

**The former Ministry of Children and Family Affairs,
September 1998¹**

**CIRCULAR ON INTERCOUNTRY ADOPTION,
INCLUDING GUIDELINES FOR REVIEW AND APPROVAL OF
ADOPTION HOMES**

(This circular replaces section IV, subsection B, in circular no. I-15/89 issued by the Ministry of Social Affairs on 13 October 1989).

The intentions of the Adoption Act

Norwegian legislation on adoption recognises, and has established favourable conditions for the implementation of intercountry adoptions in a defensible manner and in accordance with the basic interests of the child.

Section 2 of the Adoption Act states that authorisation for adoption should only be granted when it can be assumed that the adoption will benefit the child.

The principle of the best interests of the child has been embedded in the UN Convention on the Rights of the Child and the Hague Convention, that both set forth key premises for the efforts of the authorities with regard to adoption issues. Section 21 on international conventions in the UN Convention on the Rights of the Child provides for international adoption as an alternative for children who are unable to receive satisfactory care in an appropriate manner in their home countries. The Hague Convention elaborates and expands on this issue. The principle of the best interests of the child includes the premise that with a view to their general and harmonious personal development, children should be allowed to grow up in a family environment characterised by love and understanding. Both conventions are based on the view that any state should give priority to measures that can ensure that children remain in the care of their own families, and that if this should prove unfeasible, efforts should be undertaken to provide other satisfactory alternatives for the care of the child in the country of origin.

Norwegian Government White Paper 1976:55 on adoption and adoption organisations provided the first unified review of intercountry adoptions, and states the following with regard to the purpose of adoption: “Towards the end of the last century and in this century in particular, the purpose of adoptions has changed. The primary objective of adoption should no longer be to safeguard the rights of the adoptive parents, but to provide a permanent home for the child”. Further, it is stated that: “This new perception

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of the purpose of adoption, i.e. that it is primarily the best interests of the child that must be safeguarded, has entailed a need for other types of expertise in addition to the legal aspects. Our current experience and knowledge indicate that the interests and needs of children are insufficiently protected if the sole emphasis is put on the legal provisions that regulate the material conditions. Psychological, medical and social expertise that can safeguard the children's need to obtain adoptive parents who can provide them with care, contact and security is of equal importance". As regards intercountry adoption, it is emphasised that the psychological aspects of adoption are just as important as covering the material needs of the child.

Proposition no. 40 (1984-85) to the Odelsting and Recommendation no. 19 (1985-86) to the Odelsting expand on these issues. It is emphasised that the security of the child must be safeguarded and that the applicants must possess the qualities required for providing the child with proper care. The Standing Committee on Legal Affairs points out that the requirement that the adoption should benefit the child is a basic one, and that the applicants must possess both the qualifications and the opportunities for providing the child with a safe and harmonious childhood and adolescence.

Norwegian authorities have always been of the opinion that intercountry adoption should not be regarded as a kind of aid. Nor should the opportunities that the child would have in the country of origin be used directly as a basis of comparison. If so, one would run the risk that the threshold for approval of intercountry adoption would be different from the adoption of a Norwegian child. A desire to help a foreign child can be fulfilled in a number of different ways in the child's country of origin rather than through adoption to Norway, for example through distance adoption or other forms of financial support to aid projects for children. If the child cannot be provided with satisfactory care in the country of origin, an adoption to applicants abroad may constitute an appropriate alternative.

It is important to emphasise that the Adoption Act does not warrant a right for the applicants to adopt. Upholding the rights of applicants with regard to an adoption mainly concerns their rights pursuant to the Public Administration Act, for example the right to receive counselling. Because they also are to be regarded as parties in the matter they also have the right to review documents and the right to appeal against a negative decision. The outcome of an application can never be predicted completely, because the decision made by the public authorities to a large extent will be based on a joint assessment of all relevant facts.

Guidelines for processing of applications for adoption, including the criteria to be used for approval of adoptive parents, have been developed on the basis of the above and seek to safeguard the best interests of the child. Because intercountry adoptions involve a number of uncertain factors that are both different and of a more complicated nature than in the case of adoption of Norwegian children, the guidelines set forth especially stringent conditions for applications for an intercountry adoption.

General remarks on intercountry adoption

From the 1960s and well into the 1980s, most adoptive children came from Asia. Towards the end of the 1980s and in the early 1990s, Latin America was more strongly represented, and for a period of time Colombia was the largest donor country. In recent years, most children have again originated in Asia, with South Korea as the main donor country, although a number of children have also come from China. In addition, a number of children arrived from countries in Eastern Europe during the 1990s. In 1997, a total of 814 children were adopted in Norway. Of these, 542 were intercountry adoptions.

Even though most things will be the same with regard to living with a child, whether they are born into the family or adopted, the adoptive family is different from other families in that the adoptive child comes from a different culture and as a rule will look different from the adoptive parents. Children who are adopted from abroad are orphans or have been abandoned. Often, little will be known about the background of the individual child, but many of them have suffered from malnutrition or understimulation. Some of the children have been exposed to physical and mental abuse. Even though most of the adoptive children who grow up in Norway appear to do well, some children will go through especially demanding periods caused by their experience of problems in early childhood among other factors.

Most children who are adopted from abroad come to their new parents in Norway when they are small. Children who are available for intercountry adoption can, however, be older or suffer from known physical or mental injuries. This may involve particular challenges that the adoptive parents can have difficulty envisioning in advance.

Adoptive children and their backgrounds are described in more detail in the leaflet "*The adoptive family*", published in 1997 by the former Ministry of Children and Family Affairs (now: *The Ministry of Children and Equality*), which provides information and guidance to adoptive parents. The leaflet states the following: "An adoptive child has not only experienced the loss of his/her mother and other caregivers during the first years of life. The child might also come from a background characterised by deficient care, physical abuse, drug abuse and malnutrition during pregnancy and in the period following birth. The child may have experienced several relocations, and may have lived in institutions for shorter or longer periods of time. This does not necessarily imply that a child from this kind of background will always struggle with major problems. Nevertheless, it must be assumed that for a number of years the child may be influenced by these experiences in some way or other".

Media publicity may serve to create an impression that a great number of children are suffering, and hence appear to be available for adoption. The reality, however, is different. Intercountry adoption is often a highly controversial and sensitive political issue in the children's countries of origin, and strong domestic forces may be at work to oppose intercountry adoption. As a rule, the countries of origin give priority to maintaining the number of intercountry adoptions at a low level.

In recent years, focus has been placed on mental problems among children and adolescents who have been adopted from abroad. It is claimed that this group is overrepresented as clients of the social services, and in the child welfare services in particular. However, this information should be compared with other data and knowledge that we possess with regard to children and adolescents adopted from abroad. In this context, it is natural to draw on research undertaken in Sweden, Denmark and the Netherlands as well as research from Norway. In these countries, investigations have been undertaken and the results show that the percentage (25%) suffering from mental problems is no higher among persons adopted from abroad than among children and adolescents who were born in the respective countries. Within the group who suffer from such problems, the number of persons with more pronounced problems appears to be higher among those who have been adopted from abroad, and the public services that should provide the required help are less familiar with these types of problems.

Furthermore, research shows that a relatively large proportion (30%) of those who have been adopted from abroad struggle with linguistic and learning difficulties, and as a result they have difficulty mastering school curricula particularly at the secondary level. This situation may produce long-term effects with regard to later opportunities for training and careers, and ongoing research appears to a certain extent to corroborate this finding.

Realism is required when describing the group of children and adolescents adopted from abroad and their adaptation to Norwegian society. Research based on “clinical” findings will necessarily reveal complex picture. For some purposes, this point of departure is required in order to study behaviour among adopted persons who need particular help and support. However, care should be taken not to generalise this impression to the entire group of children and adolescents who have been adopted from abroad.

Overall it can be said that most adoptive relationships are successful. It is not usually known at the time when an advance approval for adoption is granted what adoptive parents will receive what adoptive child. Therefore, the authorities must ascertain as far as possible that every family which is granted such approval also has the capacity to care for a child who may have physical or mental disorders at the time of arrival to Norway.

Guidelines for review and approval of adoption applicants in the case of intercountry adoptions

In the case of adoption of a Norwegian child the identity of the child is known, making it easier to identify parents who will serve the best interests of this particular child. In the case of adoption of a foreign child nothing is known about the child in advance. Therefore, the guidelines for intercountry adoption should not only reflect the best interests of one particular child, but the interests of children in general. The guidelines must therefore be based on objective criteria to the greatest possible extent.

At the same time there is no doubt that personal suitability will determine whether the applicants will be good adoptive parents. It must therefore be emphasised that the guidelines should only be perceived as recommendations, and that the authority that is charged with approval of the adoptive parents must undertake a unified assessment of the entire life situation of the applicants with a view to the best interests of the child, cf. the Adoption Act, sections 2 and 22.

There is also reason to emphasise that because of their experiences prior to the adoption, the children may present their adoptive parents with challenges that are more difficult and far more demanding than those posed by children born into the family.

Age

The Adoption Act stipulates a minimum age limit for applicants. According to section 3 of the Adoption Act, authorisation to adopt can only be granted to persons who have reached 25 years of age. On the other hand, the Adoption Act does not specify an upper age limit. Usually, however, approval should not be granted to applicants older than 45 years. Exceptions can be granted in the case of applications for adoption of a second child, or if the applicants possess particular resources with regard to children. The upper age limit can also be deviated from, if, for example, the applicants wish to adopt a sibling for a child who already is in the family, in cases where the adoption of an older child is relevant, or if there is a large difference in age between the applicants.

The Ministry's comments:

An assessment of the age of the applicants should always be made with a view to the entire childhood and adolescent period of the child. This must be based on a time perspective of at least 15 - 20 years into the future, and entails that applicants must be capable of assuming care responsibilities for an extended period of time. The adolescence of the adoptive child, involving questions of identity, testing of limits and attempts to establish independence may involve major challenges. Nevertheless, the purpose of the upper age limit is not to exclude adoption applicants above 45 years of age, who possess particularly good physical and mental health and other appropriate qualifications, from receiving approval as parents.

Single applicants

The Adoption Act contains no provisions barring single persons from adopting. However, practices have been restrictive, based on the view that having two parents provides children with better security.

The former Ministry of Children and Family Affairs maintains this position by stating that authorisation to adopt should only be granted to a single applicant if a special relationship has been established with the child prior to the adoption, for example through kinship, foster care or similar. Exceptions can also be granted if the applicant possesses particular resources with regard to children.

The Ministry's comments:

Provisions are made for authorising adoption by persons who have no prior affiliation with the child, but who possess particular resources. At the same time, the adoption authorities are responsible for ensuring that foreign adoptive children as far as possible are placed in families with the best qualifications for taking care of them. This principle implies that children are best served by growing up with both a mother and a father. While important in general, this is especially important for adoptive children. At the outset, these children have lost both their parents and their other kin, and may need the strength inherent in having both a parental couple and their respective families on both sides. Some single applicants, however, possess such specialist knowledge and experience with children that approval still may be granted. In addition, the assessment should emphasise whether the applicant possesses a stable and appropriate network where the child can establish contact with both genders during childhood and adolescence.

Health

Adoption applicants must be in good physical and mental health. At the same time, following a specific assessment, it should be emphasised that the parents should constitute a care unit. An assessment must be made of whether illness could be expected to influence the ability and opportunity of the applicants to provide sufficient care and security to the child over an extended period of time. If any of the applicants have suffered from a serious illness that has been treated successfully, a symptom-free period may be required as the circumstances indicate.

The Ministry's comments:

The requirements to the physical and mental health of the applicants are based on the principle that the adoption should serve the best interests of the child, also of a child who may have particular needs and therefore will demand an extra effort on the part of the adoptive parents for an extended period of time.

Some applicants suffer from physical illnesses that can be regulated by medication. Some illnesses can be remedied by medication, but are subject to uncertain prognoses or require medication that produces side effects. Other illnesses can result in chronic pain that precludes employment or forces the sufferer to take special precautions. The same factors could apply to various forms of disabilities, even though a disability in itself would not give grounds to reject an application to adopt. The decisive matter will be whether the illness or disability of the applicants jointly will influence their ability to provide care today and in the future.

A further group consists of applicants suffering from mental problems. Again caution should be exercised in giving approval to applicants who are dependent on daily medication for mental disorders in order to function normally. However, the decisive factor even in such cases will be whether they possess the sufficient and stable resources

required for providing care for a child in addition to themselves for a prolonged period of time.

Finances

Applicants must have a stable financial situation, allowing the child to grow up in secure conditions. Emphasis should not be placed on whether the applicants have a high income, but rather on the security and stability of this income.

The Ministry's comments:

The vast majority of those who apply for adoption fulfil the criterion of having a stable financial situation. The financial issues can, however, come to the forefront if one (or both) of the applicants receives unemployment benefit, for example in regions of the country where few jobs are available. In these cases, an assessment of the duration of this period of unemployment must be made, along with the job search activities of the applicant. The life quality of the applicants must also be taken into account, whether they are marked by the unemployment, etc. The determining factor is that their financial situation is stable and sound, i.e. that there is a balance of income and expenditure. Therefore, liabilities and maintenance payments must be taken into account in the assessment of whether the applicants meet the criterion of a stable financial situation.

Duration of marriage

The Adoption Act requires that persons who adopt together should be married, cf. the Adoption Act, section 5. As a rule, the marriage should have lasted for two years. Cohabitation prior to marriage should be taken into account, provided that the applicants can supply documentation from the Population Register or another public authority to show that the period of marriage and cohabitation together exceeds two years, thereby demonstrating that the relationship is stable.. Private testimonials will not be accepted.

The Ministry's comments:

The interests of the adoptive child indicate that the authorities should have a reasonable degree of certainty with regard to the stability of the relationship between the applicants before approval can be granted. The marriage should therefore have lasted for two years as a minimum. Because cohabitation has become increasingly common, practices have developed in several fields in which cohabitation has been given a status equal to marriage. This implies that applicants with a relatively short period of marriage can receive advance approval of adoption, provided that they can produce documented evidence that the combined periods of cohabitation and marriage exceed two years. The guidelines stipulate a minimum period, and the requirement for duration can only be deviated from when special circumstances so indicate, for example if the adoption concerns a specific child with whom the applicants have formed a special bond while resident in the child's country of origin.

The adoptive family and application for adoption of child no. 2

An adoptive family should as far as possible be no different from families with children born into the family. This applies to the number of children, the age of the children, etc.

As a main rule, the adoptive child should be the youngest child in the family.

In the case of intercountry adoptions, there are grounds to emphasise that caution should be exercised with regard to the adoption of older children. In such cases, the applicants should be required to possess extraordinary resources, because an older child may find it difficult to adapt to a new family and a new culture.

Permission to adopt two or more children simultaneously should be granted only in cases where the adoptive children are biological siblings.

Advance approval for adoption of a second child should not be granted until the last adoptive child has been with the family for one year. As a main rule, the difference in age between the new adoptive child and the applicants' other children should be two years. Exceptions can in particular be considered if the children are siblings. If the life situation of the family has not changed in relation to the findings of the previous social report, an additional report stating this child's development and adaptation to the family will be sufficient. Thereby, it will be possible to shorten case processing time for an application of child no. 2.

The Ministry's comments:

A guiding principle for approval of adoptive homes for foreign children is that the adoptive family should as far as possible not be different from other families. The argument is that it cannot be regarded as being in the best interests of the child to emphasise the marginal position that a foreign adoptive child always will be in. A foreign adoptive child must readjust to a new life in all conceivable ways, and will for a period of time be the family member who needs most care and support. For this reason, the best solution for the child is to assume the same role as a biological child when arriving in the family.

The guidelines do not preclude adoption of siblings. In these cases, more stringent demands should be made to the applicants than in other cases, because adoption of siblings entails provision of particularly comprehensive care. Special attention must therefore be given to whether particular qualifications make the applicants suitable for this task.

When applying for adoptive siblings to either a biological child or to an adoptive child, the age difference between the children should be at least two years. Many of the children adopted from abroad have spent time in orphanages where they have been forced to struggle for their needs to be met. It may therefore be of particular importance for a foreign adoptive child to be placed in a family where there is the least possible

competition with the other children in the family for parental intimacy and contact during the essential bonding period.

An exception from the rule of two years difference in age can be considered if the applicants wish to adopt siblings.

Changes in conditions during case processing

It is assumed that the applicants will notify the authorities responsible for approval if changes in the family's financial, social or health situation occur or are expected during the time that elapses from the time of application to the completion of the adoption.

The Ministry's comments:

Applicants must provide information on a prospective pregnancy, whether they are undergoing treatment for childlessness, or whether they have applied for adoption of a Norwegian child.

Based on such information the application may be suspended, or an approval may be withdrawn.

In the Ministry's view, it is very unfortunate in relation to authorities in other countries if an application must be suspended or withdrawn for the reasons outlined above. It is therefore essential that the information described here is detailed in the social report, and is available as early as possible in the process.