1978 No. 128

SUPREME COURT, NORTHERN IRELAND

PROCEDURE

Rules of the Supreme Court (Northern Ireland) (Convention Adoptions etc.) 1978

Made . . . . . 4th May 1978

Coming into operation in accordance with rule 3

To be laid before Parliament

We, the Supreme Court Rules Committee, being the authority having for the time being power under section 7 of the Northern Ireland Act 1962(a) to make, amend or revoke rules regulating the practice and procedure of the Supreme Court of Judicature of Northern Ireland, hereby exercise those powers and all other powers enabling us in that behalf as follows:—

1. Order 73 of the Rules of the Supreme Court (Northern Ireland) 1936(b) shall be amended as follows:—

(1) For the title there shall be substituted the title "Proceedings under the Guardianship of Infants Act 1886, the Adoption Act (Northern Ireland) 1967 and the Adoption (Hague Convention) Act (Northern Ireland) 1969";

(2) Part II shall have effect subject to the amendments specified in Schedule 1 hereto;

(3) After Part II there shall be inserted the Part III set out in Schedule 2 hereto.

2. In Appendix L to the Rules of the Supreme Court for Form 33 there shall be substituted the Form 33 set out in Schedule 3 hereto and after Form 40 there shall be inserted the Forms 40A, 40B and 40C therein set out.

3. These rules may be cited as the Rules of the Supreme Court (Northern Ireland) (Convention Adoptions etc.) 1978 and shall come into operation on the day appointed for the coming into operation of section 1 of the Adoption (Hague Convention) Act (Northern Ireland) 1969(c).

Dated 4th May 1978.

(Signed) *Robert Lowry*
John MacDermott
Donald Murray
J. B. E. Hutton
E. M. Doris

(a) 1962 c. 30
(b) S.R. & O. 1936 No. 70 (II, p. 2559)
(c) 1969 c. 22 (N.I.)

SCHEDULE 1

Amendments to Part II of Order 73 of the Rules of the Supreme Court

1. In rule 15(3) for the reference to the welfare authority there shall be substituted a reference to the Health and Social Services Board in whose area the applicant is resident and Form 32 shall be modified accordingly.

2. In rule 17(1) for the words "the welfare authority" there shall be substituted the words "the Health and Social Services Board" and for the word "authority" there shall be substituted the word "Board".

3. In rule 20(1) after the word "shall" there shall be inserted the words ", subject to paragraph (3),".

4. At the end of rule 20 there shall be added the following paragraph:

"(3) Notwithstanding paragraph (1) and rule 29(4), where the applicant is not represented by a solicitor, the statement in Form 33 may, instead of being exhibited to an affidavit, be verified by a certificate signed by an officer of the Health and Social Services Board in whose area the applicant is resident who has investigated the circumstances of the applicant and—

(*a*) any document referred to in that statement which under these rules would otherwise be required to be exhibited to or filed together with the affidavit shall be attached to the statement;

(*b*) in this Order for any reference to the affidavit there shall be substituted a reference to the statement verified by such a certificate and for the reference to the documents exhibited to the effidavit there shall be substituted a reference to the documents attached to the statement."

5. In rule 27 for paragraph (3) there shall be substituted the following paragraphs:

"(3) Except where the applicant or one of the applicants is the mother or father of the infant or the infant is over the limit of compulsory school age, the guardian ad litem shall obtain a medical report on the health of the infant which may be in Form 36.

(3A) The guardian ad litem shall ascertain whether the infant is able to understand the nature of the adoption order and, if he is, whether he wishes to be adopted by the applicant."

SCHEDULE 2

Part III to be inserted in Order 73 of the Rules of the Supreme Court

PART III

ARRANGEMENT OF RULES IN THIS PART

GENERAL

39. Interpretation of this Part
40. Application of Part II of this Order to convention proceedings
41. Adaptation of certain references in Part II of this Order and in Appendix L
42. Additional information to be included in statement exhibited to applicant's affidavit in rule 20
43. Evidence as to nationality
44. Statement at hearing
45. Orders

ADDITIONAL PROVISIONS FOR CASES WHERE QUALIFIED INFANT IS NOT A UNITED KINGDOM NATIONAL

46. Scope of rules 47 to 50
47. Evidence as to foreign law relating to consents and consultations
48. Form of consent
49. Notice of hearing
50. Proper officer to receive opinions on adoption

PROCEEDINGS UNDER SECTION 6 OF THE ACT OF 1969

51. Application to annul or revoke adoption
52. Application to declare adoption invalid or determination invalid or affected
53. Evidence in support of application
54. Guardian ad litem
55. Notice of order made under section 6 of the Act of 1969

SUPPLEMENTARY

56. Evidence as to specified or notified provisions
57. Interim order
58. Attestation of documents
59. Service of documents
60. Translation of documents

GENERAL

Interpretation of this Part

39.—(1) In this Part, unless the context otherwise requires—

(*a*) "the Act of 1967" means the Adoption Act (Northern Ireland) 1967;

"the Act of 1969" means the Adoption (Hague Convention) Act (Northern Ireland) 1969;

"applicant" means an applicant for a convention adoption order;

"convention adoption order" has the same meaning as in the Act of 1969;

"convention proceedings" means proceedings in the High Court under the Act of 1969;

and expressions used in the Act of 1969 have the same meaning as in that Act;

(*b*) reference to a rule by number is to a rule as numbered in this Order;

(*c*) reference to a form by number is to a form as numbered in Appendix L or to a form to the like effect with such variations as the circumstances may require.

(2) Any reference in this Part 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 1969.

Application of Part II of and Appendix L to this Order to convention proceedings

40. Part II of this Order (other than rules 24 and 37) and the forms in Appendix L to these rules shall apply, subject to the following provisions of this Part, to convention proceedings.

Adaptation of certain references in Part II of this Order and in Appendix L

41. In Part II of this Order or in Appendix L to these rules there shall, in their application to convention proceedings, be substituted, as the context may require, for any reference to an adoption order a reference to a convention adoption order and for any reference to the Act of 1967 a reference to the Act of 1969.

Additional information to be included in statement exhibited to applicant's affidavit under rule 20

42. In convention proceedings in the statement in Form 33 paragraphs 3 and 21 shall be omitted and the paragraphs set out in Part IV of that Form shall be included.

Evidence as to nationality

43.—(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 qualified infant shall be exhibited to the affidavit referred to in rule 20(1).

(2) Where the applicant for a convention adoption order claims that, for the purposes of section 1(3) of the Act of 1969, he or the qualified infant 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

44. Except where it is established by oral evidence that immediately before the order is made the conditions set out in section 1 or in section 3(1), (2) or (3)(*a*) of the Act of 1969 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.

Orders

45. The Chief Clerk shall, in addition to complying with rule 31, within seven days after a convention adoption order has been drawn up, by notice to the Registrar General request him to inform the designated authorities of any convention country—

(*a*) of which the infant is a national;

(*b*) in which the infant was born;

(*c*) in which the applicant habitually resides or in which the applicants habitually reside;

(*d*) of which the applicant is a national or of which the applicants are nationals.

ADDITIONAL PROVISIONS FOR CASES WHERE QUALIFIED INFANT IS NOT A UNITED KINGDOM NATIONAL

Scope of rules 47 to 50

46. Rules 47 to 50 shall apply to any case where the qualified infant is not a United Kingdom national.

Evidence as to foreign law relating to consents and consultations

47. The applicant shall file, with the affidavit referred to in rule 20, 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 infant is a national.

Form of consent etc.

48.—(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 infant 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 statement referred to in rule 42, be attached to the statement.

(4) The provisions of Part II (other than rule 21) relating to consent to adoption including paragraphs 7 to 12 of Form 33 shall apply with the necessary modifications to take account of the provisions of section 3(3)(*a*) of the Act of 1969.