided in the child's own country; it is not about improving the material quality of life of children from overseas, although this is likely to be one of its effects. Intercountry adoption is now a major feature of adoption in the United Kingdom. Most intercountry adoption applications involve a child leaving his or her own country to live permanently with families in the United Kingdom. This necessarily brings radical changes to the life of a child in many ways. Intercountry adoption also brings profound changes to the lives of the adopters and affects not only their immediate families but their relatives and friends. Adoption agencies need to be satisfied that prospective adopters are not only equal to the task of adopting a child from overseas but that they fully appreciate the implications of bringing an unrelated child from abroad into their own family. Prospective adopters also need to understand the implications for a child to be taken from his or her own country, family, friends, familiar environment etc. and begin life afresh in a totally unfamiliar setting.

Assisting prospective adopters

52. The Government recognises and understands the humanitarian and altruistic response of some people who wish to adopt children living overseas, particularly those described as orphaned or abandoned. Adoption agencies should be aware of both the nature and effects of intercountry adoption in their assessment of applicants. However, it is not acceptable for an applicant to be denied the

¹² *Regulatory Impact Assessment*, as above

opportunity to be assessed by an agency on the grounds that the agency does not agree with the notion of intercountry adoption or that the applicant does not share the same ethnic or cultural background as children from their country of choice. Local authority policies therefore must reflect the positive view of adoption referred to in legislation and in Government guidance and not support policies and attitudes of their own. Thus, people seeking to adopt children from overseas should have the opportunity to be assessed as prospective intercountry adopters. Senior managers should satisfy themselves that arrangements are in place to meet requests for assessment or for them to be carried out on their behalf.

Applying the same principles

53. Assessments and checks are necessarily thorough to ensure that prospective adopters are equal to the task in the very serious commitment they wish to undertake and, so far as possible, avoid future disruption of a placement. Such assessments and checks are also important to the countries from which the children originate; countries seek the assurance of the United Kingdom that prospective adopters have been assessed as suitable by agencies authorised to do so. The standards and criteria applied in domestic adoption concerning the assessment of prospective adopters are to be applied to families seeking to adopt a child from overseas. To do less would leave the United Kingdom open to accusations of applying double standards in their assessment process. These standards and associated criteria allow agencies to apply sufficient measures of flexibility and discretion to reflect conditions of children commonly encountered in intercountry adoption."¹³

B. A controversial issue

Intercountry adoption is a controversial issue. It has formed an increasing proportion of the work of adoption agencies in the United Kingdom, reflecting interest from an increasing number of prospective adopters. But at the same time, the view that in certain situations, efforts should be made to help the children grow up in their own countries is also strongly held.

This issue was highlighted in the case of Edita Keranovic, a four-year-old from Bosnia, who was adopted by a family in the UK. According to press reports in February 1997, a High Court judge ruled that the child should remain with the British family against the claims of her grandfather. Her grandfather had apparently been separated from her father by the Serbs. The grandfather never saw the father again but no-one had found his body either.¹⁴ A letter to the Independent newspaper from Catherine Stevens, the head of fundraising at the Romanian Orphanage Fund illustrates a different point of view:

¹³ Department of Health Circular to Local Authorities, LAC 98(20))

¹⁴ See, for example, "No peace for the war babies" *The Independent*, 19 February 1997

"Sir: The case of Edita Keranovic (report 18 February) has once again focused attention on international adoption which, at best, offers a solution for a very small number of children and, at worst makes large numbers of others vulnerable to exploitation.

Agencies such as the Romanian Orphanage Trust are working to promote long-term, in-country solutions to childcare problems in Central and Eastern Europe. We have had considerable success in Romania where we have got over 3,000 children out of orphanages and back into family life, entirely within the framework of Romanian law. Eighty per cent of these children have returned to their original or extended family. When this is not possible, there are plenty of Romanian families willing to adopt.

Solution can be found which prioritise the right and the best interests of children. These rights, and those of their families, should be safeguarded. International adoption should never be the first recourse." ¹⁵

The British Agencies for Adoption and Fostering (BAAF), in its leaflet on intercountry adoption, tries to discourage stereotypes of intercountry adoption by pointing out that images of Romanian "orphans" or South American street children, or reports of child-trafficking rings and "baby-farms" are only part of a much larger jigsaw of the intercountry adoption picture.

BAAF points out that there are many other kinds of situation where people may adopt a child from overseas: for example a black American airforce sergeant and his wife wanting to adopt and take back to the USA a child of mixed parentage that they have been fostering near their base in the UK or a soldier serving with the British Army on the Rhine who has just married a German divorcee with two children whom he wants to adopt¹⁶ The Overseas Adoption Helpline says that since it was formed in May 1992, 18,000 people have sought its advice. It confirms BAAF's statement that the situation of people seeking help is varied. ¹⁷

The BAAF leaflet also discusses the need for intercountry adoptions:

"There are various circumstances which may lead people to consider adopting children from overseas and some typical examples have been given already. There are also other situations, for example, war or famine or poverty, which may lead people to believe that adopting children affected by disasters will be the right solution but this may not always be the case. Some of these are described below.

¹⁵ "Putting children first in adoption" [Letter to the Editor], *The Independent* 22 February 1997

¹⁶ British Agencies for Adoption and Fostering leaflet, *Intercountry adoption: some questions answered*, 1994

¹⁷ The Overseas Adoption Helpline was originally set up in May 1992 by Virginia Bottomley, then Secretary of State for Health, largely in response to the rise in adoptions from Romania. It no longer receives government funding but continues in existence with charitable support, subscriptions from local authorities etc

War and emergency situations

In disaster situations, such as war or famine, families may be desperate to ensure their child's survival and will even consider placing a child with another family permanently. For example, there were large movements of children during the Vietnam war and, more recently, in Bosnia. One of the biggest problems with emergency situations is that there is rarely any systematic approach to placing children. They may be moved between countries, sometimes in an extremely haphazard way, with very little record-keeping or documentation about where they came from or where they are eventually placed. The Red Cross has made tremendous efforts to set up proper recording systems, developed from their experience in earlier wars. Moving people around, even if this is to ensure their safety, can have very serious long-term consequences.

In an emergency, it is impossible to gather the information needed to make a decision about whether a child is available for adoption. For example, are the child's parents alive or not? Would they agree to the plan? Are there any birth relatives who could care for them? For these reasons, intercountry adoption is not a suitable way of dealing with the needs of children who are moved as a result of a war, conflict or other emergency situation.

While some children may eventually need the safeguard of adoption, the first priority is to provide them with a secure safe environment where long-term plans can be made. Aid agencies report that the majority of children displaced by disasters can eventually be reunited with their families.

Poverty

Some destitute families have been driven to giving their child away for adoption in order to help the child escape from poverty. It is not surprising that a birth mother in an under-developed country might take advantage of the possibility of their child growing up in the relative wealth of a developed country. This may be a solution for one individual child, but it will never be the solution for meeting the needs of the millions of children in families in situations of extreme deprivation.

If large-scale intercountry adoption programmes were introduced, they could well prevent or delay the development of proper local child care programmes, as has happened in the past in Korea. Increasingly, countries which have traditionally been seen as "sending" countries are recognising this problem and some have introduced quota systems. This kind of arrangement ensures that, for example, for every one child sent abroad for adoption, another five children needing families are placed within their own countries. This has focused attention on assessing the resources available, concentrating on recruiting adoptive families for children in their countries of origin, or supporting children within their original families.

Other countries have also been extremely concerned at the number of children leaving their shores and have seen this as a threat to their future population levels and economic viability. Legal instruments have been introduced, for example, by

Romania, to restrict intercountry adoption to those children who would not find a family in their own country. Some of these children may have special health, educational or other needs or may be older or part of a large group of siblings who need to find a family together. In the UK too there are children with similar needs, who seek adoption and sometimes have to wait a long time for a family.

Relative and in-family adoptions

Given the movement of people globally, for economic and other reasons, there are many families with members residing in several different countries. Occasionally, when a child abroad can no longer be looked after by their parent/s or carers, family members in the UK may seek to adopt the child. There are specific legal requirements which have to be met in relation to these adoptions and it is best to seek advice at a very early stage.

There will be significant issues to consider not just because of the international aspects of the arrangement, but because adoption in the UK is irrevocable and transfers all the parental rights and duties without exception. Such a legal procedure may be unfamiliar in some countries and there must be certainty that those with existing responsibility for the child in their country of origin realise the full implications of a UK adoption order. Because of its effects on legal relationships, all those involved must understand fully how an adoption order would permanently alter the relationship they have with the child. For example, grandparents will cease to have that role and with it perhaps any right to contact with the child.

It will be the task of the social worker to ensure that these issues have been explored and dealt with fully. To carry out tasks like these abroad, the services of an organisation such as International Social Services may well be employed to undertake local visits in countries outside the UK. To bring a child who is a relative to the UK for adoption, it will still be necessary for the prospective adopters to satisfy immigration requirements."¹⁸

C. International Regulation

Although there may be differences of view about the desirability of intercountry adoption, the need for regulation of the process, where it occurs, by means other than those achievable by individual countries acting on their own, seems to have been widely accepted. The Hague Convention on International Adoption, signed in 1993, was prepared by 65 or more countries, including the UK, as well as non-government organisations and other voluntary bodies with an interest in intercountry adoption. At the beginning of March 1999, 25 countries had ratified the Convention, 35 had signed it, including the UK in 1994 and a further six had acceded.¹⁹

¹⁸ As above

¹⁹ *Adoption (Intercountry Aspects) Bill, Explanatory Notes* for Bill 18 of 1998/99, 14 April 1999

The Hague Convention is set out in full in the Appendix to this Paper. It covers adoptions into and out of countries and provides a framework setting out minimum standards for the process of intercountry adoption to work in the best interests of the children concerned and enables countries to absorb its Articles within their own substantive law. It sets requirements for countries of origin, for example that they must establish that the child is adoptable, that the consents of the relevant people have been obtained in writing and that the consents have not been induced by payment etc. Separate requirements are made of receiving countries, for example in relation to the suitability of the adoptive parents. There are also requirements, such as the establishment of central authorities and accrediting bodies, that apply to both receiving countries and countries of origin.

Although it has signed the Convention, the UK has not yet been able to ratify it because the legislation necessary to give effect to it has not yet been passed. The Government's view is that, under present legislation, intercountry adoption is "poorly regulated". Existing safeguards are provided by the *Adoption Act 1976* and the *Adoption (Scotland) Act 1978* but these apply mainly to adoptions of children adopted in this country. Every local authority has a duty to maintain an adoption service in its area and only local authorities and adoption agencies approved by the Secretary of State may make arrangements for the adoption of a child (except where the child is a relative). The process is set out in Regulations.

Intercountry adoption was unusual at the time the legislation was passed and detailed provisions were therefore not included, other than for the implementation of the 1965 Hague Convention.. This Convention was ratified by only two other countries - Austria and Switzerland. The three countries involved intend to denounce the 1965 Convention in favour of the 1993 one.²⁰

The poor level of regulation in general and the failure to ratify the Hague Convention 1993 in particular have provided the reasons for the present Bill. Formal responses to the Bill have been few but Mark Oaten, the Member by whom it is being introduced has cited in support of his Bill both the Overseas Adoption Helpline and the British Agencies for Adoption and Fostering.

Gill Haworth, Chief Executive of the Overseas Adoption Helpline said:

"We know that the vast majority of prospective adopters want a more regulated system and more efficient services so that they can be properly prepared and found suitable to adopt. They also want to know that the child who will eventually become a full member of their family truly needs them as parents - having been abandoned or fully relinquished for adoption. They do not wish to risk that they and the child have come together for life as a result of child

²⁰ Department of Health , *Adoption (Intercountry Aspects) Bill Regulatory Impact Assessment*, April 1999

trafficking or other irregularities which may, in time, threaten their security as a family."²¹

Felicity Collier, the director of the British Agencies for Adoption and Fostering said:

"We warmly welcome this Private Members Bill, which, if it became law, would provide much needed protection for children adopted from overseas. It is a matter of urgency that the UK ratify the Hague Convention of 1993, which it signed in 1994. This will enable us to work towards a position where all intercountry adoptions are made through government approved agencies and children are only adopted by families from outside their country of origin when it is clear that they cannot be placed with a family in their own country."²²

²¹ Private Members Bill Press Release: *Bill to protect children adopted from abroad*, Mark Oaten, Liberal Democrats, 8 January 1999

²² As above

II The Bill

This Part of the Research Paper describes provisions in the Bill. Commentary on it is taken from the Explanatory Notes to the Bill and the Regulatory Impact Assessment of the Bill, both produced by the Department of Health..

A. Overview

Purpose: The Bill covers all forms of intercountry adoption or adoption with a foreign element. Its two central, overlapping aims are:

- to fill present gaps in the law by providing a legal framework for intercountry adoptions; and
- to apply existing measures and safeguards to those children who are habitually resident outside the British Isles and who are to be adopted by prospective adopters habitually resident in the United Kingdom.

These aims will be fulfilled in two ways. One by giving effect to the Hague Convention on International Adoption 1993 and the other by amending the *Adoption Act 1976* and the *Adoption (Scotland) Act 1978* so that both "Convention adoptions" and adoptions relating to countries not taking part in the Convention are provided for.

Two new criminal offences will be created: one for breach of Regulations implementing the Hague Convention and one for bringing a child into the United Kingdom in breach of requirements set out in Regulations, in other intercountry cases. Both sets of Regulations are provided for by the Bill.

The central aim of the Bill is therefore not to make it easier for people to adopt from abroad but rather to ensure that the adoptions that do take place, take place within a regulated framework whose aim is to provide protection for the children. However, those adoptions that are regulated by the 1995 Hague Convention will be subject to a more streamlined procedure which is intended to be simpler and quicker.

Extent: Most of the Bill applies to Great Britain, with specific provisions for Scotland where necessary. A few provisions also apply to Northern Ireland.

Financial effects: Costs to government of implementing the Bill are expected to be minimal. The central authorities to be created are the respective Departments of Health in England, Wales and Scotland (see Provisions below). The Departments have had the responsibility for carrying out work on intercountry adoption for some years. Designation as central authorities under the Hague Convention is therefore unlikely to increase expenditure above de minimis.

Financial effects for local authorities are also expected to be minimal on the grounds that welfare structures and adoption procedures required by the Convention are already in

place in the UK. *The Adoption Act 1976* section 57(3) allows an adoption agency to charge for expenses reasonably incurred. This provision is not amended by the Bill.

Effects on public service manpower: The Bill is expected to have minimal effect on public service manpower.

Compliance costs for business, charities and voluntary organisations: areas affected will be adoption agencies in the statutory and voluntary sectors whose activities are regulated by statute. There are not expected to be any compliance costs that are not already addressed in current adoption legislation.

Commencement: It is expected that the legislation will come into effect about one year after Royal Assent, to allow time for the necessary Regulations to be made. The Bill provides for the Act to come into force on such day as the Secretary of State may provide and different days may be provided for different purposes.

B. Provisions

The Department of Health's Explanatory Notes to the Bill provide a detailed account of each clause. This section of the paper therefore provides a brief outline of the Bill's main provision. The Bill makes provision for:

- Great Britain to give effect to the Hague Convention 1993 through Regulations, which the Secretary of State is given power to make and for it to be a criminal offence to breach the Regulations (Clause 1);
- the establishment of a central authority in each of the countries of Great Britain to be responsible for the operation of the Convention and the appointment of approved adoption agencies as accredited bodies (Clause 2 and Clause 1)
- an adoption order to be a "Convention" adoption order if it meets the requirements to be specified in Regulations (Clause 3) . (A "Convention" order relates to the 1993 Convention and for most purposes the earlier Convention is replaced - (Clause 8) but with protection for the very few adoptions that were made under it)
- dealing with "simple" adoptions (see Part I of this Paper) by recognising them as "full" adoption but with provision for an application to the High Court in certain circumstances for it to be treated differently (Clause 4 (2) and (3))
- a " Convention" adoption to be recognised as and have the effect of a GB one (Clause 4 and 5)
- the annulment of "Convention" adoptions in certain limited circumstances (Clause 6)

- amendment of the *British Nationality Act 1981* to enable children adopted overseas under the Convention to receive British Citizenship automatically under certain conditions (Clause 7)
- amendment of the existing adoption legislation to make clear that the adoption service provided by local authorities includes all adoptions not just those made in Great Britain (Clause 9)
- adoption societies to be approved either for non-intercountry adoptions or all adoptions - meaning that voluntary organisations wanting to be approved for intercountry adoption purposes must be approved for all adoptions (Clause 10 - this provision is not necessary in Scotland as the *Children (Scotland Act) 1995* already enables adoption agencies to be approved for specific purposes)
- in cases of intercountry adoption, where the child is brought here for adoption and the placement is made by an adoption agency, the child to be required to have his home with the prospective adopters for a period of at least 6 months - but where the placements is not made by an agency, the period remains at 12 months, where it is now (Clause 11)
- the Registrar General to make an entry in the Adopted Children Register if he has enough particulars of an adoption order made under the Convention or made overseas that meets criteria to be set out in Regulations (Clause 12)
- home study assessment reports prepared by or on behalf of an adoption agency to be a requirement (Clause 13 - to be read with Sections 11 and 56 of the 1976 Act and Sections 11 and 51 of the 1978 (Scotland) Act)
- it to be a criminal offence for a person habitually resident in the British Isles to bring into the UK for the purposes of adoption a child who is habitually resident outside these islands unless the person complies with requirement to be prescribed in Regulations (Clause 14)

Appendix

CONVENTION ON PROTECTION OF CHILDREN AND CO-OPERATION IN RESPECT OF INTERCOUNTRY ADOPTION²³

The States signatory to the present Convention,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Recalling that each State should take, as a matter of priority, appropriate measures to enable the child to remain in the care of his or her family of origin,

Recognizing that intercountry adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her State of origin,

Convinced of the necessity to take measures to ensure that intercountry adoptions are made in the best interests of the child and with respect for his or her fundamental rights, and to prevent the abduction, the sale of, or traffic in children,

Desiring to establish common provisions to this effect, taking into account the principles set forth in international instruments, in particular the United Nations Convention of the Rights of the Child, of 20 November 1989²⁴ and the United Nations Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally (General Assembly Resolution 41/85, of 3 December 1986),

Have agreed upon the following provisions-

CHAPTER I-SCOPE OF THE CONVENTION

ARTICLE 1

The objects of the present Convention are-

- (a) to establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights as

²³ This is reproduced from Treaty series No 40 (1994), Cm 2691, *Convention on Protection of Children and Co-operation in respect of Intercountry Adoption*, The Hague, 29 May 1993, presented to Parliament, October 1994

²⁴ Treaty Series No.44 (1992), Cm 1976.

recognized in international law;

- (b) to establish a system of co-operation amongst Contracting States to ensure that those safeguards are respected and thereby prevent the abduction, the sale of, or traffic in children;
- (c) to secure the recognition in Contracting States of adoptions made in accordance with the Convention.

ARTICLE 2

1. The Convention shall apply where a child habitually resident in one Contracting State ("the State of origin") has been, is being, or is to be moved to another Contracting State ("the receiving State") either after his or her adoption in the State of origin by spouses or a person habitually resident in the receiving State, or for the purposes of such an adoption in the receiving State or in the State of origin.
2. The Convention covers only adoptions which create a permanent parent-child relationship.

ARTICLE 3

The Convention ceases to apply if the agreements mentioned in Article 17, subparagraph (c) have not been given before the child attains the age of eighteen years.

CHAPTER II-REQUIREMENTS FOR INTERCOUNTRY ADOPTIONS

ARTICLE 4

An adoption within the scope of the Convention shall take place only if the competent authorities of the State of origin-

- (a) have established that the child is adoptable;
- (b) have determined, after possibilities for placement of the child within the State of origin have been given due consideration, that an intercountry adoption is in the child's best interests;
- (c) have ensured that:
 - (1) the persons, institutions and authorities whose consent is necessary for adoption, have been counselled as may be necessary and duly informed of the effects of their consent, in particular whether or not an adoption will result in the termination of the legal relationship between the child and his or her family of origin,

- (2) such persons, institutions and authorities have given their consent freely, in the required legal form, and expressed or evidenced in writing,
 - (3) the consents have not been induced by payment or compensation of any kind and have not been withdrawn, and
 - (4) the consent of the mother, where required, has been given only after the birth of the child; and
- (d) have ensured, having regard to the age and degree of maturity of the child, that
- (1) he or she has been counselled and duly informed of the effects of the adoption and of his or her consent to the adoption, where such consent is required,
 - (2) consideration has been given to the child's wishes and opinions,
 - (3) the child's consent to the adoption, where such consent is required, has been given freely, in the required legal form, and expressed or evidenced in writing, and
 - (4) such consent has not been induced by payment or compensation of any kind.

ARTICLE 5

An adoption within the scope of the Convention shall take place only if the competent authorities of the receiving State-

- (a) have determined that the prospective adoptive parents are eligible and suited to adopt;
- (b) have ensured that the prospective adoptive parents have been counselled as may be necessary; and
- (c) have determined that the child is or will be authorized to enter and reside permanently in that State.

CHAPTER III-CENTRAL AUTHORITIES AND ACCREDITED BODIES

ARTICLE 6

1. A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities.
2. Federal States, States with more than one system of law or States having autonomous territorial units shall be free to appoint more than one Central Authority and to specify the territorial or personal extent of their functions. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which any communication may be addressed for transmission to the appropriate Central Authority within that State.

ARTICLE 7

1. Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their States to protect children and to achieve the other objects of the Convention.

2. They shall take directly all appropriate measures to-

- (a) provide information as to the laws of their States concerning adoption and other general information, such as statistics and standard forms;
- (b) keep one another informed about the operation of the Convention and, as far as possible, eliminate any obstacles to its application.

ARTICLE 8

Central Authorities shall take, directly or through public authorities, all appropriate measures to prevent improper financial or other gain in connection with an adoption and to deter all practices contrary to the objects of the Convention.

ARTICLE 9

Central Authorities shall take, directly or through public authorities or other bodies duly accredited in their State, all appropriate measures, in particular to-

- (a) collect, preserve and exchange information about the situation of the child and the prospective adoptive parents, so far as is necessary to complete the adoption;
- (b) facilitate, follow and expedite proceedings with a view to obtaining the adoption;
- (c) promote the development of adoption counselling and post-adoption services in their States;
- (d) provide each other with general evaluation reports about experience with intercountry adoption;
- (e) reply, in so far as is permitted by the law of their State, to justified requests from other Central Authorities or public authorities for information about a particular adoption situation.

ARTICLE 10

Accreditation shall only be granted to and maintained by bodies demonstrating their competence to carry out properly the tasks with which they may be entrusted.

ARTICLE 11

An accredited body shall-

- (a) pursue only non-profit objectives according to such conditions and within such limits as may be established by the competent authorities of the State of accreditation;
- (b) be directed and staffed by persons qualified by their ethical standards and by training or experience to work in the field of intercountry adoption; and
- (c) be subject to supervision by competent authorities of that State as to its composition, operation and financial situation.

ARTICLE 12

A body accredited in one Contracting State may act in another Contracting State only if the competent authorities of both States have authorized it to do so.

ARTICLE 13

The designation of the Central Authorities and, where appropriate, the extent of their functions, as well as the names and addresses of the accredited bodies shall be communicated by each Contracting State to the Permanent Bureau of the Hague Conference on Private International Law.

CHAPTER IV-PROCEDURAL REQUIREMENTS IN INTERCOUNTRY ADOPTION

ARTICLE 14

Persons habitually resident in a Contracting State, who wish to adopt a child habitually resident in another Contracting State, shall apply to the Central Authority in the State of their habitual residence.

ARTICLE 15

1. If the Central Authority of the receiving State is satisfied that the applicants are eligible and suited to adopt, it shall prepare a report including information about their identity, eligibility and suitability to adopt, background, family and medical history, social environment, reasons for adoption, ability to undertake an intercountry adoption, as well as the characteristics of the children for whom they would be qualified to care.
2. It shall transmit the report to the Central Authority of the State of origin.

ARTICLE 16

1. If the Central Authority of the State of origin is satisfied that the child is adoptable, it shall-

- (a) prepare a report including information about his or her identity, adoptability, background, social environment, family history, medical history including that of the child's family, and any special needs of the child;
 - (b) give due consideration to the child's upbringing and to his or her ethnic, religious and cultural background;
 - (c) ensure that consents have been obtained in accordance with Article 4; and
 - (d) determine, on the basis in particular of the reports relating to the child and the prospective adoptive parents, whether the envisaged placement is in the best interests of the child.
2. It shall transmit to the Central Authority of the receiving State its report on the child, proof that the necessary consents have been obtained and the reasons for its determination on the placement, taking care not to reveal the identity of the mother and the father if, in the State of origin, these identities may not be disclosed.

ARTICLE 17

Any decision in the State of origin that a child should be entrusted to prospective adoptive parents may only be made if-

- (a) the Central Authority of that State has ensured that the prospective adoptive parents agree;
- (b) the Central Authority of the receiving State has approved such decision, where such approval is required by the law of that State or by the Central Authority of the State of origin;
- (b) the Central Authorities of both States have agreed that the adoption may proceed; and
- (d) it has been determined, in accordance with Article 5, that the prospective adoptive parents are eligible and suited to adopt and that the child is or will be authorized to enter and reside permanently in the receiving State.

ARTICLE 18

The Central Authorities of both States shall take all necessary steps to obtain permission for the child to leave the State of origin and to enter and reside permanently in the receiving State.

ARTICLE 19

1. The transfer of the child to the receiving State may only be carried out if the requirements of Article 17 have been satisfied.
2. The Central Authorities of both States shall ensure that this transfer takes place in secure and appropriate circumstances and, if possible, in the company of the adoptive or prospective adoptive parents.
3. If the transfer of the child does not take place, the reports referred to in Articles 15 and 16 are to be sent back to the authorities who forwarded them.

ARTICLE 20

The Central Authorities shall keep each other informed about the adoption process and the measures taken to complete it, as well as about the progress of the placement if a probationary period is required.

ARTICLE 21

1. Where the adoption is to take place after the transfer of the child to the receiving State and it appears to the Central Authority of that State that the continued placement of the child with the prospective adoptive parents is not in the child's best interests, such Central Authority shall take the measures necessary to protect the child, in particular
 - (a) to cause the child to be withdrawn from the prospective adoptive parents and to arrange temporary care;
 - (b) in consultation with the Central Authority of the State of origin, to arrange without delay a new placement of the child with a view to adoption or, if this is not appropriate, to arrange alternative long-term care; an adoption shall not take place until the Central Authority of the State of origin has been duly informed concerning the new prospective adoptive parents;
 - (c) as a last resort, to arrange the return of the child, if his or her interests so require.
2. Having regard in particular to the age and degree of maturity of the child, he or she shall be consulted and, where appropriate, his or her consent obtained in relation to measures to be taken under this Article.

ARTICLE 22

1. The functions of a Central Authority under this Chapter may be performed by public authorities or by bodies accredited under Chapter III, to the extent permitted by the law of its State.
2. Any Contracting State may declare to the depositary of the Convention that the functions of the Central Authority under Articles 15 to 21 may be performed in that State,

to the extent permitted by the law and subject to the supervision of the competent authorities of that State, also by bodies or persons who-

- (a) meet the requirements of integrity, professional competence, experience and accountability of that State; and
- (b) are qualified by their ethical standards and by training or experience to work in the field of intercountry adoption.

3. A Contracting State which makes declaration provided for in paragraph 2 shall keep the Permanent Bureau of the Hague Conference on Private International Law informed of the names and addresses of these bodies and persons.

4. Any Contracting State may declare to the depositary of the Convention that adoptions of children habitually resident in its territory may only take place if the functions of the Central Authorities are performed in accordance with paragraph 1.

5. Notwithstanding any declaration made under paragraph 2, the reports provided for in Articles 15 and 16 shall, in every case, be prepared under the responsibility of the Central Authority or other authorities or bodies in accordance with paragraph 1.

CHAPTER V-RECOGNITION AND EFFECTS OF THE ADOPTION

ARTICLE 23

1. An adoption certified by the competent authority of the State of the adoption as having been made in accordance with the Convention shall be recognized by operation of law in the other Contracting States. The certificate shall specify when and by whom the agreements under Article 17, sub-paragraph c, were given.

2. Each Contracting State shall, at the time of signature, ratification, acceptance, approval or accession, notify the depositary of the Convention of the identity and the functions of the authority or the authorities which, in that State, are competent to make the certification. It shall also notify the depositary of any modification in the designation of these authorities.

ARTICLE 24

The recognition of an adoption may be refused in a Contracting State only if the adoption is manifestly contrary to its public policy, taking into account the best interests of the child.

ARTICLE 25

Any Contracting State may declare to the depositary of the Convention that it will not be bound under this Convention to recognize adoptions made in accordance with an agreement concluded by application of Article 39, paragraph 2.

ARTICLE 26

1. The recognition of an adoption includes recognition of-
 - (a) the legal parent-child relationship between the child and his or her adoptive parents;
 - (b) parental responsibility of the adoptive parents for the child;
 - (c) the termination of a pre-existing legal relationship between the child and his or her mother and father, if the adoption has this effect in the Contracting State where it was made.
2. In the case of an adoption having the effect of terminating a pre-existing legal parent-child relationship, the child shall enjoy in the receiving State, and in any other Contracting State where the adoption is recognized, rights equivalent to those resulting from adoptions having this effect in each such State.
3. The preceding paragraphs shall not prejudice the application of any provision more favourable for the child, in force in the Contracting State which recognizes the adoption.

ARTICLE 27

1. Where an adoption granted in the State of origin does not have the effect of terminating a pre-existing legal parent-child relationship, it may, in the receiving State which recognizes the adoption under the Convention, be converted into an adoption having such an effect-
 - (a) if the law of the receiving State so permits; and
 - (b) if the consents referred to in Article 4, sub-paragraphs (c) and (d), have been or are given for the purpose of such an adoption.
2. Article 23 applies to the decision converting the adoption.

CHAPTER VI-GENERAL PROVISIONS

ARTICLE 28

The Convention does not affect any law of a State of origin which requires that the adoption of a child habitually resident within that State take place in that State or which prohibits the child's placement in, or transfer to, the receiving State prior to adoption.

ARTICLE 29

There shall be no contact between the prospective adoptive parents and the child's parents or any other person who has care of the child until the requirements of Article 4, sub-paragraphs (a) to (c), and Article 5, sub-paragraph (a), have been met, unless the adoption takes place within a family or unless the contact is in compliance with the conditions established by the competent authority of the State of origin.

ARTICLE 30

1. The competent authorities of a Contracting State shall ensure that information held by them concerning the child's origin, in particular information concerning the identity of his or her parents, as well as the medical history, is preserved.
2. They shall ensure that the child or his or her representative has access to such information, under appropriate guidance, in so far as is permitted by the law of that State.

ARTICLE 31

Without prejudice to Article 30, personal data gathered or transmitted under the Convention, especially data referred to in Articles 15 and 16, shall be used only for the purposes for which they were gathered or transmitted.

ARTICLE 32

1. No one shall derive improper financial or other gain from an activity related to an intercountry adoption.
2. Only costs and expenses, including reasonable professional fees of persons involved in the adoption, may be charged or paid.
3. The directors, administrators and employees of bodies involved in an adoption shall not receive remuneration which is unreasonably high in relation to services rendered.

ARTICLE 33

A competent authority which finds that any provision of the Convention has not been respected or that there is a serious risk that it may not be respected, shall immediately inform the Central Authority of its State. This Central Authority shall be responsible for ensuring that appropriate measures are taken.

ARTICLE 34

If the competent authority of the State of destination of a document so requests, a translation certified as being in conformity with the original must be furnished. Unless

otherwise provided, the costs of such translation are to be borne by the prospective adoptive parents.

ARTICLE 35

The competent authorities of the Contracting States shall act expeditiously in the process of adoption.

ARTICLE 36

In relation to a State which has two or more systems of law with regard to adoption applicable in different territorial units-

- (a) any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;
- (b) any reference to the law of that State shall be construed as referring to the law in force in the relevant territorial unit;
- (c) any reference to the competent authorities or to the public authorities of that State shall be construed as referring to those authorized to act in the relevant territorial unit;
- (d) any reference to the accredited bodies of that State shall be construed as referring to bodies accredited in the relevant territorial unit.

ARTICLE 37

In relation to a State which with regard to adoption has two or more systems of law applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.

ARTICLE 38

A State within which different territorial units have their own rules of law in respect of adoption shall not be bound to apply the Convention where a State with a unified system of law would not be bound to do so.

ARTICLE 39

1. The Convention does not affect any international instrument to which Contracting States are Parties and which contains provisions on matters governed by the Convention, unless a contrary declaration is made by the States Parties to such instrument.
2. Any Contracting State may enter into agreements with one or more other Contracting States, with a view to improving the application of the Convention in their mutual

relations. These agreements may derogate only from the provisions of Articles 14 to 16 and 18 to 21. The States which have concluded such an agreement shall transmit a copy to the depositary of the Convention.

ARTICLE 40

No reservation to the Convention shall be permitted.

ARTICLE 41

The Convention shall apply in every case where an application pursuant to Article 14 has been received after the Convention has entered into force in the receiving State and the State of origin.

ARTICLE 42

The Secretary General of the Hague Conference on Private International Law shall at regular intervals convene a Special Commission in order to review the practical operation of the Convention.

CHAPTER VII-FINAL CLAUSES

ARTICLE 43

1. The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Seventeenth Session and by the other States which participated in that Session.
2. It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention.

ARTICLE 44

1. Any other State may accede to the Convention after it has entered into force in accordance with Article 46, paragraph 1.
2. The instrument of accession shall be deposited with the depositary.
3. Such accession shall have effect only as regards the relations between the acceding State and those Contracting States which have not raised an objection to its accession in the six months after the receipt of the notification referred to in sub-paragraph (b) of Article 48. Such an objection may also be raised by States at the time when they ratify, accept or approve the Convention after an accession. Any such objection shall be notified to the depositary.

ARTICLE 45

1. If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in the Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.
2. Any such declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.
3. If a State makes no declaration under this Article, the Convention is to extend to all territorial units of that State.

ARTICLE 46

1. The Convention shall enter into force on the first day of the month following the expiration of three months after the deposit of the third instrument of ratification, acceptance or approval referred to in Article 43.
2. Thereafter the Convention shall enter into force-
 - (a) for each State ratifying, accepting or approving it subsequently, or acceding to it, on the first day of the month following the expiration of three months after the deposit of its instrument of ratification, acceptance, approval or accession;
 - (b) for a territorial unit to which the Convention has been extended in conformity with Article 45, on the first day of the month following the expiration of three months after the notification referred to in that Article.

ARTICLE 47

1. A State Party to the Convention may denounce it by a notification in writing addressed to the depositary.
2. The denunciation takes effect on the first day of the month following the expiration of twelve months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

ARTICLE 48

The depositary shall notify the States Members of the Hague Conference on Private International Law, the other States which participated in the Seventeenth Session and the States which have acceded in accordance with Article 44, of the following-

- (a) the signatures, ratifications acceptances and approvals referred to in Article 43;
- (b) the accessions and objections raised to accessions referred to in Article 44;
- (c) the date on which the Convention enters into force in accordance with Article 46;
- (d) the declarations and designations referred to in Articles 22, 23, 25 and 45;
- (e) the agreements referred to in Article 39;
- (f) the denunciations referred to in Article 47.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Convention.

DONE at The Hague, on the 29th day of May 1993, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Seventeenth Session and to each of the other States which participated in that Session.

SIGNATURES

<i>State</i>	<i>Date</i>
Brazil	29 May 1993
Burkina Faso	19 Apr. 1994
Canada	12 Apr. 1994
Colombia	1 Sep. 1993
Costa Rica	29 May 1993
Ecuador	3 May 1994
Finland	19 Apr. 1994
Israel	2 Nov. 1993
Mexico	29 May 1993
Netherlands	5 Dec. 1993
Romania	29 May 1993
United Kingdom	12 Jan. 1994
United States	31 Mar. 1994
Uruguay	1 Sep. 1993