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## REGISTERING AN INTERCOUNTRY ADOPTION WITH THE ADOPTION AUTHORITY OF IRELAND

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### What is an intercountry adoption?

An intercountry adoption means the adoption of a child habitually resident in one state (the 'state of origin'), whether a Hague Convention state or a non-Hague Convention state, who has been, is being or is to be transferred into another state (the 'receiving state') – (a) after the child's adoption in the state of origin by a person or persons habitually resident in the receiving state, or (b) for the purposes of an adoption, in either the receiving state or the state of origin, a person or persons habitually resident in the receiving state.

### Examples:

- Adoptive parents, habitually resident in Ireland adopt a child in USA and bring it to live in Ireland afterwards. This is an 'intercountry adoption'.
- Adoptive parents, habitually resident in Spain, adopt a child in USA and bring it to live in Spain afterwards. This is an 'intercountry adoption'.
- Adoptive parents, habitually resident in USA adopt a child in USA (i.e. their state of habitual residence and the child's state of habitual residence). This is **NOT** an 'intercountry adoption'. It is an adoption 'other than an intercountry adoption'.

### So, what else is important?

The date of the adoption is very important.

Adoptions effected abroad up to 1998 and from 1 November 2010 onwards must comply with a certain definition of a 'foreign' adoption which is set out in the Adoption Act 2010. This definition refers to the consequences and effects of the adoption.

Adoptions effected abroad between 1998 and 2010 must comply with a different definition of a 'foreign' adoption which is also set out in the Adoption Act 2010. This definition also refers to the consequences and effects of the adoption but is generally regarded as a 'lower' threshold than that mentioned above.

Generally speaking, the consequences of the foreign adoption must be on par with that of an Irish adoption, (i.e. the adoption must terminate the pre-existing legal relationship between the natural parent(s) and the adopted child. There are also two types of foreign adoptions – 'simple' adoption (which is akin to guardianship in Ireland and 'full/plenary' adoption which is akin to adoption in Ireland). Only 'full / plenary' adoptions can be recognised by Ireland (although there are provisions in the Adoption Act 2010 for the conversion of 'simple' adoptions to 'full/plenary' adoptions. Terms and conditions apply however).

**FOR THIS REASON, NOT ALL FOREIGN ADOPTIONS CAN BE RECOGNISED.**

## What intercountry adoptions CAN be recognised by the Adoption Authority?

There are **THREE** types of adoption which **MAY** be recognised...

1. Intercountry and foreign adoptions effected **prior to the enactment of the Adoption Act 2010 (1 November 2010)** may qualify for an entry in the 'Register of Intercountry Adoptions' (RICA) if they comply with the definition of a 'foreign' adoption outlined in Section 1 of the adoption Act 1991, as it was amended in 1998, unless the recognition would be contrary to public policy (for example, the adoption of an adult)
2. Intercountry adoptions effected **after the enactment of the Adoption Act 2010 (1 November 2010)** may qualify for an entry in the 'Register of Intercountry Adoptions' (RICA) if they
  - (a) comply with the definition of a 'foreign' adoption in Section 1 of the Adoption Act 1991, as it originally read and
  - (b) were effected in accordance with the terms and conditions of the Hague Convention\*.

unless the recognition would be contrary to public policy (for example the adoption of an adult). There is no provision in the Adoption Act for the recognition of an adoption effected in a Hague Convention state but **outside** of the terms and conditions of the Hague Convention.

3. Adoptions, other than 'intercountry adoptions' (see above) effected **after the enactment of the Adoption Act 2010 (1 November 2010)** may qualify for an entry in the 'Register of Intercountry Adoptions' (RICA) if they
  - (a) comply with the definition of a 'foreign' adoption in Section 1 of the Adoption Act 1991, as it originally read AND
  - (b) the adopter (if they adopted alone) or the **adopters both** (if they adopted jointly) can provide evidence that they were (each) habitually resident in the child's state of origin at the time of effecting the adoption.

unless the recognition would be contrary to public policy (e.g. the adoption of an adult or the adoption of a child by a same gender couple).

In order to make a decision on your application the Authority is entitled to ask you for documentary evidence in respect of any part of your application (including proof of habitual residence abroad).

N.B Amongst other matters, the definition of 'habitual residence' abroad includes an intention to permanently settle in that country.

### **Adoptions by unmarried couples**

Currently, unmarried couples (e.g. in a civil-partnership or cohabiting) are not eligible to jointly adopt in Ireland. The Adoption Authority therefore has decided that a matter of public policy DOES arise in the recognition of foreign adoptions effected jointly by same-gender unmarried couples.

The Children and Family Relationships Act 2015 and the Thirty Fourth Amendment to the Constitution (Marriage Equality) Act have been passed but at the time of writing enabling legislation has not yet been enacted. As soon as this legislation is commenced, the Authority will re-examine applications currently on hands from same-gender couples.

### **OK, so I think I satisfy the conditions – how do I apply for recognition?**

Complete the forms below and send them and documentary evidence to the Adoption Authority.

**Register of Intercountry Adoptions established and maintained by the Adoption Authority of  
Ireland under Section 90 of the Adoption Act 2010**

**Application Form**

Please answer all questions. Please do not enter 'not applicable' ('N/A') for any answer.

**Name of applicant:** \_\_\_\_\_

**Address:** \_\_\_\_\_

\_\_\_\_\_

**Telephone number:** \_\_\_\_\_

**Email address of applicant:** \_\_\_\_\_

**Relationship to adopted child (if any):** \_\_\_\_\_

Section 90(3) of the Adoption Act 2010 states – *'The following persons may apply to the Authority to enter particulars of an intercountry adoption effected outside the State in the register of intercountry adoptions'*. Please indicate which category of applicant you are. Are you -

- the adopted person
- an adoptive parent
- another person having an interest in the matter

The Adoption Authority can recognise three types of adoption, Please tick the relevant type below. Is the adoption -

- A. **An adoption effected before 1 November 2010?**
- B. **An adoption effected after 1 November 2010** where the adopters were habitually resident in the country of origin of the child at the time of adoption? (A definition of 'habitually resident' is at the end of this form.)
- C. **An adoption effected after 1 November 2010** where the adoption was carried out in accordance with the terms and conditions of the *1993 Hague Convention on Child Protection and Co-operation in Intercountry Adoption?*

### **Details of Adopter #1**

**Please complete in BLOCK letters**

1. Forename(s): \_\_\_\_\_
2. Current surname: \_\_\_\_\_
3. Birth surname: \_\_\_\_\_
4. Former surname(s): \_\_\_\_\_
5. Date of birth: \_\_\_\_\_
6. Occupation: \_\_\_\_\_
7. Relationship (if any) to child prior to adoption: \_\_\_\_\_
8. Relationship to Adopter #2 at the time of the adoption: \_\_\_\_\_

### **Details of Adopter #2 (if applicable)**

**Please complete in BLOCK letters**

9. Forename(s): \_\_\_\_\_
10. Current surname: \_\_\_\_\_
11. Birth surname: \_\_\_\_\_
12. Former surname(s): \_\_\_\_\_
13. Date of birth: \_\_\_\_\_
14. Occupation: \_\_\_\_\_
15. Relationship (if any) to child prior to adoption \_\_\_\_\_
16. Relationship to Adopter #1 at the time of the adoption: \_\_\_\_\_

### **JOINT ADOPTER DETAILS (if applicable)**

1. Date and place of marriage: \_\_\_\_\_
2. If either applicant had a previous marriage(s), give the date and place of marriage and (a) the date and place of dissolution or (b) the date of death of spouse.  
\_\_\_\_\_

**Details of the adopted child**

1. Birth forename(s): \_\_\_\_\_
2. Birth surname: \_\_\_\_\_
3. Adopted forename(s): \_\_\_\_\_
4. Adopted surname: \_\_\_\_\_
5. Date of birth: \_\_\_\_\_
6. Country and place of birth: \_\_\_\_\_
7. Sex: \_\_\_\_\_

**Detail of the adoption order**

1. Date of adoption order: \_\_\_\_\_
2. Country and place of adoption order: \_\_\_\_\_
3. Full name and address of agent / agency through which the adoption was arranged \_\_\_\_\_  
\_\_\_\_\_
4. Full name of institution in foreign country from where child was adopted: \_\_\_\_\_
5. Full postal address of institution in foreign country from where child was adopted: \_\_\_\_\_  
\_\_\_\_\_

**Hague Convention Article 23 Certificate (if appropriate)**

Name of issuing Competent Authority:

\_\_\_\_\_

Please enclose the original Article 23 Certificate with your application

# Statutory Declaration #1

(Complete this Declaration if the adoption was effected before  
28 April 1998 or after 1 November 2010)

In the matter of an application for an entry in the Register of Intercountry Adoptions under  
Section 90 of the Adoption Act 2010

I/We \_\_\_\_\_ and \_\_\_\_\_  
both of \_\_\_\_\_

and both aged 21 years and upwards do solemnly and sincerely declare and say as follows  
that -

- The consent to the adoption of every person whose consent to the adoption was,  
under the law of the place where the adoption was effected, required to be obtained  
or dispensed with was obtained or dispensed with under that law.
- The adoption has essentially the same legal effect as respects the termination and  
creation of parental rights and duties with respect to the child in the place where it  
was effected as an adoption effected by an adoption order.
- The law of the place where the adoption was effected required an enquiry to be  
carried out, as far as was practicable, into the adopters, the child and the parents or  
guardian,
- The law of the place where the adoption was effected required the court or other  
authority or person by whom the adoption was effected, before doing so, to give  
due consideration to the interests and welfare of the child.
- I / we have not received, made or given or caused to be made or given any payment  
or other reward (other than any payment reasonably and properly made in  
connection with the making of the arrangements for the adoption) in consideration  
of the adoption or agreed to do so

Declared before me by \_\_\_\_\_ (name of declarant), who  
is personally known to me (or who is identified to me by \_\_\_\_\_,  
who is personally known to me), at

\_\_\_\_\_

on this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

Signature \_\_\_\_\_

Description (a) \_\_\_\_\_

(a) This declaration may be made before a Notary Public, a Commissioner for Oaths, a Peace  
Commissioner or other person authorised by law to take and receive statutory declarations.

## Statutory Declaration #2

(Complete this Declaration if the adoption was affected  
between 29 April 1998 and 1 November 2010)

In the matter of an application for an entry in the Register of Intercountry Adoptions under  
Section 90 of the Adoption Act 2010

I/We \_\_\_\_\_ and \_\_\_\_\_  
both of \_\_\_\_\_

and both aged 21 years and upwards do solemnly and sincerely declare and say as follows  
that –

- The consent to the adoption of every person whose consent to the adoption was,  
under the law of the place where the adoption was effected, required to be obtained  
or dispensed with was obtained or dispensed with under that law.
- The adoption has, for so long as it is in force, substantially the same legal effect as  
respects the guardianship of the child in the place where it was effected as an  
adoption effected by an adoption order.
- The law of the place where the adoption was effected required an enquiry to be  
carried out, as far as was practicable, into the adopters, the child and the parents or  
guardian,
- The law of the place where the adoption was effected required the court or other  
authority or person by whom the adoption was effected, before doing so, to give  
due consideration to the interests and welfare of the child.
- I / we have not received, made or given or caused to be made or given any payment  
or other reward (other than any payment reasonably and properly made in  
connection with the making of the arrangements for the adoption) in consideration  
of the adoption or agreed to do so

Declared before me by \_\_\_\_\_ (name of declarant), who  
is personally known to me (or who is identified to me by \_\_\_\_\_,  
who is personally known to me), at

\_\_\_\_\_

on this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

Signature \_\_\_\_\_

Description (a) \_\_\_\_\_

(a) This declaration may be made before a Notary Public, a Commissioner for Oaths, a Peace  
Commissioner or other person authorised by law to take and receive statutory declarations.



In the matter of application to be put on the Register of Intercountry Adoptions established and maintained by the Adoption Authority of Ireland under Section 90 of the Adoption Act

2010

## **Adopter's Residency Questionnaire**

- This form should be completed only where the adopter was habitually resident in the country of adoption at the time of effecting the adoption.
- Each adopter should complete a questionnaire

Name of adopter \_\_\_\_\_

Date and place of birth \_\_\_\_\_

Date and place of marriage (if applicable) \_\_\_\_\_

Provide the following details for each country resided in since and including your birth on the table set out overleaf (see example enclosed)

- dates during which you resided there
- did you at the time intend to live permanently or non-permanently in that country?
- did your immediate family (that is, husband, wife or children – if applicable) live with you in that country or did they remain in your country of birth?
- did you maintain a permanent residence in your country of birth whilst living in that country?
- were you employed in that country? If 'yes', state
  - By whom?
  - Period of employment?
  - On what basis (fixed or indefinite period)?
  - Did you pay tax in that country?

**ADOPTER'S COUNTRIES OF RESIDENCE**

Maintain a residence = Means that you own or rent a residence

Permanent = You have/had no plans to move from this country to live elsewhere

Non-permanent = You have/had plans to move from this country at some time to live elsewhere

**Country #1 (Country of birth)** \_\_\_\_\_

Dates that the adopter lived here \_\_\_\_\_

What members of the adopter's family lived with them? \_\_\_\_\_

Did the adopter maintain a residence in this country? \_\_\_\_\_

Did the adopter work in this country? \_\_\_\_\_

\_\_\_\_\_

**Country #2** \_\_\_\_\_

Dates that the adopter lived here \_\_\_\_\_

Did the adopter live here permanently or non-permanently \_\_\_\_\_

What members of the adopter's family lived with them? \_\_\_\_\_

Did the adopter maintain a residence in this country? \_\_\_\_\_

Did the adopter work in this country? \_\_\_\_\_

\_\_\_\_\_

**Country #3** \_\_\_\_\_

Dates that the adopter lived here \_\_\_\_\_

Did the adopter live here permanently or non-permanently \_\_\_\_\_

What members of the adopter's family lived with them? \_\_\_\_\_

Did the adopter maintain a residence in this country? \_\_\_\_\_

Did the adopter work in this country? \_\_\_\_\_

\_\_\_\_\_

(Photocopy this form as required)

**ADOPTER'S COUNTRIES OF RESIDENCE - EXAMPLE**

**Country #1 (Country of birth)** \_\_\_\_\_ *IRELAND* \_\_\_\_\_

Dates that the adopter lived here \_\_\_\_\_ *1957-1980* \_\_\_\_\_

What members of the adopter's family lived with them? *Lived with birth family*

Did the adopter maintain a residence of their own in this country? \_\_\_\_\_ *NO* \_\_\_\_\_

Did the adopter work in this country? \_\_\_\_\_ *Student, then John Brown & Co, Main Street, Swinford, Co. Mayo. 1976-1980, non-permanent, paid tax. Then emigrated to USA* \_\_\_\_\_

**Country #2** \_\_\_\_\_ *United States of America* \_\_\_\_\_

Dates that the adopter lived here \_\_\_\_\_ *1980-1983* \_\_\_\_\_

Did the adopter live here permanently or indefinitely: \_\_\_\_\_ *non-permanently* \_\_\_\_\_

What members of the adopter's family lived with them? \_\_\_\_\_ *No immediate family* \_\_\_\_\_

Did the adopter maintain a residence in this country? \_\_\_\_\_ *No* \_\_\_\_\_

Did the adopter work in this country? \_\_\_\_\_ *Various, No tax paid* \_\_\_\_\_

**Country #3** \_\_\_\_\_ *Canada* \_\_\_\_\_

Dates that the adopter lived here \_\_\_\_\_ *1983- to date* \_\_\_\_\_

Did the adopter live here permanently or indefinitely: *non-permanently, then permanent*

What members of the adopter's family lived with them? \_\_\_\_\_ *Wife and child* \_\_\_\_\_

Did the adopter maintain a residence in this country? \_\_\_\_\_ *Yes, family home* \_\_\_\_\_

Did the adopter work in this country? \_\_\_\_\_ *Mapleleaf Ltd., Toronto, 1983-1993*

\_\_\_\_\_ *Department of Forestry 1993-to date, Tax paid* \_\_\_\_\_

## **Adoption Authority's Definition of 'Habitual residence'**

Habitual residence ought to be adopted on a voluntary basis and for settled purposes as part of the normal element of a person's life. It is a factual concept that is based on residence for a reasonable period of time.

The Adoption Authority will consider the following factors in determining whether habitual residence has been established:

- Duration (for example, physical presence in the State for a reasonable period of time);
- Regularity;
- Conditions and reasons for the stay in the territory of the State in respect of which habitual residence is claimed;
- The social connections with that Member State (for example, a dwelling within the territory of the State in respect of which habitual residence is claimed); and
- The circumstances of fact specific to each individual case.

## **Proof of 'habitual residence' required**

Acceptable forms of proof – please provide as many proofs as possible

- Driving licence (for the child's state of origin, current at the time of effecting the adoption).
- Utility bills in the name of one or both of the adopters showing their address in the child's state of origin.
- Mortgage payment receipts (for a mortgage in the child's state of origin).
- Bank statements(s) (with an address in the child's state of origin).
- Rent payment receipts (for rent paid in the child's state of origin).
- Proof of ownership of property in the child's state of origin.
- Statement of employment from an employer in the child's state of origin.
- Statement of school attendance for other school-going children in the adopted child's state of origin.