

*These notes refer to the Adoption (Intercountry Aspects) (Northern Ireland) 2001 (c.11) which received Royal Assent on 2 July 2001*

## Adoption (Intercountry Aspects) (Northern Ireland) 2001

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### EXPLANATORY NOTES

#### CONVENTION ADOPTIONS - SECTIONS 3 TO 6

##### *Section 3 - Convention adoption orders*

17. **Section 3** amends the 1987 Order to provide that, on an application to the court for a Convention adoption order, the order made will be a Convention adoption order. Any such order will be subject to prescribed requirements.

##### *Section 4 - Effect of Convention adoptions*

18. **Section 4** amends Article 39(1) of the 1987 Order to clarify the position with regard to Convention adoptions made outside the UK, Channel Islands and the Isle of Man. It is concerned with the legal status in Northern Ireland of children who are the subject of such adoptions.
19. Subsection (1) adds the term “Convention adoption” to the definition of adoption in Article 39(1) of the 1987 Order. This definition in the 1987 Order sets out the legal status of adopted children. The effect of the amendment is to enable Convention adoptions to be recognised in accordance with Article 40 of the 1987 Order. A Convention adoption is an adoption order made under the Convention in any Convention country (outside the UK, Channel Islands and the Isle of Man) which has been certified in accordance with the requirements of Article 23(1) of the Convention.
20. Subsections (2) and (3) deal with certain cases where a Convention adoption is made outside the UK, Channel Islands and the Isle of Man. The cases addressed are those which are not “full adoptions” and those where consents required by Article 4(c) and (d) of the Convention have not been given for a full adoption (e.g. matters relating to the consent of the birth mother, the consent of the child (where relevant) and safeguards against consents induced by payment).
21. Northern Ireland adoption law, in common with that in the rest of the UK, recognises only one type of adoption – “full adoption”. The latter creates a new and irrevocable legal relationship between the child and the adoptive parents which severs all legal ties between the child and birth parents and is set out in Article 40(2) of the 1987 Order. This contrasts with “simple adoptions” which

may be made in some Convention countries, where some forms of adoption do not totally sever all legal ties with birth parents.

22. Article 26 of the Convention provides for the recognition of both full and simple adoptions, but does not prejudice the application of any legal provision in force in the Contracting State if it is more favourable to the child. By the amendment to Article 39(1) noted above, all Convention adoptions will be recognised as full adoptions. However a new paragraph (3A) is inserted into Article 40 of the 1987 Order by Section 4(3). This provides a mechanism whereby the High Court may give a direction with regard to the child's status if this is more favourable to the child. The Court may thus direct that Article 40(2) shall not apply or shall not apply to the extent specified in the direction.
23. Situations where a court may be called upon to give a direction might include cases where the birth parents come into unexpected money.

### ***Section 5 - Annulment etc of Convention adoptions***

24. **Section 5** inserts a new Article 55A into the 1987 Order. This permits the High Court to annul (on application) a Convention adoption or a Convention adoption order on the ground that the particular adoption or order is contrary to public policy, or that the authority, which purported to authorise the adoption, was not so authorised. The effect of any annulment will be that the adoption will cease to have effect in Northern Ireland. Similar provision is made for overseas adoptions and determinations not covered by the Convention.
25. This amendment also provides that the validity of a Convention adoption, a Convention adoption order, an overseas adoption or determination shall not be challenged in any court in Northern Ireland, except by means of an application under Article 55A.
26. **Section 5** also inserts a new Article 55B into the 1987 Order. This contains supplementary provisions to Article 55A. It concerns the manner of applications to the High Court and how the court is to gauge the competence of an authority which purported to authorise an adoption as referred to in Article 55A. In this regard the court is to be bound by any finding of fact by the authority in relation to its competence.

### ***Section 6 - Meaning of 'Convention adoption' and related expressions in 1987 Order***

27. **Section 6** provides for amendments to be made to Article 2 of the 1987 Order which sets out definitions of terms used in that Order.
28. The "Convention" is defined as meaning the 1993 Convention. A "Convention adoption" is an adoption effected outside the United Kingdom, the Channel Islands and the Isle of Man under the 1993 Convention and which has been certified under Article 23(1) of the Convention dealing with the recognition and effects of adoption. The latter requires that where an adoption has been certified by the competent authority of the State of the adoption as having been made

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in accordance with the Convention, the adoption shall be recognised under the law of the other Contracting States. The certificate is to specify when and by whom the agreements under Article 17(c) of the Convention were given.

29. Article 17(c) of the Convention falls under the general heading of the duties of Central Authorities and accredited bodies and requires the Central Authorities of both States to have agreed that the adoption may take place. Agreement will only be given by each Central Authority if it is satisfied that the requirements of the relevant Articles of the Convention for which each is responsible have been met. A “Convention adoption order” is an adoption order made in Northern Ireland as a convention adoption.