

PART 4

CONVENTION PROCEEDINGS

23. Introductory

This Part applies to Convention proceedings and, subject to the provisions of this Part, Parts 1, 2 and 3 apply, with the necessary modifications, to Convention proceedings as they apply to other proceedings in the Court under the Act.

24. Originating application

- (1) An applicant for a Convention adoption order shall state in his originating application that he is applying for a Convention adoption order.
- (2) The originating application —
 - (a) need not contain paragraphs corresponding to paragraph 2 or 20 of Form 1 but
 - (b) shall contain the additional information required by Schedule 4.

25. Prescribed requirements for purposes of making Convention adoption order

- (1) For the purposes of section 6 of the Act (requirements in respect of Convention adoption order), the prescribed requirements are —
 - (a) where the Island is the receiving country —
 - (i) both spouses (in the case of an application by a married couple) or the applicant (in the case of an application by one person) have been habitually resident in part of the British Islands for a period of not less than 1 year ending with the date of the application;
 - (ii) the child to be adopted has not attained the age of 18 years on the date of the application;
 - (iii) the child to be adopted was, on the date on which the agreement under Article 17(c) was made, habitually resident in a Convention country outside the British Islands;
 - (iv) in a case where the applicant (in the case of an application by one person) or one of the spouses (in the case of an application by a married couple) is not a British citizen by virtue of the British Nationality Act 1981¹⁴, the Home Office has confirmed that the child is authorised to enter and reside permanently in the Island;
 - (b) where the Island is the country of origin —

¹⁴ 1981 c.61

- (i) both spouses (in the case of an application by a married couple) or the applicant (in the case of an application by one person) are habitually resident in a Convention country outside the British Islands on the date of the application;
- (ii) either each parent or guardian of the child freely, and with full understanding of what is involved, agrees unconditionally to the making of an adoption order (whether or not he knows the identity of the applicants), or there is in force in respect of the child an order mentioned in section 5(2A) of the Act;
- (iii) the child is habitually resident in any part of the British Islands on the date of the application; and
- (iv) the child has not attained the age of 18 years on the date of application.

(2) The requirements specified in paragraph (1) may be established by a document executed by the applicant containing a statement to that effect attested in accordance with rule 30 and such a statement shall be admissible in evidence without further proof of the signature of the applicant.

26. Form of consent etc

(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 in which the child is habitually resident: 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 witnessed, be admissible as evidence of the consent or 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 originating application, be attached to that application.

27. Notice of hearing

(1) When serving notice of the hearing on the persons specified in rule 10, the Chief Registrar shall also serve notice on any person —

- (a) whose consent to the making of the order is required, not being an applicant, or
- (b) who, in accordance with the internal law relating to adoption of the Convention country in which the child is habitually resident, has to be consulted about, but does not have to consent to, the adoption.

(2) 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 10.

28. Removal of child by adoption agency

- (1) This rule applies where —
 - (a) a notice under regulation 14(7) of the Convention Regulations has been given but has not been complied with; or
 - (b) before such a notice was given an application for a Convention adoption order has been made and not disposed of.
- (2) An application for the return of the child shall be made by the Department by petition or, where paragraph (1)(b) applies, by application in the existing proceedings.
- (3) The respondents shall be —
 - (a) the prospective adoptive parents,
 - (b) the child, and
 - (c) the adoption agency (if not the Department);

and the Court may require notice of the application to be served on such other persons as it thinks fit.

(4) Any respondent who wishes to contest the notice shall, within 7 days of service of the notice upon him, file and serve an answer.

(5) The Chief Registrar shall list the case for hearing on a date not more than 21 days from the date the application under paragraph (2) was submitted to the Court.

29. Specific applications

(1) Where a Convention adoption order is to be or has been sought and has not been disposed of, the applicant or proposed applicant may apply to the Court for an order-

- (a) permitting the child to be known by a new surname, or
 - (b) permitting the child to be removed from the Island for a period of one month or more.
- (2) The application under paragraph (1) shall be made —
- (a) if an application for a Convention adoption order under section 17 of the Act is pending, in those proceedings; or
 - (b) if no such application is pending, by petition.

(3) The Chief Registrar shall serve a copy of the application and a notice of the date of the hearing —

- (a) in a case where proceedings for an adoption order are pending, on all the parties to those proceedings and on the guardian ad litem; and
- (b) in any other case, on the Department and (if not the Department) the accredited agency.

30. Witnessing of documents

A document shall be sufficiently attested for the purposes of this Part if it is witnessed by one of the following persons —

- (a) if it is executed in the Island, the guardian ad litem, a justice of the peace, a commissioner for oaths or an officer of the General Registry authorised for the purpose;
- (b) if it is executed elsewhere, any person specified in rule 9(3) or (4), according to the country in which it is executed.

31. Service of documents

(1) Any document to be served for the purposes of this Part 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.

32. Translation of documents

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.