STATUTORY INSTRUMENTS

1978 No. 417 (L.7)

CHILDREN AND YOUNG PERSONS

The Convention Adoption Rules 1978

Made - - - - 14*th March* 1978

Laid before Parliament 28*th March* 1978

Coming into operation in accordance with Rule 1

The Lord Chancellor, in exercise of the powers conferred on him by section 9(3) of the Adoption Act 1958**(a)**, as amended by paragraph 22 of Schedule 3 to the Children Act 1975**(b)**, and section 12(1) of the Adoption Act 1968**(c)**, as amended by Part III of Schedule 4 to the Children Act 1975, and all other powers enabling him in that behalf, hereby makes the following Rules:—

INTRODUCTORY

Citation and commencement

1. These Rules may be cited as the Convention Adoption Rules 1978 and shall come into operation on the date appointed by the Secretary of State for the coming into force of section 24 of the Children Act 1975.

Interpretation

2.—(1) In these Rules, unless the context otherwise requires—

"the Act of 1968" means the Adoption Act 1968;

"Convention proceedings" means proceedings in the High Court on an application for a Convention adoption order in reliance upon section 24 of the Act of 1975 and proceedings in the High Court under the Act of 1968;

"the general rules" means the Adoption (High Court) Rules 1976**(d)**;

expressions which are defined in the general rules have the same meaning as in the general rules;

expressions which are used in the Act of 1975 have the same meaning as in that Act;

any reference to any rule or enactment shall be construed as a reference to that rule or enactment as amended, extended or applied by any other rule or enactment, including these Rules.

(2) Any reference in these Rules to the nationality of a person who is not solely a United Kingdom national means that person's nationality as determined in accordance with section 9 of the Act of 1968.

(3) In these Rules a rule referred to by number means the rule so numbered in these Rules.

(a) 7 & 8 Eliz. 2. c. 5.
(b) 1975 c. 72.
(c) 1968 c. 53.
(d) S.I. 1976/1645

(4) In these Rules a form referred to by number means the form so numbered in Schedule 1 to the general rules, or, as the case may be, the form so numbered in Schedule 2 to these Rules, or in either case a form substantially to the like effect with such variations as the circumstances may require.

(5) The Interpretation Act 1889**(a)** shall apply to the interpretation of these Rules as it applies to the interpretation of an Act of Parliament.

Extent and application of other rules

3.—(1) These Rules shall apply to Convention proceedings and, subject to the provisions of these Rules, the general rules (except rules 3 and 10 thereof, and paragraph 2 of Schedule 2 thereto) shall apply, with the necessary modifications, to Convention proceedings as they apply to the proceedings mentioned in rule 3(1) of the general rules.

(2) Subject to the provisions of these Rules and of any enactment, the Rules of the Supreme Court 1965**(b)** shall apply with the necessary modifications to Convention proceedings.

(3) For the purposes of paragraph (2) any provision of these Rules or of the general rules authorising or requiring anything to be done shall be treated as if it were a provision of the Rules of the Supreme Court 1965.

(4) Unless the contrary intention appears, any power which by these Rules is to be exercised by the Court may be exercised by the registrar.

PROVISIONS RELATING TO ALL APPLICATIONS FOR CONVENTION ADOPTION ORDERS

Summons and affidavit

4.—(1) An applicant for a Convention adoption order shall state in his originating summons that he is applying for a Convention adoption order.

(2) The applicant's affidavit—

(*a*) need not comply with paragraph 2, 23 or 24 of Form 2, but

(*b*) shall contain the additional information required by Schedule 1 to these Rules.

Evidence as to nationality

5.—(1) Any document (or copy of a document) which is to be used for the purposes of satisfying the Court as to the nationality of the applicant or of the child shall be exhibited to the applicant's affidavit.

(2) Where the applicant claims that for the purposes of section 24(2)(*a*), (4)(*a*) or (5)(*a*) of the Act of 1975 he or the child is a national of a Convention country, he shall file, with his affidavit, expert evidence of the law of that country relating to nationality applicable to that person.

Statement at hearing

6. Except where it is established by oral evidence that, immediately before the order is made, the conditions in section 24(2), (3), (4) and (5) of the Act of 1975 are satisfied, there shall be supplied at the hearing a document executed by the applicant containing a statement to that effect and any such document shall, if sufficiently attested, be admissible in evidence without further proof of the signature of the applicant.

(a) 1889 c. 63. **(b)** S.I. 1965/1776

Orders

7. Within seven days after a Convention adoption order has been drawn up, the registrar shall by notice to the Registrar General request him to send the information to the designated authorities of any Convention country—

(*a*) of which the child is a national;
(*b*) in which the child was born;
(*c*) in which the applicant habitually resides;
(*d*) of which the applicant is a national.

ADDITIONAL PROVISIONS FOR CASES WHERE CHILD IS NOT A UNITED KINGDOM NATIONAL

Scope of rules 9 to 12

8. Rules 9 to 12 shall apply to any case where the child is not a United Kingdom national.

Evidence as to foreign law relating to consents and consultations

9. The applicant shall file, with his affidavit, expert evidence as to the provisions relating to consents and consultations of the internal law relating to adoption of the Convention country of which the child is a national.

Form of consent etc.

10.—(1) Any document signifying the consent of a person to, or otherwise containing the opinion of a person on the making of, the Convention adoption order shall be in a form which complies with the internal law relating to adoption of the Convention country of which the child is a national:

Provided that where the Court is not satisfied that a person consents with full understanding of what is involved, it may call for further evidence.

(2) A document referred to in paragraph (1) shall, if sufficiently attested, be admissible as evidence of the consent or other opinion contained therein without further proof of the signature of the person by whom it is executed.

(3) A document referred to in paragraph (1) shall, if executed before the date of the applicant's affidavit referred to in rule 4(2), be exhibited to that affidavit.

(4) The provisions in the general rules (other than rule 7 thereof) relating to agreement to adoption, including paragraphs 9–13 of Form 2, shall apply with the necessary modifications to take account of the provisions of section 24(6)(*a*) of the Act of 1975.

Notice of hearing

11.—(1) When serving notice on the persons specified in rule 18 of the general rules, the registrar shall also serve notice of the hearing on any person whose consent to the making of the order is required and who is not an applicant.

(2) The registrar shall also serve notice of the hearing on any person who, in accordance with the internal law relating to adoption of the Convention country of which the child is a national, has to be consulted about, but does not have to consent to, the adoption.

(3) Any person served or required to be served with notice under this rule shall be treated as if he had been served or was required to be served with notice under rule 18 of the general rules.

Proper officer to receive opinions on adoption

12. For the purposes of section 24(7)(*a*) of the Act of 1975, the proper officer of the Court to whom any person whose consent is required under or who is consulted in pursuance of the internal law relating to adoption of the Convention country of which the child is a national may communicate his consent or other opinion on the adoption is the Senior Registrar of the Principal Registry of the Family Division of the High Court.

PROCEEDINGS UNDER SECTION 6 OF THE ACT OF 1968

Application to annul or revoke adoption

13.—(1) An application for an order under section 6(1) or (2) of the Act of 1968 shall be made by originating summons in Form 6 issued out of the Principal Registry of the Family Division; and the person taking out the summons shall be described as the applicant and the adopted person and any adopter, not being the applicant, shall be described as a respondent.

(2) An application under section 6(1) of the Act of 1968 shall not, except with the leave of the Court, be made later than two years after the date of the adoption to which it relates.

Application to declare adoption invalid or determination invalid or affected

14. An application for an order or decision under section 6(3) of the Act of 1968 shall be made by originating summons in Form 7 issued out of the Principal Registry of the Family Division; and the person taking out the summons shall be described as the applicant and the adopted person and any adopter, not being the applicant, shall be described as a respondent.

Evidence in support of application

15.—(1) Evidence in support of an application under section 6 of the Act of 1968 shall be given by means of an affidavit in Form 8 which shall be filed within 14 days after the issue of the originating summons.

(2) Where the application is made under section 6(1) or (3) of the Act of 1968 there shall be exhibited to the affidavit a statement of the facts and, subject to rule 19, there shall be filed with the affidavit expert evidence of any provision of foreign law relating to adoption on which the applicant intends to rely.

(3) The Court may order any deponent to give oral evidence concerning the facts stated in, or exhibited to, his affidavit.

Guardian ad litem

16. Where the adopted person is under the age of 18 on the date on which an application under section 6 of the Act of 1968 is made, rule 12 of the general rules shall apply to the application as it applies to an application for an adoption order.

Proceedings in private

17. Proceedings under the Act of 1968 may be disposed of in chambers.

Notice of order made under section 6 etc.

18.—(1) Where under section 6 of the Act of 1968 the Court has ordered that an adoption be annulled or revoked or that an adoption or a determination shall cease to be valid in Great Britain, the registrar shall serve notice of the order on the Registrar General, and shall specify in the notice—

(*a*) the date of the adoption;

(*b*) the name and address of the authority which granted the adoption;

(*c*) the names of the adopter or adopters and of the adopted person as given in the affidavit referred to in rule 15.

(2) A notice under paragraph (1) in respect of the annulment or revocation of an adoption shall request the Registrar General to send the information to the designated authorities of any Convention country—

(*a*) in which the adoption was granted;

(*b*) of which the adopted person is a national;

(*c*) in which the adopted person was born.

(3) Where under section 26(1) of the Act of 1958 the Court has ordered that a Convention adoption order be revoked, the notice to the Registrar General under section 26(2) of that Act shall request the Registrar General to send the information to the designated authorities of any Convention country—

(*a*) of which the adopted person is a national;

(*b*) in which the adopted person was born.

SUPPLEMENTARY

Evidence as to specified or notified provisions

19.—(1) Where the applicant seeks to satisfy the Court as to any question which has arisen or is likely to arise concerning a provision—

(*a*) of the internal law of the Convention country of which the applicant or any other person is or was a national,

(*b*) which has been specified in an order—

(i) under section 24(8) of the Act of 1975 (a "specified provision"), or

(ii) under section 7(4) of the Act of 1968 (a "notified provision"),

expert evidence as to the specified or notified provision shall, where practicable, be exhibited to the applicant's affidavit.

(2) Paragraph (1) shall apply, in the case of a person who is or was a United Kingdom national, for the purposes of a notified provision in respect of a specified country as it applies for the purposes of a notified provision in respect of a Convention country of which a person is or was a national.

Interim order

20. Where the applicant is a national or both applicants are nationals of a Convention country, the Court shall take account of any specified provision (as defined in section 24(8) of the Act of 1975) of the internal law of that country before any decision is made to postpone the determination of the application and to make an interim order.

Attestation of documents

21. A document shall be sufficiently attested for the purposes of these Rules if it is attested by any of the following persons:—

(*a*) if it is executed in the United Kingdom—

(i) a justice of the peace; or

(ii) if it is executed in England and Wales, an officer of a county court appointed for the purposes of section 87 of the County Courts Act 1959**(a)**, or a justices' clerk within the meaning of section 21 of the Justices of the Peace Act 1949**(b)**; or

(iii) if it is executed in Scotland, the sheriff;

(*b*) if it is executed elsewhere, any person mentioned in rule 7(2) of the general rules.

(a) 1959 c. 22. **(b)** 1949 c. 101.

Service of documents

22.—(1) Any document to be served for the purposes of these Rules may be served out of the jurisdiction without the leave of the Court.

(2) Any document served out of the jurisdiction in a country in which English is not an official language shall be accompanied by a translation of the document in the official language of the country in which service is to be effected or, if there is more than one official language of the country, in any one of those languages which is appropriate to the place in that country where service is to be effected.

Translation of documents

23. Where a translation of any document is required for the purposes of Convention proceedings, the translation shall, unless otherwise directed, be provided by the applicant.

Elwyn-Jones, C.
Dated 14th March 1978.

SCHEDULE 1

Rule 4(2)(*b*)

Modification to Form in General Rules

Form 2 shall contain the following additional paragraphs after paragraph 22:—

"PART IV

Additional Information required for a Convention adoption application

23. *The child.* The child—

(*a*) is a United Kingdom national [*or* a national of ..... which is a Convention country] **(28) (29) (30)**, and

(*b*) habitually resides at..... which is in British territory **(31)** [*or* a Convention country].

24. *The applicants.* We are applying together, in reliance on section 24(4)(*a*) of the Act of 1975, and the first applicant is a United Kingdom national [*or* a national of ..... which is a Convention country] **(28) (30)** and the second applicant is a United Kingdom national [*or* a national of ..... which is a Convention country] **(28) (30)** and we habitually reside at ..... which is in Great Britain.

[*or* 24. *The applicants.* We are applying together in reliance on section 24(4)(*b*) of the Act of 1975, and are both United Kingdom nationals **(28)**, and we are habitually resident at ..... which is in British territory **(31)** [*or* a Convention country].]

[*or* 24. *The applicant.* I am applying alone in reliance on section 24(5)(*a*) of the Act of 1975, and am a United Kingdom national [*or* a national of .... which is a Convention country] **(28) (30)** and habitually reside at ..... which is in Great Britain.]

[*or* 24. *The applicant.* I am applying alone in reliance on section 24(5)(*b*) of the Act of 1975, and am a United Kingdom national **(28)** and habitually reside at ..... which is in British territory **(31)** [*or* a Convention country].]

[25. *Specified Provisions* **(32) (33)**. We are both [*or* I am], accordingly, nationals of the same [*or* a national of a] Convention country, namely .... and there are no specified provisions in respect of that country [*or* there are no relevant specified provisions in respect of that country because .....].]"

(28) Documentary evidence of nationality should be exhibited. Where the child or an applicant is a national of a Convention country, evidence as to the law of the country relating to nationality applicable to that person should be supplied.

(29) Where the child is not a United Kingdom national, evidence as to the provisions relating to consents and consultations of the internal law relating to adoption of the Convention country of which the child is a national should be supplied.

(30) Any accompanying affidavit on foreign law must be sworn by a person who is suitably qualified on account of his knowledge or experience to give evidence as to the law concerned.

(31) British territory is defined in section 107(1) of the Act of 1975.

(32) Specified provision is defined in section 24(8) of the Act of 1975.

(33) Expert evidence as to specified provisions may be necessary: if so see sidenote (30) above.

Rule 2(4)

SCHEDULE 2

Rule 13(1)

Form 6

ORIGINATING SUMMONS FOR THE ANNULMENT OR REVOCATION OF AN ADOPTION **(1),(2),(3)**

In the High Court
Family Division

No. of 19

IN THE MATTER OF.....**(4)**

and

IN THE MATTER OF the Adoption Act 1968

Let ..... of .....
attend at the Royal Courts of Justice, Strand, London, WC2A 2LL on a date to be fixed for the hearing of the application of .....
..... of .....
for an order:—

1. That the adoption which was authorised on the .....
day of ..... 19.... at .....**(5)**,
by which ..... [and .....]
was [*or* were] authorised to adopt the said.....
be annulled [*or* revoked].

[2. That the leave of the court be granted for the purpose of making this application out of time **(3)**.]

3. That the costs of this application be provided for.

Dated this ..... day of .....19....

This summons was taken out by ..... of .....
solicitor for the above-named .....

(1) This Form is for use when the adoption is to be annulled or revoked under section 6(1) or (2) of the Adoption Act 1968.
(2) An application may not be made unless either the adopter or both adopters, as the case may be, or the adopted person habitually resides in Great Britain immediately before the application is made.
(3) Except with the leave of the court an application to annul an adoption may not be made later than two years after the date of the adoption to which it relates.
(4) Enter the full names by which the adopted person has been known since the adoption.
(5) Enter the description and address of the authority by which the adoption was authorised.

Rule 14

Form 7

ORIGINATING SUMMONS FOR AN ORDER THAT AN OVERSEAS ADOPTION OR A DETERMINATION CEASE TO BE VALID OR THAT A DETERMINATION HAS BEEN AFFECTED BY A SUBSEQUENT DETERMINATION (1)

In the High Court No. of 19
Family Division

IN THE MATTER OF.....

and

IN THE MATTER OF the Adoption Act 1968

Let ..... of .....
attend at the Royal Courts of Justice, Strand, London, WC2A 2LL on a date to be fixed for the hearing of the application of
.....of..... for:

[1. An order that an overseas adoption which was authorised on the ..... day of ..... 19.... at ..... by which .....
[and .....] was [*or* were] authorised to adopt the said ..... do cease to be valid in Great Britain; (2)]

[2. An order that a determination made by an authority of a Convention country [*or* a specified country] to authorise [*or* review the authorisation of] a convention adoption [*or* an adoption order made under any enactment in force in a specified country and corresponding to sections 8(1) and 24 of the Children Act 1975] do cease to be valid in Great Britain; (2) (3)]

[3. An order that a determination made by an authority of a Convention country [*or* a specified country] to give [*or* review] a decision revoking [*or* annulling] a convention adoption [*or* an adoption order made under any enactment in force in a specified country and corresponding to sections 8(1) and 24 of the Children Act 1975] [*or* an order made under section 8 of the Children Act 1975 as a convention adoption order] do cease to be valid in Great Britain; (2) (3)]

[4. A decision as to the extent, if any, to which a determination mentioned in paragraph 2 [*or* 3] above has been affected by a subsequent determination;]

5. An order that the costs of this application be provided for.

Dated this ..... day of ..... 19....

This summons was taken out by ..... of .....
solicitor for the above-named .....

(1) This Form is principally for use if the applicant claims that the adoption or determination is contrary to public policy or that the authority which purported to authorise the adoption or make the determination was not competent to entertain the case. The applicant should delete the paragraphs which are not relevant.
(2) An overseas adoption is one specified in an order made under section 4(3) of the Adoption Act 1968: a convention adoption is an overseas adoption of a description designated in such an order as that of an adoption regulated by the Hague Convention on the Adoption of Children 1965.
(3) A Convention country means a country designated by an order of the Secretary of State as a country in which the Hague Convention on the Adoption of Children 1965 is in force (section 107(1) of the Children Act 1975). A specified country means Northern Ireland, the Channel Islands, the Isle of Man, or a colony, unless this meaning is modified by an order of the Secretary of State (section 11(1) of the Adoption Act 1968).

Rule 15(1)

Form 8

AFFIDAVIT IN SUPPORT OF APPLICATION UNDER SECTION 6 OF ADOPTION ACT 1968

In the High Court Family Division No. of 19

IN THE MATTER OF.....(1)

and

IN THE MATTER OF the Adoption Act 1968

I/We ..... of .....
hereby make oath and say that the particulars set out in this affidavit are true.

PART I

1. Name of [first] adopter in full .....
Address .....

[2. Name of second adopter in full.....
Address .....]

3. Name of adopted person in full .....(1)

[4. The said .....(2) [and the said .....(3)] habitually reside in Great Britain.] (4)

5. The adopted person is of the ..... sex, is a national of ..... and was born at.....
on the ..... day of ..... 19....

6. On the ..... day of ..... 19....
the said ..... [and .....] was [*or* were] authorised to adopt the said.....
by ..... at .....(5)
and those persons are the persons to whom the certified copy of an entry in a public register (or other evidence of adoption (6)) which is exhibited to this affidavit relates.

(1) Enter the name(s) by which the adopted person has been known since the adoption.
(2) Enter the name(s) of either the adopter(s) or the adopted person. Where this paragraph is required (see note (4) below), no application may be made to the court unless the adopter or, as the case may be, both adopters or the adopted person habitually reside in Great Britain immediately before the application is made.
(3) Delete unless both theadopter(s) and the adopted person habitually reside in Great Britain
(4) This paragraph is not required for applications made under section 6(3) of the Adoption Act 1968.
(5) Enter the description and full address of the authority which authorised the adoption.
(6) Evidence of the adoption may be given either by a certified copy of an entry in a public register relating to adoptions or by a certifi-

[7. At the time at which the adoption was authorised the said ....**(7)** was a national of ..... and resided in ..... [the said .....**(8)** was a national of ..... and resided in .....] and the adopted person was a national of ..... and resided in ....] **(9)** *or*

[7. *For other applications details of the marriage or, as appropriate, of the determination or determinations should be given and any necessary documentary evidence relating thereto supplied.*]

[8. *A statement of the facts is exhibited to this affidavit.*] **(10)** **(11)**

Sworn, etc.

This affidavit is filed on behalf of the applicant(s).

cate that the adoption has been effected signed by a person who is authorised by the law of the country concerned to do so.

(7) Enter the name of the first adopter.

(8) Enter the name of the second adopter if applicable.

(9) This paragraph should be completed where the application is made under section 6(1).

(10) A statement of facts is not required for anapplication to revoke a convention adoption under section 6(2) of the Adoption Act 1968.

(11) Expert evidence as to notified provisions may be necessary. In that or any other case where the applicant intends to rely on any provision of foreign law relating to adoption, any accompanying affidavit thereon must be sworn by a person who is suitably qualified on account of his knowledge or experience to give evidence as to the law concerned.

EXPLANATORY NOTE

(This Note is not part of the Rules.)

These Rules make provision in England and Wales for proceedings under section 24 of the Children Act 1975 and section 6 of the Adoption Act 1968, which relate principally to the Hague Convention on Jurisdiction, Applicable Law and Recognition of Decrees Relating to Adoptions.

The general scheme of the Rules is to apply the Adoption (High Court) Rules 1976 with the modifications necessitated by the specific provisions relating to proceedings under the Hague Convention.

Rules 4 to 7 provide the additional material required for all applications for adoption orders under the Hague Convention and rules 9 to 12 in addition make provision for cases where the child to be adopted is not a United Kingdom national: in such cases, the High Court has to apply the law relating to consents and consultations of the internal law relating to adoption of the Convention country of which the child is a national (section 24(6)(*a*) of the Children Act 1975).

Rules 13 to 18 make provision for proceedings under section 6 of the Adoption Act 1968 concerning the annulment and revocation of adoptions and concerning the effect in Great Britain of adoptions and determinations relating to adoptions made overseas.

Rules 19 to 23 make supplementary provisions concerning proceedings dealt with in the preceding rules.

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