

# ADOPTION AND CHILDREN ACT 2002

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 1 – Adoption**

#### *Chapter 6 – Adoptions with a Foreign Element*

#### *Section 88: Modification of section 67 for Hague Convention adoptions*

229. *Section 88* provides that where the High Court, on an application, is satisfied that the conditions set out in *subsection (2)* are met, it may direct that *section 67(3)* (which provides for the status conferred by adoption) does not apply or does not apply to any extent which may be specified in the direction. The reason for this provision is as follows. Adoption law of the United Kingdom recognises only one type of adoption, which is full adoption, and this creates a new and irrevocable legal relationship between the child and adoptive parents which severs all legal ties between the child and his birth parents. A child adopted in England and Wales is to be treated in law as not being the child of any person other than the adopters. In some countries, however, certain forms of adoption do not have the effect of totally severing all ties from the birth parents and these are known as simple adoptions.
230. Article 26 of the Hague Convention provides for the recognition of both full and simple adoptions. Article 27 of the Hague Convention allows a receiving State to convert a simple adoption into a full adoption if its law so permits and provided the birth parents and relevant parties under Article 4 of the Hague Convention have given their consent to a full adoption. Where the receiving State is England and Wales, the Central Authority will ensure that in all cases the birth parents are informed of the effects of a simple adoption in England and Wales and seek to obtain their consent to a full adoption prior to a Convention adoption being made in a country outside the British Islands or a Convention adoption order being made here. Where the receiving State is not England and Wales, it is possible that the child may be brought to this country in circumstances where simple adoptions are recognised, both in the State of origin and the receiving State, and so no consent to full adoption has been given. In those cases the adoption will still be treated as a full adoption by operation of law, but if any issue of status arises where it is felt it would be more favourable to the child to treat the adoption otherwise than as a full adoption, an application may be made to the High Court.