

Version
as at 28 October 2021



Adoption (Intercountry) Act 1997

Public Act	1997 No 109
Date of assent	17 December 1997
Commencement	see section 1(2)

Contents

	Page
Title	2
1 Short Title and commencement	2
2 Interpretation	3
3 Act binds the Crown	3
Part 1	
Intercountry adoption	
4 Convention to have force of law	4
5 New Zealand Central Authority	4
6 Delegation of functions	4
7 Chief executive must offer choice of report-writing service	4
8 Authority for New Zealand accredited bodies to act overseas	5
9 Authority for overseas accredited bodies to act in New Zealand	5
10 Approval of placement	5
11 Recognition of Convention adoptions	5
12 Termination of pre-existing legal parent-child relationships	5
13 Access to information	6
14 Certificate of Secretary of Foreign Affairs and Trade	6

Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

This Act is administered by the Ministry of Justice.

Part 2		
New Zealand accredited bodies		
15	New Zealand accredited bodies	6
16	Application for accreditation	7
17	Grant of accreditation	7
18	Declining of application for accreditation	8
19	Suspension and revocation of accreditation	8
20	Appeals	9
21	Accredited bodies to report annually	10
22	Assessment of accredited bodies	11
23	Change of principal officer to be notified	12
Part 3		
Miscellaneous provisions		
24	Regulations	12
<i>Amendments to Adoption Act 1955</i>		
25	Recognition of overseas adoptions	12
26	Prohibition of payments	12
27	Restriction upon advertisements	13
28	Offences	13
<i>Amendments to Citizenship Act 1977</i>		
29	Special provisions relating to parentage	13
<i>Amendment to Births, Deaths, and Marriages Registration Act 1995</i>		
30	Registration of overseas adoptions	13
Schedule		
Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption		

An Act—

- (a) to implement in the law of New Zealand the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption; and
- (b) to provide for the approval of organisations as accredited bodies to whom functions may be delegated under the Convention; and
- (c) to make other provision for intercountry adoption and other matters related to adoption

1 Short Title and commencement

- (1) This Act may be cited as the Adoption (Intercountry) Act 1997.

- (2) This Act comes into force on a date to be appointed by the Governor-General by Order in Council.
- (3) An order under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 1(2): Adoption (Intercountry) Act 1997 brought into force, on 1 January 1999, by clause 2 of the Adoption (Intercountry) Act Commencement Order 1998 (SR 1998/427).

Section 1(3): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

2 Interpretation

In this Act, unless the context otherwise requires,—

chief executive means the chief executive of the department

Contracting State means, subject to Article 45 of the Convention, a country for which the Convention is for the time being in force as between that country and New Zealand

Convention means the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption signed at The Hague on 29 May 1993, a copy of the English text of which is set out in the Schedule

department means the department for the time being responsible for the administration of the Oranga Tamariki Act 1989

New Zealand accredited body means an organisation approved as an accredited body under Part 2 and the Convention

New Zealand Central Authority has the meaning given by section 5

organisation means any body or organisation, whether incorporated or unincorporated.

Section 2 **chief executive**: inserted, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 2 **department**: inserted, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 2 **department**: amended, on 14 July 2017, by section 149 of the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31).

Section 2 **Director-General**: repealed, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

3 Act binds the Crown

This Act binds the Crown.

Part 1

Intercountry adoption

4 Convention to have force of law

Subject to the provisions of this Act, the provisions of the Convention have the force of law in New Zealand.

5 New Zealand Central Authority

- (1) The chief executive is the New Zealand Central Authority for the purposes of the Convention.
- (2) The chief executive has all the duties, may exercise all the powers, and must perform all the functions that a Central Authority has under the Convention.
- (3) The chief executive may not be made subject to any order to pay costs relating to adoptions in relation to the exercise or performance, by the chief executive, of any of the chief executive's duties, powers, or functions as the New Zealand Central Authority.

Compare: 1991 No 19 s 7

Section 5(1): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 5(2): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 5(3): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

6 Delegation of functions

- (1) The New Zealand Central Authority may, to the extent permitted by the Convention and by any regulations made under this Act, delegate the functions of a Central Authority under Article 9 or Chapter IV of the Convention to public authorities or New Zealand accredited bodies.
- (2) No such delegation prevents the exercise of any functions by the New Zealand Central Authority.

7 Chief executive must offer choice of report-writing service

- (1) The chief executive must, on application by prospective adoptive parents, prepare reports under the Convention as to their eligibility and suitability to adopt.
- (2) Subsection (1) applies notwithstanding that the function of preparing those reports may also have been delegated to any public authority or New Zealand accredited body.
- (3) This section applies for the purpose of offering prospective adoptive parents a choice of whether the report is prepared by a Government or non-Government agency.

Section 7 heading: amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 7(1): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

8 Authority for New Zealand accredited bodies to act overseas

The New Zealand Central Authority may authorise a New Zealand accredited body to act in another Contracting State.

9 Authority for overseas accredited bodies to act in New Zealand

The New Zealand Central Authority may authorise a body accredited under Chapter III of the Convention in another Contracting State to act in New Zealand.

10 Approval of placement

- (1) A child who is habitually resident in another Contracting State must not be entrusted to prospective adoptive parents who are habitually resident in New Zealand unless the New Zealand Central Authority has approved the decision.
- (2) Where the New Zealand Central Authority refuses to approve such a decision, the Authority must give notice in writing to the prospective adoptive parents of the refusal and the reasons for it.

11 Recognition of Convention adoptions

- (1) An adoption made in accordance with the Convention, subject to Article 24 of the Convention,—
 - (a) must be recognised in accordance with the Convention; and
 - (b) for the purposes of this Act and all other New Zealand enactments and laws, has, subject to section 12, the same effect as an adoption order validly made under the Adoption Act 1955.
- (2) A certificate signed by the competent authority in the State where the adoption took place and stating that the adoption was made in accordance with the Convention is for all purposes prima facie evidence of that fact.
- (3) The Family Court may, under Article 24 of the Convention, refuse to recognise an adoption made in accordance with the Convention, subject to such terms and conditions as it thinks fit.
- (4) No application to the court under subsection (3) may be made without the prior approval of the Attorney-General.
- (5) Every application to the court under subsection (3) must be heard as soon as practicable.

12 Termination of pre-existing legal parent-child relationships

- (1) An adoption in accordance with the Convention does not have the effect of terminating a pre-existing legal parent-child relationship unless—

- (a) the adoption has that effect in the State where it was made; or
 - (b) the Family Court makes an order converting the adoption into one having that effect.
- (2) The court may, on application, make such an order if satisfied that—
- (a) the adoptive parent is habitually resident in New Zealand; and
 - (b) the adoptive parent has, in accordance with the Convention, adopted, in another Contracting State, a child who is habitually resident in that Contracting State; and
 - (c) the consents to the adoption required by paragraphs (c) and (d) of Article 4 of the Convention have been given for the purpose of an adoption that terminates the pre-existing legal parent-child relationship.

13 Access to information

- (1) The New Zealand Central Authority must ensure that every report under paragraph 1 of Article 16 of the Convention that is prepared or received by it, and that results in an adoption, in accordance with the Convention, of the child who is the subject of the report, is retained either by the New Zealand Central Authority or by the Chief Archivist under the Public Records Act 2005.
- (2) Every New Zealand accredited body that prepares or receives a report under paragraph 1 of Article 16 of the Convention must give a copy to the New Zealand Central Authority.
- (3) *[Repealed]*

Section 13(1): amended, on 21 April 2005, by section 67(1) of the Public Records Act 2005 (2005 No 40).

Section 13(3): repealed, on 8 September 2010, by section 12 of the Privacy (Cross-border Information) Amendment Act 2010 (2010 No 113).

14 Certificate of Secretary of Foreign Affairs and Trade

A certificate signed by the Secretary of Foreign Affairs and Trade and stating that a specified country is or is not a Contracting State is, unless the contrary is proved by the production of another certificate issued under this section (being a certificate that was issued after the first-mentioned certificate was issued), for all purposes conclusive evidence of that fact.

Part 2

New Zealand accredited bodies

15 New Zealand accredited bodies

- (1) The chief executive may approve as a New Zealand accredited body under the Convention any organisation that—
- (a) pursues only non-profit objectives; and

- (b) has demonstrated its capability and competence to carry out properly and on a continuing basis the tasks that may be delegated to it under the Convention; and
 - (c) has demonstrated, by its aims, policy, and operations, that it will operate in the best interests of the child, and with respect for his or her fundamental rights, when carrying out tasks that may be delegated to it under the Convention; and
 - (d) is directed and staffed by persons qualified by their ethical standards and by training or experience to work in the field of intercountry adoption.
- (2) An organisation that is formed or carried on for the purpose of trading or securing a pecuniary profit for its members is, for the purpose of this Act, treated as pursuing profit objectives.

Section 15(1): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

16 Application for accreditation

- (1) Any application for approval as a New Zealand accredited body—
- (a) must be in writing and contain such information relating to the organisation as is required by the chief executive; and
 - (b) must nominate a person to act as principal officer of the organisation for the purposes of this Act.
- (2) Before considering any such application, the chief executive must publicly notify the application in at least 1 daily newspaper circulating in the area in which the principal office of the organisation is situated.
- (3) The notice must set a closing date for receiving submissions on the application, which must not be earlier than 10 working days after publication.
- (4) The chief executive is not required to conduct a public hearing on the application.

Section 16(1)(a): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 16(2): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 16(4): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

17 Grant of accreditation

Where the chief executive approves an organisation as a New Zealand accredited body, the accreditation must—

- (a) be in writing; and
- (b) specify any conditions to which it is subject (if any); and
- (c) specify the functions that have been delegated to the organisation under Article 9 or Chapter IV of the Convention; and

- (d) be notified in the *Gazette*.

Section 17: amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

18 Declining of application for accreditation

The chief executive must not decline an application made under section 16 without giving the applicant—

- (a) a copy of any information on which the chief executive relies in proposing to decline the application; and
- (b) a reasonable opportunity to make written submissions to the chief executive in relation to the information.

Section 18: amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 18(a): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 18(b): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

19 Suspension and revocation of accreditation

- (1) If the chief executive is satisfied that a New Zealand accredited body—

- (a) has pursued, or is pursuing, profit objectives; or
- (b) is no longer suited to performing functions that, under the Convention, may be delegated to New Zealand accredited bodies; or
- (c) has failed in a significant way to adequately perform any function that has been delegated to that body under the Convention; or
- (d) has not provided to the New Zealand Central Authority access to documents or records relating to any adoption arranged by the body in accordance with functions delegated to it under the Convention; or
- (e) has not submitted to supervision of its composition, operation, and financial situation by the chief executive; or
- (f) has charged excessive costs and expenses in respect of the performance of any function delegated to that body under the Convention; or
- (g) has allowed the payment of unreasonably high remuneration to the principal officer or staff in relation to functions delegated to that body under the Convention,—

the chief executive may exercise either or both of the powers contained in subsection (2).

- (2) The chief executive may—

- (a) suspend the approval of an organisation as a New Zealand accredited body if the chief executive considers that suspension is desirable in the public interest; and

- (b) give the organisation 60 days' notice of the chief executive's intention to revoke the approval of the organisation as a New Zealand accredited body and the reasons for that intention.
- (3) The chief executive must have regard to any submissions that are received from the organisation before the decision to revoke the approval of the organisation as a New Zealand accredited body is made.
- (4) The chief executive must—
 - (a) give notice in writing of the suspension or revocation of accreditation, and the reasons for it, to the organisation; and
 - (b) give notice of the suspension or revocation in the *Gazette*.
- (5) Where the accreditation of any organisation is suspended or revoked under this section, the New Zealand Central Authority must ensure, in relation to any ongoing adoption, that the functions that were delegated to the organisation under the Convention at the time of suspension or revocation are carried out.

Section 19(1): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 19(1)(e): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 19(2): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 19(2)(a): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 19(2)(b): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 19(3): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 19(4): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

20 Appeals

- (1) Any person who is dissatisfied with—
 - (a) any decision of the chief executive to decline an application by that person for approval as a New Zealand accredited body; or
 - (b) any decision of the chief executive to revoke or suspend that person's approval as a New Zealand accredited body,—may appeal to the District Court against the decision.
- (2) An appeal under this section must be brought within 28 days after notice of the decision was communicated to the appellant, or within such further time as the District Court may allow on application made before or after the expiration of that period.
- (3) Every appeal under this section must be heard as soon as practicable after the appeal is lodged.

- (4) Where, before an appeal against a decision to suspend a person's approval as a New Zealand accredited body has been dealt with, the approval is revoked, the court may treat the appeal as an appeal against the decision to revoke the approval.
- (5) On the hearing of an appeal under this section the District Court may confirm, reverse, or modify the decision of the chief executive, or may give any decision that the chief executive could have given or made in respect of the matter.
- (6) Nothing in this section gives the District Court power to review any part of the decision of the chief executive other than the part against which the appellant has appealed.
- (7) Subject to any order of the court, every decision appealed against under this section continues in force and has effect according to its tenor pending the determination of the appeal.
- (8) The decision of the District Court on any appeal under this section is final

Section 20(1): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 20(1)(a): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 20(1)(b): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 20(2): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 20(5): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 20(6): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 20(6): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 20(8): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

21 Accredited bodies to report annually

- (1) Every New Zealand accredited body must report annually to the chief executive on the exercise of its functions delegated under the Convention during the year.
- (2) The report must be given within 3 months of the end of each year ending with 30 June, or such other date as may from time to time be directed by the chief executive.
- (3) The report must be accompanied by a copy of the body's financial accounts, which must include a statement of the money received, and the expenses paid to other persons, by the body in respect of—
 - (a) the functions delegated to the body under the Convention; and

- (b) the services provided by the body to persons intending to be adoptive parents.

Section 21(1): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 21(2): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

22 Assessment of accredited bodies

- (1) The chief executive may at any time, and must at intervals of not more than 12 months, carry out an assessment of a New Zealand accredited body for the purpose of—
 - (a) supervising the organisation as to its composition, operation, and financial situation; and
 - (b) reviewing whether or not its approval as a New Zealand accredited body should continue.
- (2) Any such assessment may be carried out by any employee of the department authorised by the chief executive.
- (3) Every employee of the department who carries out an assessment of a New Zealand accredited body must prepare a report on that assessment for the chief executive, and a copy of that report must be supplied by the chief executive to that organisation.
- (4) For the purpose of carrying out an assessment under this section, an employee of the department authorised by the chief executive may—
 - (a) interview the principal officer or any other officer or employee of the organisation; and
 - (b) examine any documents or records that are held by the organisation and that relate to its composition, operation, or financial situation; and
 - (c) communicate with any person to whom the organisation is providing a service, or has provided a service, in relation to functions delegated to the organisation under the Convention; and
 - (d) communicate with any other person who may be able to provide relevant information.
- (5) Every employee of the department who carries out an assessment under this section must give reasonable notice of that person's intention to interview the principal officer or other officer or employee of an organisation, or to examine any documents or records held by the organisation.
- (6) The provisions of section 16(2) to (4) apply to any review under subsection (1)(b) as if it were an application.

Section 22(1): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 22(2): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 22(3): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 22(4): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Section 22(5): amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

23 Change of principal officer to be notified

Every New Zealand accredited body must, within 10 working days, notify the chief executive in writing of any change in the person acting as its principal officer for the purposes of this Act.

Section 23: amended, on 1 October 1999, by section 13 of the Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Part 3 Miscellaneous provisions

24 Regulations

- (1) The Governor-General may from time to time, by Order in Council, make regulations—
- (a) prescribing the extent to which the functions of a Central Authority under Article 9 or Chapter IV of the Convention may be delegated to public authorities or New Zealand accredited bodies:
 - (b) providing for such matters as are contemplated by or necessary for giving full effect to this Act and for its due administration.
- (2) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 24(2): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Amendments to Adoption Act 1955

25 Recognition of overseas adoptions

Amendment(s) incorporated in the Act(s).

26 Prohibition of payments

Amendment(s) incorporated in the Act(s).

27 Restriction upon advertisements

Amendment(s) incorporated in the Act(s).

28 Offences

Amendment(s) incorporated in the Act(s).

Amendments to Citizenship Act 1977

29 Special provisions relating to parentage

Amendment(s) incorporated in the Act(s).

Amendment to Births, Deaths, and Marriages Registration Act 1995

30 Registration of overseas adoptions

Amendment(s) incorporated in the Act(s).

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

s 2

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 on the Rights of the Child*, of 20 November 1989, 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 1
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 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, sub-paragraph *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 authorised 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 authorised 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;
- c* 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 authorised 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 the 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 authorised 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 day of 19.... *, 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.

*The Convention was signed on the 29th of May 1993 and thus bears that date.

Notes

1 *General*

This is a consolidation of the Adoption (Intercountry) Act 1997 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

2 *Legal status*

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

3 *Editorial and format changes*

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

4 *Amendments incorporated in this consolidation*

Secondary Legislation Act 2021 (2021 No 7): section 3

Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Act 2017 (2017 No 31): section 149

District Court Act 2016 (2016 No 49): section 261

Privacy (Cross-border Information) Amendment Act 2010 (2010 No 113): section 12

Public Records Act 2005 (2005 No 40): section 67(1)

Department of Child, Youth and Family Services Act 1999 (1999 No 82): section 13

Adoption (Intercountry) Act Commencement Order 1998 (SR 1998/427)