

2003 No. 183 (L. 1)

**CHILDREN AND YOUNG PERSONS, ENGLAND
AND WALES**

The Adoption (Amendment) Rules 2003

Made - - - - - 31st January 2003

Laid before Parliament 3rd February 2003

Coming into force in accordance with rule 1

The Lord Chancellor, in exercise of the powers conferred upon him by sections 65(1), 66(1) and 67(1) of the Adoption Act 1976(a), makes the following Rules:

Citation and commencement

1. These Rules may be cited as the Adoption (Amendment) Rules 2003 and shall come into force—
- (a) for the purposes of rules 2, 18 and this rule on 24th February 2003; and
 - (b) for all other purposes on 1st June 2003.

Interpretation

2. In this rule and in the following rules—
- (a) “the Rules” means the Adoption Rules 1984(b);
 - (b) a rule or Schedule referred to by number means the rule or Schedule so numbered in the Rules; and
 - (c) a Form referred to by number means the Form so numbered in Schedule 1 to the Rules.

Amendments to the Adoption Rules 1984

3. In rule 2(1)—
- (a) after the definition of “adoption agency” insert—
 - ““CA of the receiving State” means, in relation to a Convention country(c) other than the United Kingdom, the Central Authority of the receiving State;
 - “CA of the State of origin” means, in relation to a Convention country other than the United Kingdom, the Central Authority of the State of origin;
 - “Central Authority” means, in relation to England, the Secretary of State for Health, and in relation to Wales, the National Assembly for Wales;”;
 - (b) after the definition of “children’s guardian” insert—
 - ““Convention” means the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, concluded at the Hague on 29th May 1993;”;

(a) 1976 c. 36; section 65 is amended by the Criminal Justice and Court Services Act 2000 (c. 43), Schedule 7, Part II, paragraphs 51 and 52 and Schedule 8.

(b) S.I. 1984/265 amended by S.I. 1991/1880, 1999/1477 and 2001/819.

(c) The term “Convention country” is defined in section 72(1) of the Adoption Act 1976 (c. 36) as amended by section 8 of the Adoption (Intercountry Aspects) Act 1999 (c. 18).

- (c) for the definition of “Convention proceedings” substitute—
 ““Convention proceedings” means proceedings in the High Court or a county court for a Convention adoption order or in connection with a Convention adoption order or a Convention adoption(a);”;
 - (d) after the definition of “the court” insert—
 ““Hague Convention Regulations” means the Intercountry Adoption (Hague Convention) Regulations 2003(b);”;
 - (e) in the definition of “proper officer” omit the second “and”;
 - (f) after the definition of “proper officer” insert—
 ““receiving State” means the state in which it is proposed that the child will become habitually resident;”;
 - (g) in the definition of “reporting officer” for “Act.” insert “Act; and”; and
 - (h) after the definition of “reporting officer” insert—
 ““State of origin” means the state in which the child is habitually resident.”.
4. In rule 3—
- (a) in paragraph (1) omit “27th May 1984” and substitute “1st June 2003”; and
 - (b) after paragraph (3) insert—
 “(3A) In any proceedings concerning an adoption in accordance with the Convention relating to Adoption concluded at the Hague on 15th November 1965, the Adoption Rules 1984 in force immediately before 1st June 2003 shall continue to apply, with any necessary modifications, to proceedings in the High Court.”.
5. In rule 18—
- (a) in paragraph (2) for “Where” substitute “Subject to paragraph (2A), where”;
 - (b) after paragraph (2) insert—
 “(2A) Where an application is made for a Convention adoption order under rule 28, the proper officer shall as soon as possible appoint a children’s guardian of the child and shall send him a copy of the originating process together with any documents attached thereto.”;
 - (c) in paragraph (6)(a)(i) after “22(1) or (2)” insert, any reports filed under the Convention or Hague Convention Regulations”; and
 - (d) in paragraph (6)(a)(ii) after “adoption order” insert “/Convention adoption order”.
6. In rule 27—
- (a) in paragraph (1) after “High Court” insert “or a county court”; and
 - (b) omit paragraph (2).
7. Omit rule 29.
8. For rule 30 substitute—
 “30. The requirements prescribed by regulations 21 and 32 of the Hague Convention Regulations may be established by a document executed by the applicant containing a statement to that effect attested in accordance with rule 44 and such a statement shall be admissible in evidence without further proof of the signature of the applicant.”.
9. Omit rules 31, 32 and 33.
10. In rules 34(1) and 35(1)(b) for “a national” substitute “habitually resident”.
11. Omit rule 36.
12. After rule 37 insert—

(a) The terms “Convention adoption order” and “Convention adoption” are defined in section 72(1) of the Adoption Act 1976 as amended by section 8 of the Adoption (Intercountry Aspects) Act 1999.
 (b) S.I. 2003/118.

“Application to annul Convention adoption or Convention adoption order

37A.—(1) An application for the annulment of a Convention adoption or a Convention adoption order under section 53(1) of the Act^(a) shall be made by originating process issued out of the Principal Registry of the Family Division in Form 9, and may be made by—

- (a) the adopter or adopters, or
- (b) the adopted person, or
- (c) the relevant Central Authority, or
- (d) the adoption agency, or
- (e) the local authority to whom notice under section 22 of the Act was given (if different), or
- (f) the Secretary of State for the Home Department.

(2) The adopted person and any adopter, not being the applicant, shall be respondents and the court may require notice of the application to be served on such other persons as it thinks fit.

Application for directions where a full adoption has not been made

37B.—(1) An application for a direction under section 39(3A) of the Act—

- (a) may be made by the adopted child, the adopter or adopters or the birth parents of the child; and
- (b) shall be made by originating process issued out of the Principal Registry of the Family Division in Form 15A.

(2) The person filing the process shall be described as the applicant.

(3) The respondents shall be—

- (a) the adopter or adopters (if not the applicant),
- (b) the birth parents (if not the applicant),
- (c) the adoption agency,
- (d) the local authority to whom notice under section 22 of the Act was given (if different),
- (e) the Attorney-General

and the court may require notice of the application to be served on such other persons as it thinks fit including the child, having regard to the child’s age and degree of maturity.

(4) Any direction given in accordance with section 39(3A) of the Act shall be in Form 15B.”.

13. In rule 39(2) omit “, subject to rule 42,”.

14. In rule 40—

- (a) after “18(2)” insert “, (2A)”; and
- (b) after “adoption order” wherever it appears insert “/Convention adoption order”.

15. In rule 41—

- (a) in paragraph (1) after “Registrar General” insert “and, where it relates to a Convention adoption order or a Convention adoption, the relevant Central Authority”; and
- (b) omit paragraph (2).

16. Omit rules 42 and 43.

17. After rule 47 insert—

“Application for removal, return etc, of child in Convention proceedings

47A.—(1) Paragraph (2) shall apply where—

- (a) a notice under regulation 18(1) of the Hague Convention Regulations has been given but has not been complied with; or

(a) Section 53(1) was substituted by section 6(1) of the Adoption (Intercountry Aspects) Act 1999.

(b) before such a notice was given an application for a Convention adoption order has been made and not disposed of.

(2) Where this paragraph applies an application for the return of the child shall be made by the local authority to whom notice under section 22 of the Act was given by filing an originating process in the court or, where paragraph (1)(b) applies, by process on notice in the existing proceedings.

(3) The respondents shall be—

- (a) the prospective adopter or adopters,
- (b) the children’s guardian,
- (c) the adoption agency

and the court may require notice of the application to be served on such other persons as it thinks fit, including the child, having regard to the child’s age and degree of maturity.

(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 proper officer 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.

Specific applications in Convention proceedings

47B.—(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 United Kingdom 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, by process on notice in those proceedings; or
- (b) if no such application is pending, by filing an originating process in the court.

(3) The proper officer shall serve a copy of the process 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 children’s guardian; and
- (b) in any other case, on the adoption agency and the local authority to whom notice under section 22 of the Act was given (if different).”.

18. In rule 51—

(a) in paragraph (2)(b) for “the 1998 Rules” substitute “the Civil Procedure Rules” (a); and

(b) after paragraph (2) insert—

“(3) Except in the case of an appeal against a decision of an authorised court officer (to which rules 47.20 to 47.23 of the Civil Procedure Rules apply), an appeal against a decision in assessment proceedings relating to costs in proceedings under the Act shall be dealt with in accordance with the following paragraphs of this rule.

(4) An appeal within paragraph (3) shall lie as follows—

- (a) where the decision appealed against was made by a district judge of the High Court or a costs judge (as defined by rule 43.2(1)(b) of the Civil Procedure Rules), to a judge of the High Court; or
- (b) where the decision appealed against was made by a district judge of a county court, to a judge of that court.

(5) Part 52 of the Civil Procedure Rules applies to every appeal within paragraph (3), and any reference in Part 52 to a judge or a district judge shall be taken to include a district judge of the Principal Registry of the Family Division.

(a) The reference is the Civil Procedure Rules 1998 (S.I. 1998/3132 as amended by S.I. 1999/1008, 2000/221, 940, 1317 and 2092 and 2001/256, 1388 and 1769).

(6) The Civil Procedure Rules shall apply to an appeal to which Part 52 or rules 47.20 to 47.23 of those Rules apply in accordance with paragraph (3) in the same way as they apply to any other appeal within Part 52 or rules 47.20 to 47.23 as the case may be; accordingly the Rules of the Supreme Court 1965 and the County Court Rules 1981 shall not apply to any such appeal.”.

19. In rule 52—

(a) in paragraph (4)—

(i) after “Registrar General and,” insert “where paragraph (e) applies, to the Central Authority;”; and

(ii) omit “in the case of a Convention adoption order, shall comply with rule 31;”;

(b) after paragraph (10) insert—

“(11) Within 7 days of the making of an order to annul a Convention adoption order or a Convention adoption, the proper officer shall send a copy of the order to the applicant, every respondent, the relevant Central Authority and the Registrar General.”.

20. In Form 6—

(a) in the heading after “Adoption Order” insert “/Convention Adoption Order”;

(b) in the note to paragraph 2 after “adoption” insert “/Convention adoption order”;

(c) in the notes to paragraph 5 and 7 after “of them” insert “, or if the application is for a Convention adoption order”;

(d) in the notes to paragraph 8—

(i) before the existing text insert “Where the application being made is for a Convention adoption order and the order freeing the child for adoption was made in Scotland or Northern Ireland replace the words “section 18 of the Adoption Act” with either “section 18 of the Adoption (Scotland) Act 1978” or “Article 17(1) or 18(1) of the Adoption (Northern Ireland) Order 1987” as appropriate.”; and

(ii) after “section 21” insert “or corresponding Scotland or Northern Ireland legislation.”;

(e) in the notes paragraphs 16 and 17 after the sub-paragraph (a) insert—

“(aa) for at least 6 months if the proposed adoption is to be effected by a Convention adoption order;”;

(f) in the notes to paragraph 21 after “home of the applicant.” insert “In Convention proceedings it is only necessary to specify those that took part in the arrangements in the country where the order is to be made.”;

(g) in the notes to paragraph 22 after “adoption agency” insert “or if the application is for a Convention adoption order”; and

(h) in the paragraph beginning “I/we accordingly apply”, after “adoption order” insert “/a Convention adoption order”.

21. In Form 7—

(a) in the heading after “Adoption Order” insert “/Convention Adoption Order”;

(b) in the paragraph beginning “Whereas an application. . .” after “adoption order” insert “, a Convention adoption order”; and

(c) in paragraphs (1) to (4) after “adoption order” insert “/a Convention adoption order”.

22. In Form 8—

(a) where “foreign adoption” appears insert “/a Convention adoption order”;

(b) omit “and whereas . . . (and . . .) was/were appointed reporting officer(s) (and . . . was appointed children’s guardian of the child” and substitute “and whereas . . . who is an officer of CAFCASS appointed to act on behalf of the child/and whereas . . . who is an officer CAFCASS appointed to prepare a report”; and

(c) at the end of the note to the preamble add “In every Convention case an officer of CAFCASS is appointed to act on behalf of the child. Where a foreign adoption is proposed an officer of CAFCASS is appointed to report.”.

23. In the notes to Form 9 omit “annulled or revoked under section 52(1) or 53(1)” and substitute “revoked under 52(1) or annulled under section 53(1)”.

24. In Form 10—

(a) for paragraphs 2 and 3 substitute—

“(2 An order that a determination made by an authority of a specified country to authorise or review the authorisation of an adoption order made under any enactment in force in a specified country and corresponding to sections 12(1) and 17 of the Adoption Act 1976 do cease to be valid in Great Britain;)

(3 An order that a determination made by an authority of a specified country to give or review a decision revoking or annulling an order made under any enactment in force in a specified country and corresponding to sections 12(1) and 17 of Adoption Act 1976 do cease to be valid in Great Britain;);

(b) in the notes to paragraph 1 omit the phrase beginning “; a Convention adoption” and ending “Adoption of Children 1965”; and

(c) in the notes to paragraphs 2 and 3 omit the first sentence.

25. In Form 15 in the penultimate paragraph omit “(and that the entry shall be marked with the words “Convention Order”)”.

26. After Form 15 insert Forms 15A and 15B set out in the Schedule to these Rules.

27. In Schedule 2—

(a) in paragraph 1(k) after “prospective adopter” insert “and where a Convention adoption is proposed, details of the arrangements which were made for the transfer of the child to the UK and that they were in accordance with regulation 12(8) of the Hague Convention Regulations;”; and

(b) after paragraph 6 insert—

“6A Further information to be provided in proceedings relating to a Convention adoption/foreign adoption

(a) where the UK is the State of origin confirmation that an order has been made under section 18(1) of the Act, section 18 of the Adoption (Scotland) Act 1978(a) or Article 17(1) or 18(1) of the Adoption Northern Ireland Order 1987(b);

(b) where the UK is the State of origin confirmation that, after possibilities for placement of the child within the UK have been given due consideration, an intercountry adoption is in the child’s best interests;

(c) confirmation that, in the case of a foreign adoption, the requirements of regulations made under section 56A of the Adoption Act 1976(c) have been complied with and, in the case of a Convention adoption, that the requirements of the Intercountry Adoption (Hague Convention) Regulations 2003 have been complied with; and

(d) for the Convention adoption where the United Kingdom is either the State of origin or the receiving State confirmation that the Central Authorities of both States have agreed that the adoption may proceed. The documents supplied by the CA of the State of origin should be attached to the report together with a translation if necessary.”.

28. In Schedule 4 omit paragraphs 26 to 28 and the notes relating to those paragraphs substitute—

“26. Where the United Kingdom is the receiving State and—

The Child

(i) to be adopted has not attained the age of 18 years at the date of the application; and

(ii) was habitually resident in which is a Convention country outside the British Islands on the date on which the Article 17(c) agreement was made.

The Applicants

(iii) Both spouses (in the case of an application by a married couple) or the

(a) 1978 c. 28. Section 18 has been amended by paragraph 11(d) of Schedule 2 to the Children (Scotland) Act 1995 (c. 36).

(b) S.I. 1987/2203 (NI 22).

(c) Section 56A was substituted by paragraph 12 of Schedule 4 to the Adoption and Children Act 2002 (c. 38).

applicant (in the case of an application by one person) have attained the age of 21 years and have been habitually resident in the British Islands for a period of not less than one year ending with the date of the application; and

- (iv) [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 British citizens by virtue of the British Nationality Act 1981(a).] [Whereas, (insert name of applicant(s)) is/are not a British citizen by virtue of the British Nationality Act 1981, the Home Office has confirmed that the child is authorised to enter and reside permanently in the United Kingdom.]

27. Where the United Kingdom is the State of origin—

The Child

- (i) to be adopted has not attained the age of 18 years at the date of the application;
- (ii) is free for adoption by virtue of an order made under section 18 of the 1976 Act, section 18 of the Adoption (Scotland) Act 1978, or Article 17(1) or 18(1) of the Adoption (Northern Ireland) Order 1987; and
- (iii) is habitually resident in....which is part of the British Islands on the date of the application.

The Applicants

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 attained the age of 21 years and are habitually resident in....which is a Convention country outside the British Islands on the date of the application.

Notes

Paragraph 26. The report on the child prepared by the CA of the State of origin should be exhibited where the United Kingdom is the receiving State. In subparagraph (iv) insert the words in square brackets which apply. Where the applicant or one or more of the applicants is not a British citizen by virtue of the British Nationality Act 1981, notice of confirmation from the Home Office that the child is authorised to enter and reside permanently in the United Kingdom should be exhibited.”.

Dated 31st January 2003

Irvine of Lairg, C.

(a) 1981 c. 61.

Form 15A

Application to the High Court for a direction under s.39(3A) of the Adoption Act 1976

IN THE HIGH COURT OF JUSTICE

PRINCIPAL REGISTRY OF THE FAMILY DIVISION

NO. AA of 20
CS of 20

IN THE MATTER OF THE ADOPTION ACT 1976

IN THE MATTER OF

A CHILD

Note: Enter the full name by which the adopted person has been known since the adoption.

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:—

Note: Enter the description and authority by which the Convention adoption was authorised.

1. A direction that a Convention adoption which was authorised on the day of [19][20] at by which (and) was (or were) authorised to adopt the said was not, under the law of the country in which the adoption was effected, a full adoption; (that the consents referred to in Articles 4(c) and (d) of the Convention have not been given for a full adoption) (that the United Kingdom is not the receiving State (within the meaning of Article 2 of the Convention)); and that it would be more favourable for the said if a direction under section 39(3A) of the Adoption Act 1976 was given.

Note: The Convention means the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, concluded at the Hague on 29th May 1993.

2. A direction that section 39(2) of the Adoption Act 1976 shall not apply to the said (to the extent that).

Note: Please insert details of the extent to which s.39(2) of the Adoption Act 1976 should not apply.

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

Dated this day of 20

This summons was taken out by of solicitor for the , .

This form is for use if the applicant claims that the Convention adoption is not, under the law of the country that made the adoption, a full adoption; that the consents required under Articles 4(c) and (d) of the Convention have not been given for a full adoption (or the UK is not the receiving State within the meaning of Article 2 of the Convention); and that it would be more favourable to the child if a direction was given under s.39 (3A) of the Adoption Act 1976.

Form 15B

Direction of the High Court that s.39(2) of the Adoption Act 1976 should not apply, or should apply to such extent as is directed by the court

IN THE HIGH COURT OF JUSTICE

PRINCIPAL REGISTRY OF THE FAMILY DIVISION

**NO. AA of 20
CS of 20**

IN THE MATTER OF THE ADOPTION ACT 1976

IN THE MATTER OF

Note: Enter the full name by which the adopted person has been known since the adoption.

A CHILD

Upon the application of _____ and
upon hearing _____
and upon hearing _____
(and upon reading _____

).

The High Court is satisfied that:—

Note: Enter the date and the country within which the Convention adoption was made.

1. The adoption of the said
was effected as a Convention adoption
on the _____ day of _____ [19] [20]
in _____

; and

2. Under the law of that country the adoption was not effected as a full adoption;
and

Note: *Delete as appropriate.

3. *(The consents referred to in Articles 4(c) and (d) of the Convention have not been given for a full adoption) *(The United Kingdom is not the receiving State (within the meaning of Article 2 of the Convention)); and

4. In all the circumstances it would be more favourable for the said
for a direction to be given under section 39(3A) of the Adoption Act 1976.

Note: *Delete as appropriate.

It is hereby directed that:—

*(Section 39(2) of the Adoption Act 1976 shall not apply to the said
_____).

*(Section 39(2) of the Adoption Act 1976 shall apply to the said
_____,
with the following modifications:

_____.
(and as regards costs it is ordered that _____

_____).

Dated this _____ day of _____ 20

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Adoption Rules 1984 following the implementation of the Adoption (Intercountry Aspects) Act 1999 and the ratification of the 1993 Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption. In conjunction with the Intercountry Adoption (Hague Convention) Regulations 2003, these Rules implement that Convention.

The amendments to the Adoption Rules apply to Convention proceedings commenced on or after 1st June 2003. The amending Rules:

- (a) make provision for a children's guardian to be appointed for the child when an application for a Convention adoption order is made (*rule 5*);
- (b) allow for applications to be made to annul a Convention adoption order and for directions to be given in respect of an application where a full adoption has not been made (*rule 12*);
- (c) outline the circumstances in which an application can be made to return the child and for specific applications such as permitting the child to be known by a new surname or to be removed from the jurisdiction (*rule 17*);
- (d) make amendments to the forms prescribed by the Adoption Rules 1984.

Rule 18 amends the Adoption Rules 1984 to provide for the assessment of costs in adoption proceedings. It provides that, as in civil proceedings generally, an appeal arising out of the assessment of costs is dealt with:

- (a) under rules 47.20 to 47.23 of the Civil Procedure Rules 1998 as at present, where the appeal is against a decision of an authorised costs officer; and
- (b) under Part 52 of those Rules, otherwise.

In either case the appeal is made subject to the Civil Procedure Rules 1998 rather than to the Rules of the Supreme Court or the County Court Rules. Appeals dealt with under Part 52 lie from a district judge or other officer of the court to a judge of the same court.

2003 No. 183 (L. 1)

**CHILDREN AND YOUNG PERSONS, ENGLAND
AND WALES**

The Adoption (Amendment) Rules 2003

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