

Annex C: Further information on adoptions with a foreign element

This annex sets out information about adoptions with a foreign element, including international law, the role of the DfES, the procedures for matching prospective adopters with a child, bringing children into the UK and taking children out of the UK. Although the subjects in this annex cover the role of other agencies and authorities, adoption agencies should ensure that they are familiar with this information, so they are able to explain it to prospective intercountry adopters, or children for whom the agency is considering a placement outside the UK.

Part one: General

International law	3
Domestic law	5
Handling cases that have not been through the proper procedures	5

Part two: UK as a receiving State

Domicile and habitual residence	6
Immigration status of adopters	6
Designated List	8
Procedure following approval of intercountry adopter	9
Role of the DfES	9
Matching	10

Placing the child with the prospective adopter	14
Bringing the child into the UK	15
Prospective adopters wish to change country	17
Circumstances where a child has already been identified by prospective adopters	18
British citizens and others with rights to live in the UK – living and adopting abroad	18
Post-placement reports	20
Part 3: UK as a State of origin	
Role of the DfES	25
Matching in Convention cases	26
Restrictions on taking children out of the UK	29
Post-placement reports	29

PART ONE: GENERAL

- 1 This part sets out general considerations that apply to all adoptions with a foreign element, regardless of whether the UK is the receiving State or the State of origin.

International law

- 2 A number of international instruments provide a framework for the operation of intercountry adoption that keeps the interest of the child central to the process and any decisions that are made. These include:
 - The UN Declaration on Social Legal Principles relating to the Protection and Welfare of Children, with special reference to Foster Placements and Adoption nationally and internationally, adopted by General Assembly Resolution 41/85 of 3rd December 1983
 - The UN Convention on the Rights of the Child 1989
 - The Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption 1993
 - Recommendation 1443(2000) International adoption: respecting children's rights adopted by the Parliamentary Assembly of the Council of Europe on 26th January 2000
 - The European Parliament's Resolution on improving the law and co-operation between the Member States on the adoption of minors of 12th December 1996
- 3 They provide that:
 - Children who cannot live with their birth parents should be either found a placement with a family member or given the opportunity to live with a family within his or her State of origin
 - Intercountry adoption may be considered as an alternative means of providing a permanent family for a child who cannot be cared for in a suitable family in his or her own country
 - Intercountry adoption should take place in the best interests of the child and with respect for his or her fundamental rights
 - Safeguards and standards equivalent to those which apply in domestic adoption should be applied in intercountry adoption to protect the welfare of the child
 - Profit should not be made from the process

Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption

- 4 The UK implemented the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption with effect from 1 June 2003. The Convention aims to establish safeguards to protect the best interests of the child and put in place a system of co-operation between countries to prevent the abduction of, the sale of, or traffic in children.
- 5 Key requirements are:
 - The child's home country must ensure that the child has been freely given up for adoption and that this has not been induced by payment or compensation of any kind
 - Attempts must be made to place the child in a family in their home country. If this is not possible, it must be confirmed that intercountry adoption is in the child's best interests
 - An adoption can only take place if the adopters have been approved as suitable to become adopters in the receiving State (i.e. in their home country) and the receiving country confirms that the child will be allowed to reside permanently in that country
 - All appropriate measures must be taken by contracting States to prevent improper financial or other gain in connection with adoption and to deter all practices contrary to the objects of the Convention
 - The State may accredit bodies to work as adoption agencies. These bodies must be non-profit making
 - Adoptions made in countries which have ratified or acceded to the Convention, if certified in accordance with Article 23(1), are recognised in other Hague Convention contracting States
- 6 Any person wishing to adopt under the Convention must comply with the procedures set out for Convention cases in the **FER**. Failure to do so may mean that one or both of the Central Authorities in the contracting States will be unable to provide the agreements required by the Convention. In such a case, the prospective adopter will not be able to obtain a Convention adoption or Convention adoption order and the provisions for non-Convention cases in section 83 of the Act will apply.

Domestic law

- 7 The main legal framework for intercountry adoption is set out in the following primary and secondary legislation:
- The Adoption (Intercountry Aspects) Act 1999
 - The Adoption and Children Act 2002 (the Act)
 - The Adoption Agencies Regulations 2005 (the **AAR**)
 - The Adoptions with a Foreign Element Regulations 2005 (the **FER**)
 - The Suitability of Adopters Regulations 2005 (the **SAR**)
 - The Restriction on the Preparation of Adoption Reports Regulations 2005 (the **ARR**)
- 8 The **AAR** provide for the duties adoption agencies have in relation to arranging adoptions under the Act. This includes agency arrangements for adoption work, considering whether a child should be placed for adoption, approval of prospective adopters and whether a particular child should be placed with prospective adopters.
- 9 The **FER** provide additional requirements for, and set out additional procedures in relation to, the adoption of children from abroad by British residents and the adoption of children in England and Wales by persons resident abroad. This includes adoptions falling within the scope of the Convention and non-Convention adoptions. The **FER** apply particular provisions of the **AAR** to intercountry cases. The **AAR** and **FER** must therefore be read together.

Handling cases that have not been through the proper procedures

- 10 As a public authority, a local authority has a duty to notify the Police and provide them with such information as they may require if they are made aware that a person has:
- made an application to adopt a child who was brought into the UK in contravention of the provisions on intercountry adoption in the Act, or
 - brought, or has caused someone else to bring, a child into the UK without complying with the conditions or requirements included in the **FER**, or
 - brought a child into the UK with the immigration status of a visitor but with the actual intention of adopting the child, or
 - removed a child from the UK for the purposes of adoption in a country outside the British Islands without complying with section 85 of the Act

- 11 The Police will investigate the case and, where relevant, refer it to the Crown Prosecution Service for it to determine whether or not to prosecute the alleged offender.

PART TWO: UK AS A RECEIVING STATE

- 12 This part sets out considerations that apply where the UK is the receiving State.

Domicile and habitual residence

- 13 It is essential that prospective intercountry adopters seek independent legal advice in respect of their domicile and habitual residence status as early as possible in the adoption process. See Annex A for more information.

Immigration status of adopters

- 14 It is recommended that prospective adopters check their immigration status prior to considering intercountry adoption and, if appropriate, seek their own independent legal advice. The main possibilities are:
 - British citizens – British citizens are not subject to immigration control. If a British citizen adopts in a Convention country under the Hague Convention, and is (or, in the case of a couple, both of them) habitually resident in the UK, the child will automatically receive British citizenship. If they adopt from a country whose adoptions are recognised as overseas adoptions, they will need to obtain entry clearance prior to bringing the child into the UK, and apply for their child to be registered as a British citizen. If they bring a child into the UK for the purposes of adoption, and a court in the UK makes an adoption order, the child will automatically receive British citizenship
 - Settled – If an individual has settled status (i.e. they have indefinite leave to remain in the UK and are ordinarily resident in the UK) they are permitted to remain indefinitely in the UK. They will be able to apply for entry clearance for a child adopted in a foreign country by them to enter and remain indefinitely in the UK. They will then be able to adopt the child in a UK Court if they meet the domicile or habitual residence conditions in section 49 of the Act. If they are not domiciled they may seek to adopt from a Hague Convention country, or from a country whose adoptions are recognised as overseas adoptions, so that the adoption order is recognised in the UK
 - European Economic Area (EEA) nationals – EEA nationals are able to exercise Treaty Rights to reside in the UK. Once they have lived in the UK for four years, they are able to apply for indefinite leave to remain if they wish to do so. They will only be able to

adopt the child in a UK Court if they meet the domicile or habitual residence conditions in section 49 of the Act. However, it is unlikely that the Home Office would be able to issue confirmation that the child would be permitted to reside permanently in the UK if they wished to adopt under the Hague Convention (although they should seek advice from the Home Office and their own independent legal advisor, as this is a complex area). But if they adopted from a country whose adoptions are recognised as overseas adoptions, then that adoption would be recognised and they would be able to apply for entry clearance for the child to join them

- Working Visa – someone in the UK on a short term working visa is unlikely to be domiciled in the UK or considered to be habitually resident in the UK. The Home Office would be unable to give the assurances that the child would be permitted to reside permanently in the UK (as the adopters would not be) so they would not be able to adopt under the Convention. They will only be able to adopt the child in a UK Court if they meet the domicile or habitual residence conditions in section 49 of the Act, and may therefore wish to consider adopting from a country whose adoptions are recognised as overseas adoptions.
- 15 Prospective intercountry adopters should also consider the immigration requirements for bringing a child into the UK at an early stage. The immigration requirements, together with the prospective adopter's domicile and habitual residence status, may have an impact on their choice of country.
- 16 Where a child has been adopted or entrusted to an individual in a foreign country, unless the child has automatically received British citizenship on the making of a Convention adoption, the adopter must apply for entry clearance or, if at least one adopter is a British citizen, for the child to be registered as a British citizen. There are three possible options:
- Bringing the Child into the UK for the Purposes of Adoption – those who have adopted in a country whose adoption orders are not recognised in the UK are likely to want to adopt in the UK so that their relationship with the child is recognised under UK law. Individuals may only adopt in the UK if they meet the domicile or habitual residence conditions in section 49 of the Act. Where the applicant meets either of these conditions, and the entry clearance officer is content that the adoption is a genuine adoption, and the paperwork is in order, a time limited visa may be issued which will allow the child to be brought into the UK for the purposes of adoption. Alternatively, an application can be made by a British citizen for the child to be registered as a British citizen prior to bringing the child into the UK. Decisions will be made on a case by case basis

- Bringing an Adopted Child into the UK – where a child has been adopted outside the British Islands and that adoption is recognised under UK law (either because it is a Convention adoption or because it is an adoption made in a country whose adoptions are recognised as overseas adoptions), and the entry clearance officer is satisfied that it is a genuine adoption and other immigration requirements have been met, the child will usually be granted entry clearance to reside with their adoptive parent. Alternatively, an application can be made by a British citizen for the child to be registered as a British citizen prior to bringing the child into the UK. Decisions will be made on a case-by-case basis
- De Facto Dependants – where the child has not been adopted in a way recognised under UK law. If the child has been integrated into the family for so long that s/he can be considered to be an adopted child for immigration purposes (although the relationship will not be recognised legally), the child may be granted entry clearance as a de facto dependant on the same basis as their “adoptive parent”. This is an immigration provision and exists to allow the entry of a child who has been fully integrated into a family whilst they were residing abroad for a long period of time. It is not a provision which will apply to anyone who has resided in the UK throughout the previous 18 months. Further details of the requirements of this provision may be seen on the Home Office website at www.ind.homeoffice.gov.uk. It should be noted that if the adopter could be considered as habitually resident in the UK, they should seek independent legal advice on whether or not they will be committing an offence under section 83 of the Act by bringing the child into the UK on this basis.

DESIGNATED LIST

- 17 The Adoption (Designation of Overseas Adoptions) Order 1973 (as amended in 1993) enables adoption orders made in countries listed on the Order (commonly referred to as the designated list) to be recognised in the UK. Anyone habitually resident in the UK wishing to adopt from a country on the designated list must comply with the requirements and conditions set out in the **FER**. When an adoption is made in a country included on the designated list, the adoption is automatically recognised under UK law. This is referred to as an overseas adoption. This type of adoption can be registered in the Adopted Children Register. See chapter 12 for more information.

British citizenship

- 18 Adoptions by British citizens in designated countries do not automatically convey British citizenship on the child. However, the adopter can apply for British citizenship for the child. Application forms are available from:

Home Office Nationality Group
PO Box 306
Liverpool
L2 7XS

Telephone: 0845 010 5200

Email: nationalityenquiries@ind.homeoffice.gsi.gov.uk

Website: www.ind.homeoffice.gov.uk/

PROCEDURE FOLLOWING APPROVAL OF INTERCOUNTRY ADOPTER

- 19 This section sets out the typical process for all intercountry adoption applications, once the prospective adopter's application has been submitted to the DfES for checking and onward transmission to the relevant authority in the State of origin. Procedural differences between Convention cases and non-Convention cases are highlighted.¹

Role of the DfES

Checking Applications

- 20 On receipt of an application, the intercountry adoption caseworker in the DfES will check that the relevant statutory requirements and procedures have been complied with, and that all the necessary information has been provided.
- 21 Beyond checking that the legislative requirements and procedures have been followed, the DfES will *not* check the content of the prospective adopter's report or the supporting documents. The caseworker will contact the agency if there is anything missing or the correct procedures do not appear to have been followed.

Issuing a certificate

- 22 Once it has been confirmed that the documentation is in order and the relevant statutory procedures have been complied with, the DfES will normally issue a certificate to the relevant authority in the State of origin. This will confirm that:
- the prospective adopter has been assessed and approved as eligible and suitable to be an adoptive parent in accordance with the relevant statutory procedures; and
 - subject to any entry clearance and immigration requirements, the child will be allowed to enter and reside in the UK.

Putting papers into order

- 23 The DfES caseworker will arrange for any additional supporting documents and fees to be supplied to them by the prospective adopter. The caseworker will also advise the

¹ See flowcharts on pages 21-24 for further details.

prospective adopter if there is a need for the documents to be translated, notarised or legalised (these requirements vary from country to country) and how to secure these services.

Sending the application abroad

- 24 Once the papers have been notarised, legalised and translated as required, the DfES will forward the applications to the relevant authority or agency in the State of origin from which the prospective adopter wishes to adopt. The caseworker will send written confirmation to the agency and the prospective adopter when the application has been sent abroad.

Matching

- 25 The relevant authority in the State of origin will consider the application and, if the application is approved, the prospective adopter will be added to the waiting list of approved adopters until the authority can match them with a child. Prospective adopters should be made aware that it can take some time to know what decision has been made by the authority in the State of origin. In some countries it is unlikely a decision will be made until the case comes to the top of the waiting list.

Prospective adopter is not matched

- 26 It is possible that the application will not be accepted, or it will be accepted, but there are no suitable children with whom to match the prospective adopter at that time. Where this is the case, the adoption agency should arrange to discuss the outcome with the prospective adopter, provide counselling and support, and assist them in deciding what they would like to do. Information about the process that should be followed where the prospective adopter wishes to change countries is also set out in this annex.

Prospective adopter is matched

- 27 Where the relevant authority in the State of origin accepts the application they will consider the reports on the prospective adopter prior to making a match with a child. The relevant authority will then:
- send the proposed match with information about the child to the DfES, who will forward it to the prospective adopter and the adoption agency, or
 - send the proposed match and information about the child to the prospective adopter directly. Where this is the case, the prospective adopter must send a copy of the reports to the adoption agency. Failure to do so is an offence under section 83 of the Act.

- 28 When the adoption agency receives details of the proposed match it must make arrangements to meet with the prospective adopter to discuss the proposed adoption (see chapter 4).

Prospective adopter decides not to go ahead after discussing match

- 29 If the prospective adopter decides not to go ahead the adoption agency should:
- Notify the DfES of this decision
 - Return all the papers to the DfES for return to the relevant authority in the State of origin
- 30 It is good practice for the adoption agency to offer the prospective adopter counselling, advice and support as well as discussing with them what options are now open to them and how they would like to proceed.

Prospective adopter decides to go ahead after discussing match

- 31 If the prospective adopter decides that they would like to proceed further with the proposed match, they must make arrangements to travel to meet the child. The prospective adopter cannot accept the match until they have met the child or, in the case of a couple, until they have both met the child. Failure to visit the child in the State of origin may prevent a Convention adoption going ahead in a Convention case and is an offence under section 83 of the Act in a non-Convention case.
- 32 As a couple will be parenting any child together, they should be strongly encouraged to go together and meet the child at the same time. They are then in a better position to share their views and experiences of the visit and come to a considered view together of whether they feel they can meet the needs of that child.
- 33 After meeting the child the prospective adopter must notify the adoption agency in writing of whether or not they wish to accept the match. Failure to notify the agency may prevent a Convention adoption going ahead in a Convention case and is an offence under section 83 of the Act in a non-Convention case.
- 34 After meeting the child the prospective adopter may decide to accept the match and remain in the child's State of origin until the process has been completed, thus enabling them to return to the UK with the child. In these circumstances the prospective adopter will need to make arrangements to ensure that they can send the acceptance and any additional reports or information on the child to the adoption agency from the State of origin (for example, a faxed letter or email confirming that the adopter has met the child and wishes to proceed with the adoption).

- 35 Alternatively, the prospective adopter may decide to return to the UK until such time as formalities are completed and they are free to return to the State of origin to bring the child to the UK.
- 36 If, after meeting the child, the prospective adopter decides not to go ahead with the match, the adoption agency must notify the DfES and return all the relevant papers to the DfES for onward transmission to the authority in the State of origin.
- 37 If, after meeting the child, the prospective adopter decides go ahead with the adoption and has notified the adoption agency of this –

CONVENTION: The adoption agency must write to the DfES confirming:

- whether or not the match has been accepted
- if it has been accepted, that the required processes (including meeting the child) have been followed, and
- if it has been accepted, that the adoption agency is content for the adoption to proceed

Upon receipt of written confirmation that the prospective adopter wishes to proceed with the match and that the adoption agency is content for the adoption to proceed, the DfES will refer the case to the Home Office for their view on the immigration status of the prospective adopters and the child. This is to mitigate the chances of any problems arising at a late stage which could prevent an adoption under the Convention proceeding when it is clear that entry clearance would not or could not be granted due to immigration concerns.

The Home Office will consider the relevant papers and determine whether or not they are able to confirm that the child will be permitted to enter and reside permanently in the UK, if a Convention adoption or Convention adoption order is made (and any entry clearance, leave to enter, or leave to remain required by UK immigration law is granted and not subsequently revoked or cancelled). The Home Office will then write to the DfES. This process should not usually take longer than 5 working days. However, in some (less straightforward) cases it may take longer.

Where the Home Office is unable to confirm that the child will be permitted to enter and reside permanently in the UK if a Convention adoption or Convention adoption order is made (and any entry clearance, leave to enter, or leave to remain required by UK immigration law is granted and not subsequently revoked or cancelled), the adoption will not be able to proceed. If all the necessary enquiries have been made at the eligibility and assessment stages, this should be extremely rare.

However, if it does occur the DfES will notify the adoption agency and the agency will need to notify the prospective adopter and offer such counselling, advice and support as necessary. Where it is confirmed that the adoption cannot go ahead, the adoption agency must also return the relevant papers to the DfES for onward transmission to the relevant authority in the State of origin.

Where:

- the prospective adopter has met the child and decided to go ahead with the match
- the adoption agency has confirmed that they are content for the match to go ahead
- the Home Office has confirmed that (subject to certain conditions being met) the child will be permitted to enter and reside permanently, the DfES will advise the relevant authority in the State of origin of the decision to go ahead with the match, and confirm that the adoption may proceed, and
- the relevant authority in the State of origin confirms that they are content for the adoption to proceed

the DfES will seek to make an agreement with the relevant authority of the State of origin in line with Article 17(c) of the Convention, and notify the adoption agency and the prospective adopter when the agreement has been made. The relevant authority of the State of origin will then make arrangements for placing the child.¹

NON-CONVENTION: The adoption agency should write to the DfES stating:

- Whether or not the match has been accepted
- If it has been accepted, that the required processes (including meeting the child) have been followed

The relevant authority in the State of origin will make arrangements for placing the child.

- 38 If, in relation to Convention and non-Convention cases, having visited the child in the State of origin, the prospective adopter decides not to go ahead, the adoption agency should:
- notify the DfES of this decision
 - return all the papers to the DfES for return to the relevant authority in the State of origin

¹ FER 20-23.

- 39 It is good practice for the adoption agency to offer the prospective adopter counselling, advice and support as well as discussing with them what options are now open to them and how they would like to proceed.

PLACING THE CHILD WITH THE PROSPECTIVE ADOPTER

- 40 Where the prospective adopter decides to go ahead with the match they will need to determine how the child will be placed with them in the State of origin. The arrangements for placing the child with the prospective adopter will vary according to the adoption laws and procedures of each country and whether the child's State of origin has ratified or acceded to the Convention, is on the designated list or neither.

POSSIBLE ROUTES FOR PLACEMENT OF THE CHILD WITH THE PROSPECTIVE ADOPTER IN THE STATE OF ORIGIN

Convention country	Designated list country	Other
<ul style="list-style-type: none"> ● prospective adopter is entrusted with the child to bring the child to the UK for the purposes of obtaining a Convention adoption order in a UK Court 	<ul style="list-style-type: none"> ● prospective adopter is entrusted with the child to bring the child to the UK for the purposes of obtaining an adoption order in a UK Court 	<ul style="list-style-type: none"> ● prospective adopter is entrusted with the child to bring the child to the UK for the purposes of obtaining an adoption order in a UK Court
<ul style="list-style-type: none"> ● prospective adopter completes adoption procedures in the child's State of origin and obtains a Convention adoption 	<ul style="list-style-type: none"> ● prospective adopter completes adoption procedures in the State of origin and obtains an overseas adoption 	<ul style="list-style-type: none"> ● prospective adopter completes adoption procedures in the State of origin and brings the child to the UK for the purposes of obtaining an adoption order in a UK Court
<ul style="list-style-type: none"> ● prospective adopter obtains an interim adoption which will become a full Convention adoption if conditions are met 	<ul style="list-style-type: none"> ● prospective adopter obtains an interim adoption which will become a full overseas adoption if conditions are met 	

- 41 The adoption procedures and laws of the State of origin will usually determine how the child is placed with the prospective adopters. However, in some countries the prospective adopter may be given a choice by the relevant authority in the State of

origin and, if so, the prospective adopter will wish to consider whether this will take more or less time than an adoption process in the UK and the benefits of the different options available.

BRINGING THE CHILD INTO THE UK

- 42 The prospective adopter must accompany the child upon entering the UK. In the case of a couple adopting jointly, both of them must accompany the child unless the adoption agency and the authority in the State of origin have agreed that it is only necessary for one of them to accompany the child. Failure to accompany the child into the UK may prevent a Convention adoption going ahead in a Convention case and is an offence under section 83 of the Act in a non-Convention case.

Entry clearance

- 43 If the child does not acquire British citizenship before entering the UK, the child must receive Entry Clearance prior to being brought into the UK and leave to enter or remain will need to be obtained upon arrival in the UK. British citizens are not subject to immigration controls.
- 44 The issues that will be considered by the Entry Clearance Officer (ECO) will depend on the nationality and immigration status of the adopter or prospective adopter and the nature of the adoption:

SITUATION	IMMIGRATION REQUIREMENTS
Child automatically acquires British citizenship on the making of a Convention adoption	The child will not be subject to immigration controls. The adopter may obtain a British passport for the child from the nearest British Diplomatic Post and bring the child back to the UK without seeking Entry Clearance
Child has been registered outside the UK as a British citizen	The child will not be subject to immigration controls. The adopter may obtain a British passport for the child from the nearest British Diplomatic Post and bring the child back to the UK without seeking Entry Clearance
Child has been adopted by means of a Convention adoption by an adopter who is not a British citizen but who is settled in the UK	The ECO will need to be satisfied that the adoption is a genuine adoption and that other requirements of the Immigration Rules are satisfied prior to granting Entry Clearance for the child. The child will usually be granted the same rights to stay in the UK as their adopter subject to the usual discretion of the Home Secretary

SITUATION	IMMIGRATION REQUIREMENTS
Child has been adopted by means of an overseas adoption	The ECO will consider the application and, if satisfied that the adoption is a genuine adoption and immigration requirements have been met, issue Entry Clearance which, on entry to the UK, will normally result in leave to enter being granted for a limited period. Where the adopter is a British citizen, the child will be able to apply for British citizenship. If the adopter is not a British citizen, the child will be able to apply for leave to remain in the UK on the same basis as the adopter
Child has been adopted by means of an interim adoption which will become a Convention adoption in due course	The ECO will consider the application and, if satisfied that immigration requirements have been met, may issue Entry Clearance which, on entry to the UK, will normally result in leave to enter being granted for a limited period. If the child will automatically receive British citizenship when the Convention adoption is made, the child will no longer be subject to immigration control. If the child does not become a British citizen when the Convention adoption is made, the adopter will need to seek clearance for the child to reside permanently in the UK
Child has been adopted by means of an interim adoption which will become an overseas adoption in due course	The ECO will consider the application and, if satisfied that immigration requirements have been met, may issue Entry Clearance which, on entry to the UK, will normally result in leave to enter being granted for a limited period. When the overseas adoption is made, and the adopter is a British citizen, the child will be able to apply for British citizenship. If the adopter is not a British citizen when the overseas adoption is made, the child will be able to apply for leave to remain in the UK on the same basis as the adopter

SITUATION	IMMIGRATION REQUIREMENTS
Child is entrusted to the prospective adopter to be brought to the UK for adoption	The ECO will wish to ensure that the immigration requirements have been met, seek confirmation from the DfES that the paperwork is in order and, in the case of the Hague Convention, that the Article 17(c) agreement has been made. If the ECO is content, an Entry Clearance will be issued which, on entry to the UK, will normally result in leave to enter being granted for a limited period, thus allowing the child to come to the UK for the purposes of adoption. A child adopted by a British citizen in a UK Court will automatically receive British citizenship and will no longer be subject to immigration control. If the adopter is not a British citizen, the child will be able to apply for leave to remain in the UK on the same basis as the adopter once they have been adopted in a UK Court

- 45 Occasionally it will be necessary for the ECO or immigration officer to seek advice from the UK Visas office in London prior to making a decision.

PROSPECTIVE ADOPTERS WISH TO CHANGE COUNTRY

- 46 When prospective adopters are found eligible and suitable to adopt the report prepared will relate to a specific country. If the applicant wishes to apply to a different country after they have been approved, they should discuss this with the adoption agency.
- 47 The applicant will need to demonstrate that they fully understand the cultural and other needs of a child from the 'new' country, and that they also meet the eligibility criteria of that country. An addendum report should be produced and returned to the Adoption Panel and agency decision maker to obtain a new approval. This should then be forwarded to the DfES.
- 48 The DfES should be informed at the earliest opportunity if the prospective adopter decides on a change of country, so that the authorities in the country concerned can be notified and the original application can be withdrawn.
- 49 Prospective adopters should be advised that where an application has already been sent to the original country of choice before the DfES has received notice of a change of country, they will be required to meet any expenses that have been incurred to date. This will be in addition to the costs incurred by the adoption agency in undertaking the work needed to update the report and re-present the application to the Adoption Panel and decision maker.

CIRCUMSTANCES WHERE A CHILD HAS ALREADY BEEN IDENTIFIED BY PROSPECTIVE ADOPTERS

Prospective Adopters in the UK

- 50 It is important that prospective adopters comply with the laws of other countries and, in some cases, taking steps to identify a child to adopt is illegal. However, in some circumstances, a child will already have been identified by the prospective adopters who are applying to be assessed as eligible and suitable to adopt. This may be where the prospective adopters are guardians or relatives of the child concerned, or when the prospective adopters have met the child when travelling or living abroad.
- 51 It will usually be beneficial for the prospective adopter to demonstrate that the child is available for intercountry adoption and that the foreign authorities are content for them to proceed with an application to adopt, prior to beginning an assessment of their suitability to adopt.
- 52 It is also recommended that immigration checks are made as early as possible in the process where a named child is concerned, preferably prior to beginning an assessment. This is because the realisation that the adopter is ineligible to bring a child into the UK might occur after the adoption process abroad has been completed. This would be very distressing and costly for all involved. The child's circumstances will need to meet certain criteria if they are to be granted entry clearance and leave to enter or remain in the UK. In particular, children who can still be cared for by their parents but who have been "gifted" or "given" to a relative in the UK are very unlikely to gain an entry clearance to enter and reside in the UK. The Home Office can provide information and advice about this.
- 53 Where these checks have been satisfactorily completed, it is very important for the adoption agency to attempt to obtain as much information as possible about the characteristics of the child. Then, in the same way as for a domestic adoption of a named child, the assessment will be focussed on the ability of the prospective adopter to meet the needs of the child concerned.
- 54 Where a prospective adopter is approved to adopt a specific child, the prospective adopter's report and the agency decision maker's letter should clearly state the child's full name and date of birth.

BRITISH CITIZENS AND OTHERS WITH RIGHTS TO LIVE IN THE UK – LIVING AND ADOPTING ABROAD

Adoptions through assessment procedures outside the British Islands

- 55 British citizens and others with rights to live in the UK (European Economic Area nationals and those holding settled status in the UK) who are living and working

abroad may be able to adopt a child according to the laws of that country. In such cases they should ensure that they follow the requirements and laws of the country in which they are living.

- 56 If those with rights to live in the UK are able to apply to adopt a child in the country outside the British Islands in which they are living, they will be assessed and approved to adopt according to the procedures of that country. Once the adoption is granted the relevant authorities in that country will monitor the progress of the adoption placement according to their laws.
- 57 Where a person with rights to live in the UK is resident abroad and wishes to adopt under the law of that country, the DfES has no role in the matter. However, some countries require a general statement from the UK government that the child to be adopted is likely to be permitted to enter the UK. The Home Office Immigration and Nationality Directorate may be able to issue a letter on request, stating that if the immigration criteria are met, the adoptive child will be given leave to enter the UK with the adoptive parents, once they decide to return home.
- 58 Other countries may require a letter from the DfES confirming that they are content for the adoption to go ahead. The DfES is unable to do this because the full facts of the case will not be known and the DfES has no role in this matter.
- 59 When the adopters wish to return to the UK they must, where necessary, seek the agreement of the foreign authorities for the child to leave the country. They must then apply to the British Embassy for an entry clearance for their child. There are a number of possible grounds for the issuing of entry clearance. Prospective adopters may need to seek independent legal advice about whether section 83 of the Act applies to them.

Adoptions by British Citizens living abroad – through UK assessment procedures

- 60 Where British citizens are living abroad, they should usually go through the approval procedures of the country in which they are living, if they are eligible to do so under the jurisdiction within which they are resident. However, if a particular country requires an assessment from the UK, it may be possible for an applicant to be assessed in the UK if they (or in the case of a couple, at least one of them) is domiciled in the United Kingdom, or in the Channel Islands or the Isle of Man. The decision in such cases will need to be made on the individual facts of the case.
- 61 In such cases, the applicant should approach their local authority or VAA registered to work on intercountry adoption to discuss undertaking an assessment of eligibility and suitability. The adoption agency would need to decide whether or not it is possible to agree to undertake the assessment in “bite-size chunks” to fit in with the applicants’ visits to the UK. They would also need to determine whether or not it would be possible

to secure satisfactory police checks if the applicant has been abroad for some time and how the agency would be able to meet the good practice requirement that all prospective adopters undertake appropriate training and preparation for adoption.

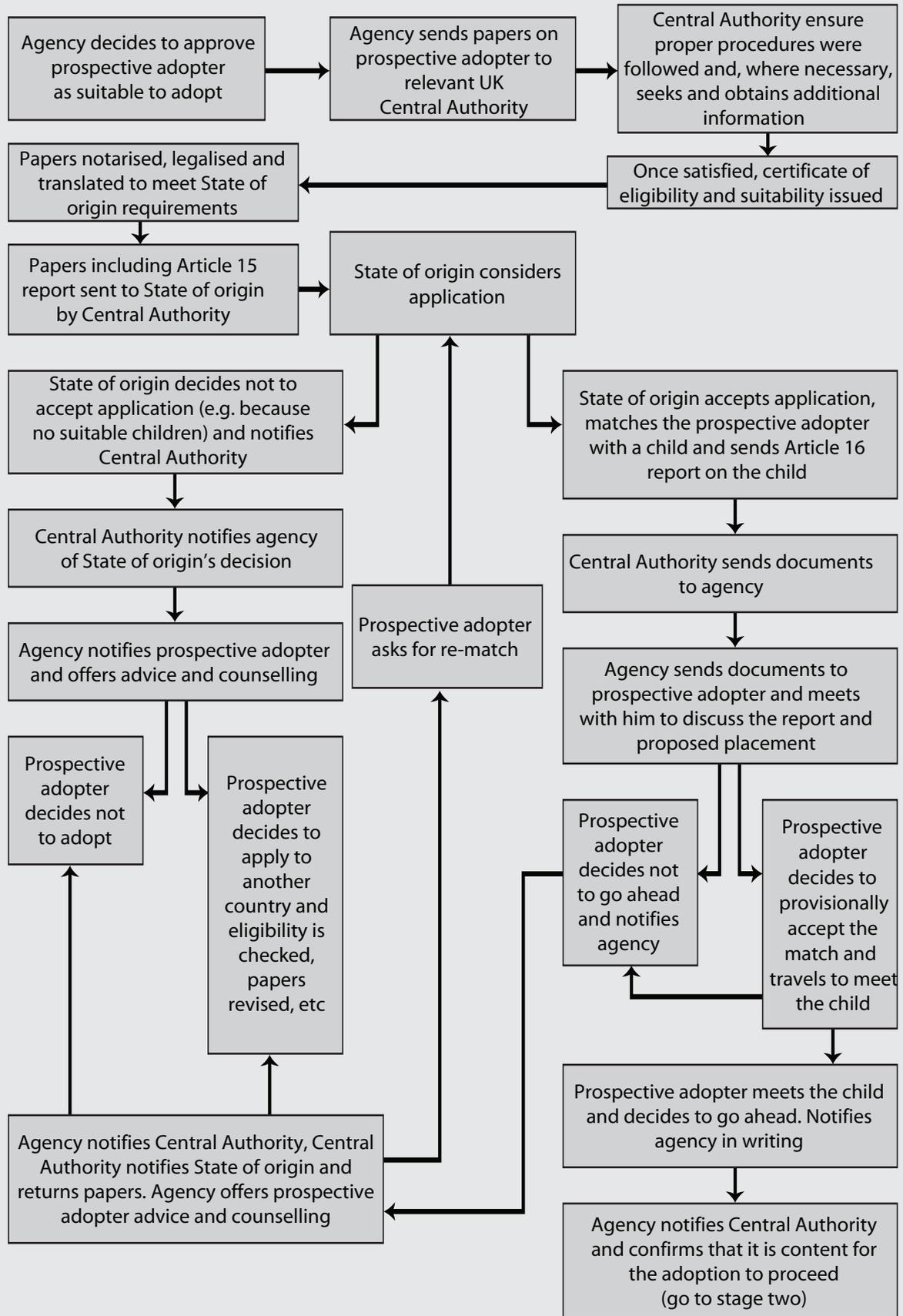
- 62 Where the adoption agency agrees to go ahead, the assessment should include a number of meetings between the social worker and the prospective adopter in the space of a few months. Usually, the adoption agency will also wish to commission a suitable social worker in the other country to produce a report on the home environment abroad. International Social Service may be able to advise adoption agencies on the commissioning of a suitable social worker.
- 63 Once the adoption agency has carried out the assessment, the case is passed to the Adoption Panel and agency decision maker in the usual way. The papers are then sent to the DfES for the usual checks prior to being sent abroad.

POST-PLACEMENT REPORTS

- 64 Many countries require post-placement reports about the child to be sent to them at regular intervals. Any agreement made by the adopter and the relevant authority in the State of origin to provide post-placement reports is an individual arrangement which has no status or effect under UK law. The length of any arrangement will vary from country to country. It may run until the child reaches 18, until an adoption order is made in the UK courts or there may be no arrangement made at all.
- 65 It is the responsibility of the adopter to make arrangements for the provision of any post-placement reports requested by the authority in the State of origin. Post-placement reports must be prepared in accordance with the **ARR**.
- 66 In most cases the adopter may forward post-placement reports directly to the authority in the State of origin. However, some countries require that post-placement reports are sent to the DfES for onward transmission. The DfES may be able to advise on the appropriate arrangements.

ENGLAND / WALES AS THE RECEIVING STATE

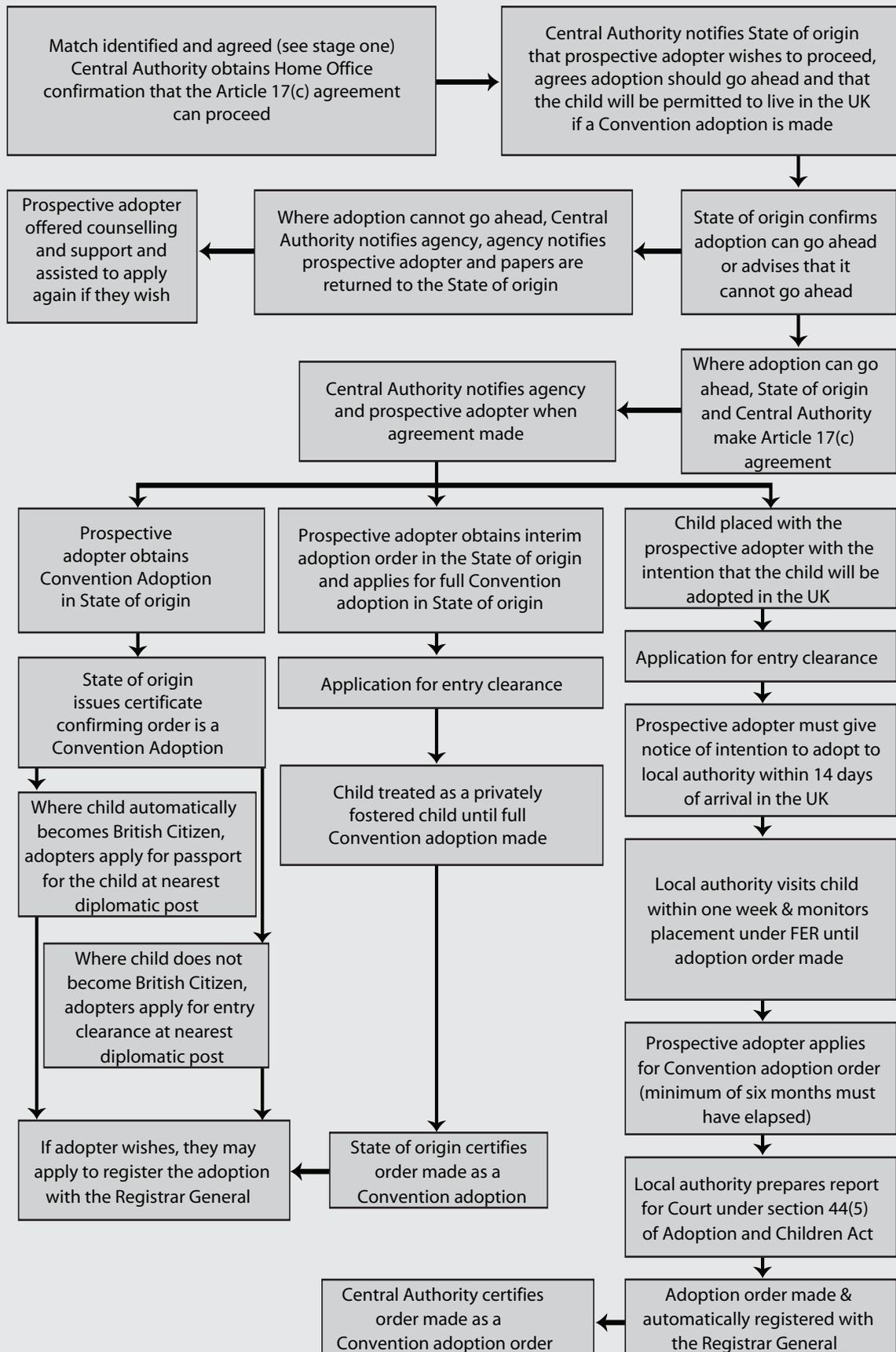
Stage One - Suitability to Agreed Match (Convention cases)



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ENGLAND / WALES AS THE RECEIVING STATE

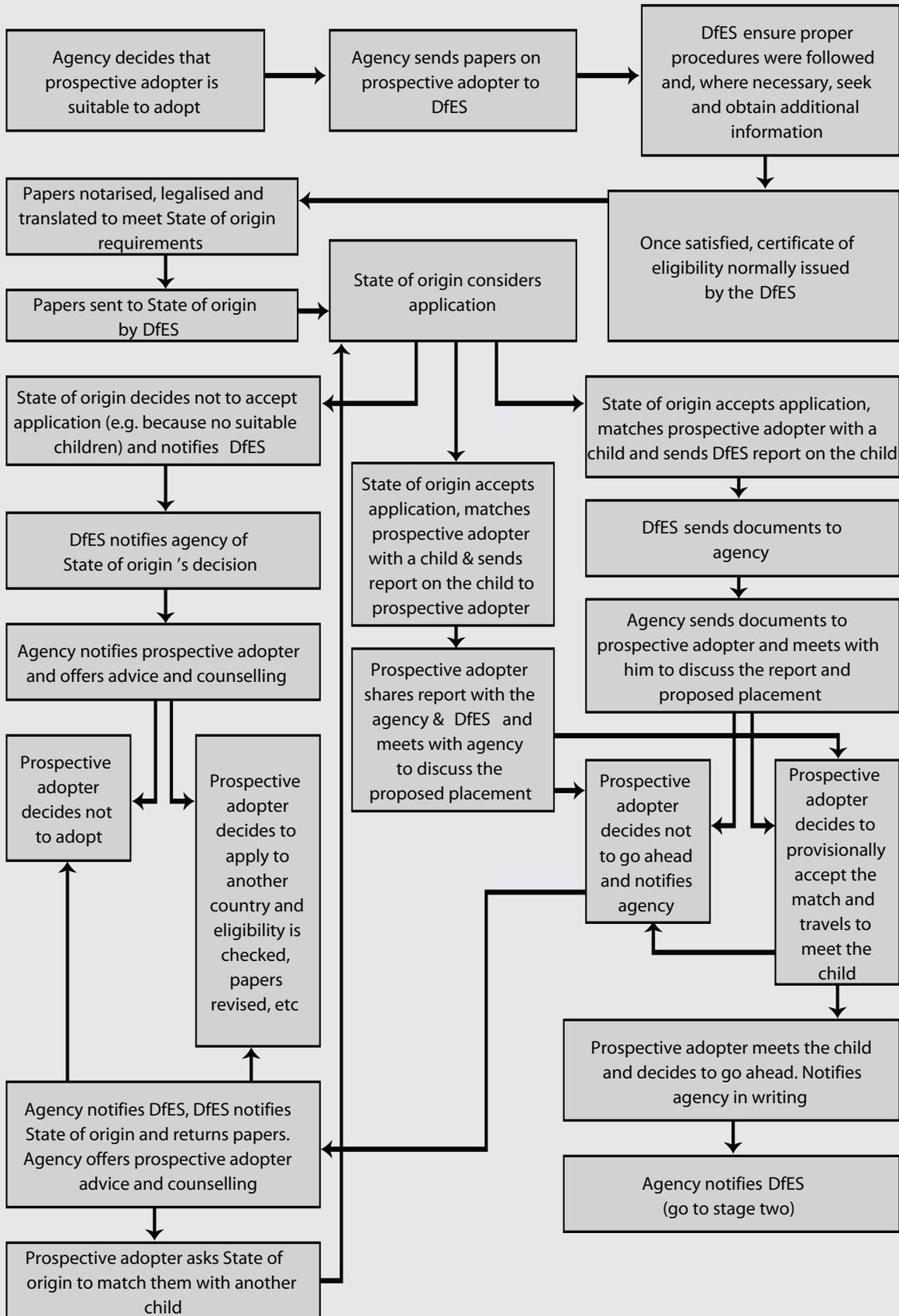
Stage Two - Agreed Match to Adoption (Convention cases)



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ENGLAND / WALES AS THE RECEIVING STATE

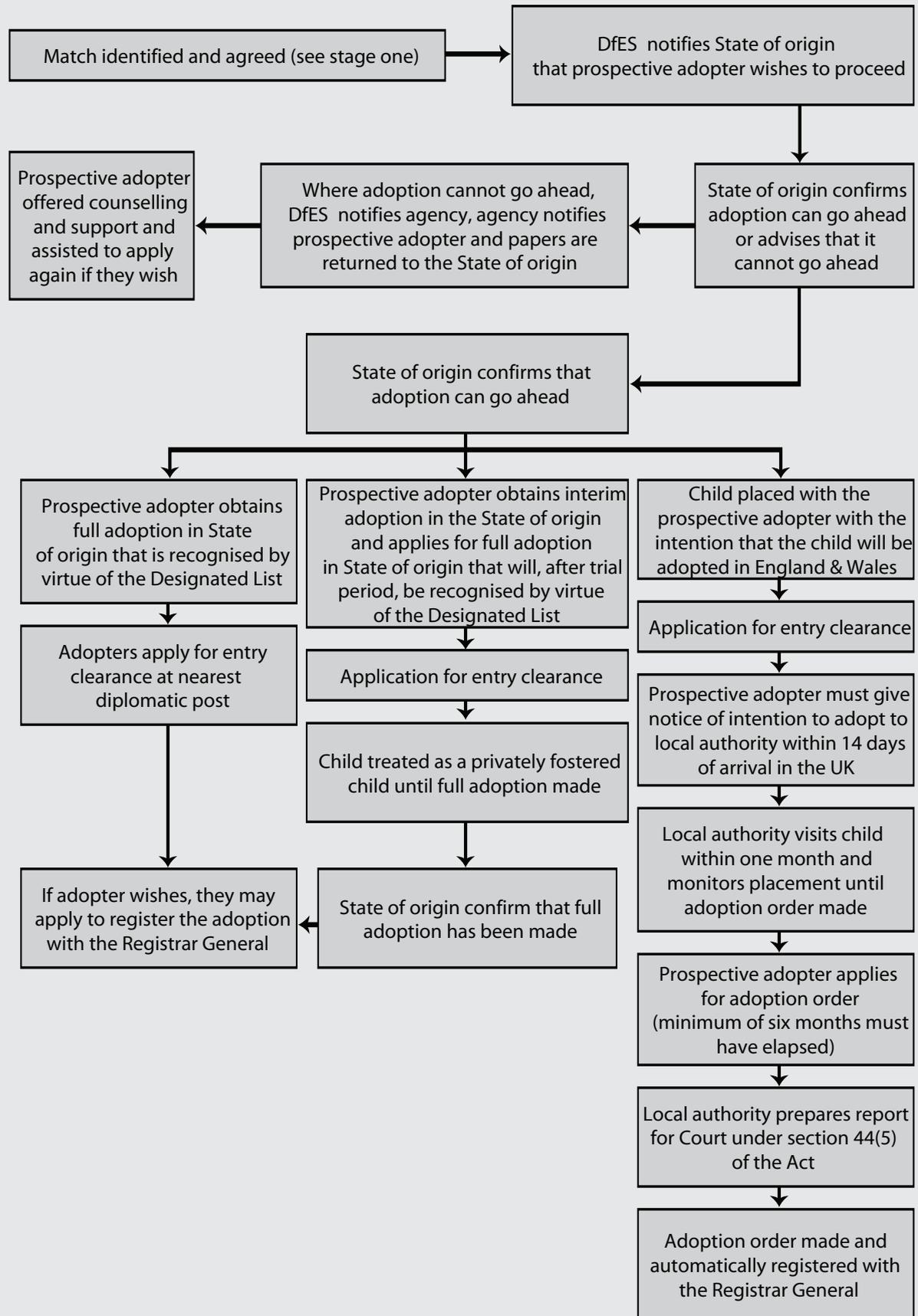
Stage One - Suitability to Agreed Match (non-Convention cases)



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ENGLAND / WALES AS THE RECEIVING STATE

Stage Two - Agreed Match to Adoption (non-Convention cases)



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PART THREE: UK AS A STATE OF ORIGIN

67 This part sets out considerations that apply where the UK is the State of origin.

Taking children outside the British Islands for the purpose of adoption

- 68** Where a local authority decides that a looked after child's best interests may be served by being adopted by a known person in another country (for example, a relative) they must satisfy themselves of the individual's suitability to adopt the child. The assessment should usually be carried out in the individual's State of origin and be sent to the agency for consideration in the same way as for any other prospective adopter.
- 69** Prior to the child being taken outside the UK, the prospective adopter must apply to the High Court for permission to take the child out of the country in accordance with sections 84 and 85 of the Act. An application for an order under section 84 may only be made if the child has had his home with the prospective adopter at all times for 10 weeks preceding the application.

ROLE OF THE DfES

- 70** Where the adoption agency decides that intercountry adoption in a Convention country would be in the best interests of the child they must notify the DfES (as the Central Authority for England) of the following:
- A file reference number
 - The name of the child
 - The age of the child (including month and year of birth)
 - The gender of the child
 - The reasons why they believe the child may be suitable for adoption outside the British Islands
 - The date any placement order was made
- 71** The DfES will maintain a list of children in England available for intercountry adoption under the Convention. The list will be held in a database format but will hold only anonymised information (with the file reference used as the identifier). The list of anonymised information will be made available for consultation by other Central Authorities within the British Islands.

- 72 If, after a child has been referred for inclusion upon the list:
- The child is placed for adoption with a family within the British Islands, or
 - The local authority decides that intercountry adoption is no longer in the best interests of the child, or
 - The local authority identifies prospective adopters living in a foreign country but not in a Convention contracting State

the agency must notify the DfES so that the child's details can be removed from the list.

- 73 If the agency is seeking to place the child with prospective adopters for intercountry adoption outside of the Convention, it is not required to notify the DfES unless the child's details had previously been referred to the Convention List.

MATCHING IN CONVENTION CASES

- 74 Where a prospective adopter living in a Convention contracting State outside the British Islands wishes to adopt a child from the UK, their application will be forwarded to the DfES by the Central Authority in the receiving State.

- 75 Where an application is received from a Central Authority outside the British Islands the DfES will check that:

- The prospective adopter meets the requirements of eligibility, age and residence under UK law
- The Central Authority in the receiving State have confirmed that they have been assessed and approved as eligible and suitable to adopt a child under the Convention.

- 76 The DfES will then consult the list of children available for intercountry adoption under the Convention. When consulting the list the DfES will look at the age and gender of the child and whether the child is part of a sibling group. The DfES will not be able to consider any additional details.

No children available for intercountry adoption

- 77 If there are no children available for intercountry adoption, the DfES will write immediately to the Central Authority in the receiving State, advising them that this is the case. Where the prospective adopters wish to adopt a very young child, they will also be advised that it is extremely unlikely that such a child will be available for intercountry adoption (due to the small numbers of very young children available for adoption in the UK and the high levels of demand from domestic adopters).

- 78 The DfES will hold applications from foreign countries for 6 months. If the prospective adopters are not matched within that period their papers will be returned to the relevant Central Authority in the receiving State. Prospective adopters will be permitted to resubmit their applications if they wish.

Children available for intercountry adoption

- 79 If there are any children available for adoption who appear, at face value, to link with the characteristics of the child the prospective adopters are approved to adopt, the DfES will copy the papers and send them to the local authority looking after the child on the list.
- 80 Upon receipt of the papers of a prospective adopter, the local authority must consider the papers in the same way as they would consider any other potential match. The local authority should initially consider whether or not the prospective adopters would be able to meet the particular needs of the child in their care. If they require additional information, they should pass this request to the DfES who will pass it on to the foreign authorities. Once they have the necessary information, the local authority must decide whether or not to pursue the match (see the guidance in chapter 4).

Decision not to pursue the match

- 81 Where the local authority's decision is not to pursue the match they must return the papers to the DfES. The DfES will write to the Central Authority in the receiving State, advising them that it has not been possible to identify a suitable match for the prospective adopter, but that the papers will be held for 6 months.

Decision to pursue the match

- 82 Where the local authority decides to pursue the match (subject to the prospective adopter(s) meeting the child) it must prepare a report for the purposes of Article 16 of the Convention. This will include information about the child's:
- Identity
 - Suitability for adoption
 - Background
 - Social environment
 - Family history
 - Medical history (including that of the child's family)
 - Special needs (if any)

- 83 The report should also set out the reasons for the local authority's decision.
- 84 The report must be sent to the DfES together with:
- Information about any placement order that has been made
 - Observations on the child's upbringing and his or her ethnic, religious and cultural background
 - The report on the child's views and wishes in relation to adoption
 - A recent photo of the child
- 85 The DfES will then send the information to the foreign authorities for onward transmission to the prospective adopter.
- 86 The suggested match and the report on the child will be considered by the prospective adopter. Where they decide to go ahead, the prospective adopters will then be required to travel to meet the child.
- 87 When the prospective adopters meet the child, the local authority should offer such advice, support and counselling as necessary to both the child and the prospective adopters.
- 88 The local authority should discuss the proposed placement with the prospective adopters and establish what, if any, reporting arrangements are to be put into place up to the making of a Convention adoption or Convention adoption order. Although this is a private arrangement between the local authority and the prospective adopters, it is usually expected that the local authority will seek regular reports from foreign authorities on the progress of the placement.
- 89 If the local authority is content for the adoption to go ahead, and the prospective adopter confirms that they would like the adoption to go ahead, the local authority must notify the DfES accordingly.
- 90 The DfES will then contact the Central Authority in the receiving State and, if they are content for the adoption to go ahead and can confirm that the child will be permitted to enter and reside permanently, an Article 17(c) Agreement can be made. Once the DfES has confirmed that an Article 17(c) Agreement has been made, the local authority should make appropriate arrangements for introductions to the child before placing the child with the prospective adopter.

MATCHING IN NON-CONVENTION CASES

- 91 Where the local authority is seeking to place a child with prospective adopters habitually resident abroad outside of the Convention, it will need to comply with chapters 4 and 5 of this guidance.

RESTRICTIONS ON TAKING CHILDREN OUT OF THE UK

92 Section 85 of the Act provides restrictions on removing children from the British Islands for the purposes of adoption. Failure to comply with section 85 is an offence punishable by 12 months imprisonment and an unlimited fine. In order to avoid breaching section 85, prospective adopters who live abroad will need to either obtain a Convention adoption order, an adoption order in the UK courts, or an order under section 84 of the Act before removing the child from the British Islands.

Adopting in the UK

93 A prospective adopter may only apply for an adoption order if they meet one of the domicile or habitual residence conditions in section 49 of the Act. It is expected that most prospective adopters who are habitually resident outside the British Islands will not meet either of these conditions.

94 However, in Convention cases, arrangements are in place for prospective adopters to apply for a Convention adoption order in the UK if they have lived with the child for a minimum of 10 weeks. If a Convention adoption order is made the DfES will normally issue a certificate under Article 23 of the Convention confirming that the adoption order has been made in accordance with the Convention. A copy of the certificate will be sent to the Central Authority of the receiving State and the local authority.

Adopting outside the UK

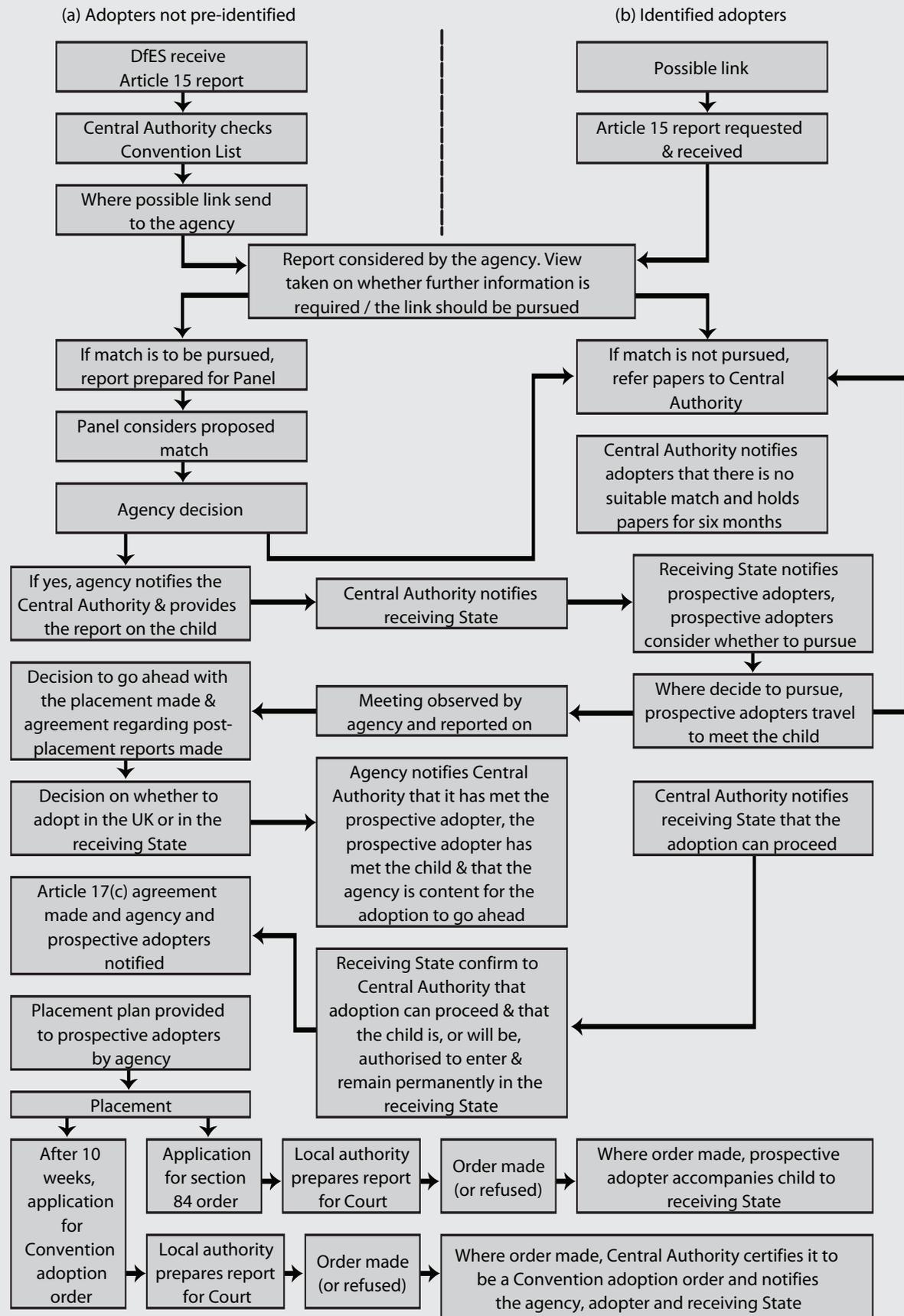
95 Many prospective adopters will wish to adopt the child abroad. In these circumstances the prospective adopters will need to apply to the High Court for an order under section 84 of Act before removing the child from the British Islands. See Annex A for more information on section 84 orders.

96 If a Convention adoption is subsequently made in the other country, a certificate will be issued by the Central Authority in the receiving State in accordance with Article 23 of the Convention. A copy of this should be sent to the DfES. The DfES will provide the local authority with a copy of this as soon as possible after receipt.

POST-PLACEMENT REPORTS

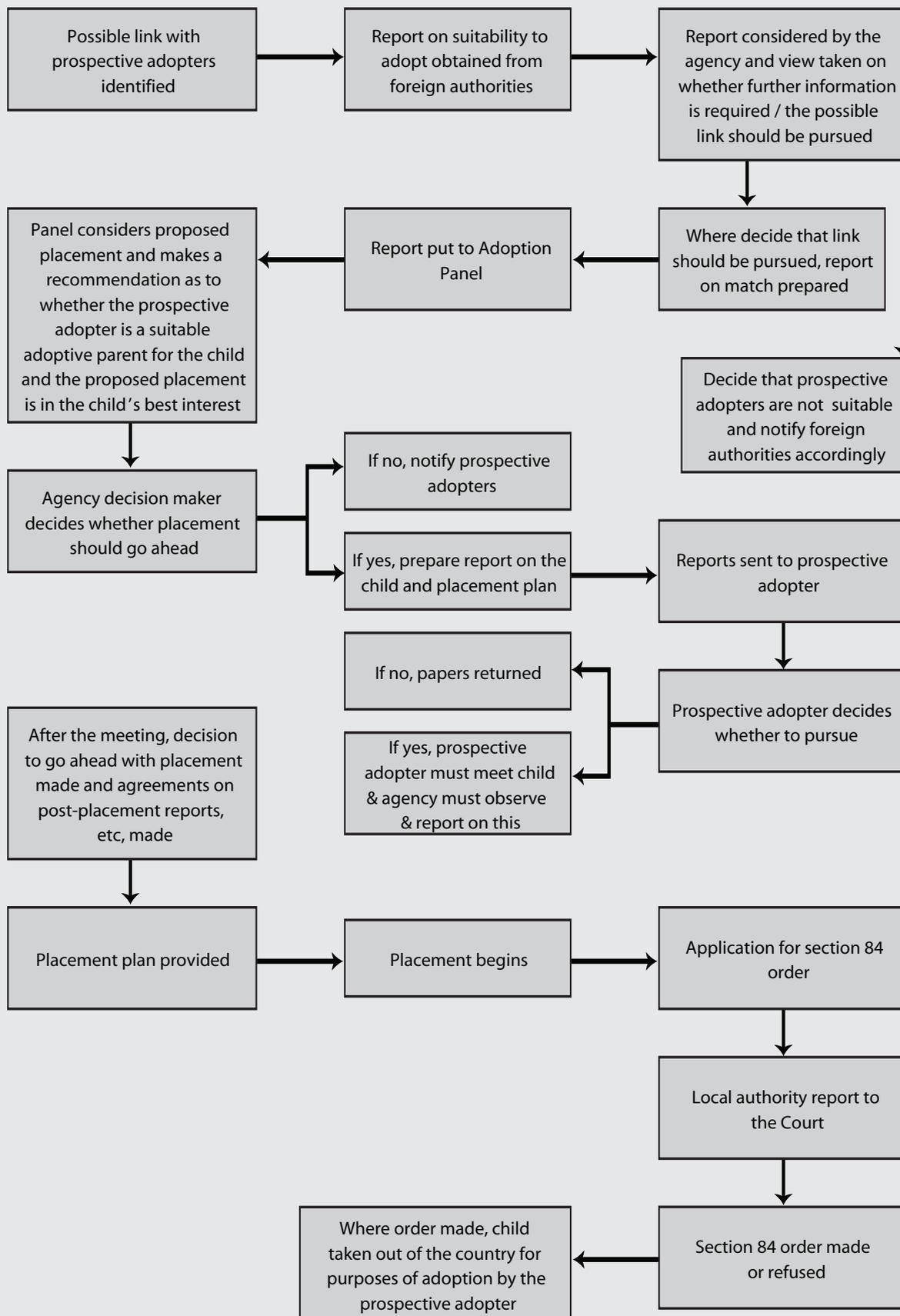
97 The local authority should discuss the proposed placement with the prospective adopters and establish what, if any, reporting arrangements are to be put into place up to the making of an adoption. Although this is a private arrangement between the local authority and the prospective adopters, it is usually expected that the local authority will seek regular reports from foreign authorities on the progress of the placement.

ENGLAND / WALES AS A STATE OF ORIGIN
Matching and placement (Convention cases)



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ENGLAND / WALES AS A STATE OF ORIGIN
Matching and placement (non-Convention cases)



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