

THE LAW REFORM COMMISSION
AN COIMISIÚN UM ATHCHÓIRIÚ AN DLÍ
(LRC 58-1998)

REPORT
ON
THE IMPLEMENTATION OF THE HAGUE CONVENTION
ON PROTECTION OF CHILDREN AND
CO-OPERATION IN RESPECT OF INTERCOUNTRY ADOPTION, 1993

JUNE 1998

IRELAND
The Law Reform Commission
Ardilaun Centre, 111 St. Stephen's Green, Dublin 2

**© Copyright
First Published**

**The Law Reform Commission 1998
June 1998**

ISSN 1393-3132

THE LAW REFORM COMMISSION

The Law Reform Commission was established by section 3 of the *Law Reform Commission Act, 1975* on 20th October, 1975. It is an independent body consisting of a President and four other members appointed by the Government.

The Commissioners at present are:

The Hon. Anthony J. Hederman, former Judge of the Supreme Court, President;
Ms Hilary A Delany, B.L., Lecturer in Law, Trinity College, Dublin;
The Right Honourable Dr Turlough O'Donnell, Q.C.;
Mr Arthur F Plunkett, Barrister-at-Law;
Ms Patricia T Rickard-Clarke, Solicitor, Partner - Mc Cann Fitzgerald Solicitors.

Mr. John Quirke is the Secretary to the Commission.

The Commission's programme of law reform, prepared in consultation with the Attorney General, was approved by the Government and copies were laid before both Houses of the Oireachtas on 4th January, 1977. The Commission has formulated and submitted to the Taoiseach or the Attorney General fifty seven Reports containing proposals for the reform of the law. It has also published eleven Working Papers, twelve Consultation Papers, a number of specialised Papers for limited circulation and eighteen Reports in accordance with Section 6 of the 1975 Act. Details may be found on pp. 85-90.

Dr. Gerard Quinn, BA, LLB, LLM (Harv), SJD (Harv), Barrister-at-Law is the Director of Research to the Commission.

Mr Geoff Moore, B.C.L., Ms. Lia O'Hegarty, B.C.L., LL.M. (Michigan), LL.M. (Harvard), Barrister-at-Law and Ms. Róisín Pillay, LL.B., LL.M (Cantab.), Barrister-at-Law are Researchers.

Ms. Mary Teresa Faherty, Ms. Dympna Forde and Ms Deborah Parkes are the Administrative Staff.

Further information from:

The Secretary,
The Law Reform Commission,
Ardilaun Centre,
111 St. Stephen's Green,
Dublin 2.
Telephone: 475 1310.
Fax No: 475 1265.
Email: ircsecretary@tinet.ie.

The Law Reform Commission

AN COIMISIÚN UM ATHCHÓIRIÚ AN DLÍ

ARDILAUN CENTRE
111 ST. STEPHEN'S GREEN
DUBLIN 2
IRELAND
TELEPHONE (01) 475 1310
FAX (01) 475 1265

30th June 1998

An Taoiseach Bertie Ahern, T.D.,
Office of the Taoiseach,
Government Buildings,
Dublin 2.

Dear Taoiseach,

Pursuant to the provisions of the *Law Reform Commission Act, 1975*, I have the honour to transmit to you herewith the Commission's Report on *The Implementation of the Hague Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption, 1993* (LRC 58-1998).

The Commission proposes to publish this Report in the near future.

Yours sincerely,


ANTHONY J. HEDERMAN
PRESIDENT

Encl.

ACKNOWLEDGEMENTS

We would like to record our thanks to the following persons, who provided advice, information or assistance to the Commission and its research staff during the course of this project:

Mr Pia Anderson, Ministry of Justice, Department of Private Law, Denmark;
Mrs Mary Banotti, MEP;
Ms Helen Brain, Manager, Intercountry Adoption Service, Victoria, Australia;
Mr Michael Brennan, Department of Health, United Kingdom;
Mr John Ditch, Co-ordinator, European Family Policy Observatory;
Mr Mark Helin, Ministry of Justice, Finland;
Ms Sally Keavney, International Orphan Aid;
Ms Virginia Lynch, New Zealand Department of Justice;
Dr Jorg Pirrung, Ministry of Justice, Germany;
Mrs Chantal Saclier, International Social Service.

The Commission would also like to thank all those who made written submissions or who attended the seminar.¹ We would like to record our particular thanks to Professor William Duncan, of the Permanent Bureau of the Hague Conference on Private International Law, for his advice and assistance. Full responsibility for this Report lies with the Commission.

¹ See Appendices 1 and 2.

TABLE OF CONTENTS

PAGES

PART I: INTRODUCTION AND COMPARATIVE BENCHMARKS

CHAPTER 1: INTRODUCTION 1-5

<i>Background to this Report</i>	1
<i>Scope of this Report</i>	2
<i>General Principles</i>	2
<i>The Hague Convention</i>	3
<i>Implementation by Legislation and Regulation</i>	4
<i>Terminology</i>	5
<i>Structure of this Report</i>	5

CHAPTER 2: COMPARATIVE MEASURES OF IMPLEMENTATION 6-14

<i>United Kingdom</i>	6
<i>France</i>	8
<i>Sweden</i>	8
<i>Canada</i>	10
<i>New Zealand</i>	11
<i>Ecuador</i>	13
<i>Conclusions</i>	14

PART II: IMPLEMENTATION OF THE HAGUE CONVENTION IN IRELAND

CHAPTER 3: IMPLEMENTATION OF CONVENTION STANDARDS 15-28

<i>Adoptability</i>	15
Where Ireland is a State of Origin	15
Where Ireland is a Receiving State	17
<i>Consents</i>	18
Where Ireland is a Receiving State	18
Where Ireland is a State of Origin	21
<i>Consultation with the Child</i>	21
<i>Counselling</i>	22
<i>Immigration Clearances</i>	23
<i>Right of Permanent Residency</i>	24
<i>Post-adoption Services</i>	27

<i>TABLE OF CONTENTS</i>	<i>PAGES</i>
CHAPTER 4: ESTABLISHING ADMINISTRATIVE STRUCTURES AND PROCEDURES	29-39
<i>Central Authority</i>	29
<i>Appeal Structures</i>	30
<i>Accreditation of Agencies</i>	32
<i>Overseas Agencies</i>	33
<i>Charitable Status and Payments to Agencies</i>	33
<i>Procedures and Delegation of Functions</i>	35
Ireland as a Receiving State	35
<i>The Role of the Adoption Board</i>	35
<i>The Role of the Health Board or Accredited Agency</i>	36
Ireland as a State of Origin	37
<i>The Role of the Adoption Board</i>	37
<i>The Role of the Health Board or Accredited Agency</i>	37
<i>Approval of the Matching Decision</i>	38
<i>Adoption through Independent Intermediaries</i>	39
CHAPTER 5: RECOGNITION AND EFFECTS OF THE ADOPTION	40-49
<i>Categories of Adoption</i>	40
<i>Recognition under the Hague Convention</i>	42
<i>Recognition of Convention Simple Adoptions in Irish Law</i>	43
1. Conversion	43
2. Recognition of the State of Origin Effects	44
3. Recognition of Minimum Consequences	45
Recommendations	45
<i>Recognition of Convention Adoptions where Ireland is Neither the State of Origin nor the Receiving State</i>	46
<i>Recognition of Adoptions outside the Convention: Retrospective Recognition of Foreign Simple Adoptions, and Recognition of Adoptions from Non-Convention States</i>	47
Foreign Adoptions by Non-Irish Residents	48
CHAPTER 6: SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS	50-57
BIBLIOGRAPHY	58-59

<i>TABLE OF CONTENTS</i>	<i>PAGES</i>
APPENDIX 1: LIST OF WRITTEN SUBMISSIONS	60
APPENDIX 2: LIST OF ATTENDEES AT SEMINAR	61-62
APPENDIX 3: TEXT OF THE HAGUE CONVENTION	63-78
APPENDIX 4: STANDARD HAGUE CONVENTION CONSENT FORM	79-82
APPENDIX 5: LIST OF STATES PARTIES TO HAGUE CONVENTION	83-84
LIST OF LAW REFORM COMMISSION PUBLICATIONS	85-90

PART I: INTRODUCTION AND COMPARATIVE BENCHMARKS

CHAPTER 1: INTRODUCTION

Background to this Report

1.01 Following Ireland's signature of the *Hague Convention on Intercountry Adoption, 1993* (the Convention), on 29 May 1993, the Department of Health strategy document, "*Shaping a Healthier Future*" stated a commitment to the introduction of changes in adoption law and procedure, to bring the applicable legislation into line with the Convention. In its first *National Report on the United Nations Convention on the Rights of the Child, 1989*, Ireland reiterated its commitment to ratification, as soon as the necessary legislative measures were in place.

1.02 In order to facilitate the process of implementation, and as part of its remit under the *First Programme for Law Reform* to examine and make recommendations in respect of issues of private international law, the Law Reform Commission published, in September 1997, a *Consultation Paper on the Implementation of the Hague Convention on Intercountry Adoption, 1993*. The Consultation Paper examined the current law and practice relating to intercountry adoption in Ireland, and, in respect of each provision of the 1993 Convention, considered the consequences for Irish law, the changes necessary to current legislation, and the manner in which the Irish law and practice should best guarantee the standards and introduce the safeguards set out in the Convention. A series of detailed provisional recommendations were made, which set out proposals for reform of the law, and for the allocation of responsibilities arising under the Convention.

1.03 Following the publication of its Consultation Paper, the Commission initiated its process of consultation. It received a number of detailed written submissions on its provisional recommendations, from interested professionals and participants in the intercountry adoption process.¹ In order to ascertain the views of a broad range of interested parties, the Commission held a seminar, in

¹ See Appendices 1 and 2.

March 1998, on the implementation of the *Hague Convention on Intercountry Adoption*, at which there was extensive discussion by participants of methods of implementation, as well as issues raised by intercountry adoption generally. Having considered the views of consultees as expressed both in written submissions and by participants at the seminar, the Commission sets out, in this Report, its final recommendations.

Scope of this Report

1.04 Any attempt to regulate intercountry adoption inevitably raises many difficult and wide-ranging issues. In intercountry adoption, the ethical dilemmas and the psychological and sociological issues, which are involved in any transfer of a child from one family to another, or the choice of one method of childcare over another, are complicated by issues of global inequality, cultural and ethnic difference, and at times, by the impact of extreme poverty, war and displacement. These issues have each been highlighted in submissions made to the Commission.

1.05 Crucial though they are, all of these issues are, strictly speaking, outside of the scope of this Report. It is not the Commission's role to arrive at conclusions on the desirability or otherwise of intercountry adoption. This Report proceeds on the premise that the *Hague Convention on Intercountry Adoption* is to be ratified and implemented in Irish law, and that the regulation and standards which the Convention puts in place cannot but be beneficial to the large numbers of children who are adopted across national boundaries each year, as well as to their birth and adoptive parents. The aim of the recommendations contained in this Report is to ensure that the Convention is implemented effectively and carefully, and that implementing measures guarantee the highest possible standards and efficiency of procedures, to the benefit of the children affected by it.

1.06 This said, however, there must be a clear awareness, in making recommendations on the means of implementation of the Convention in Irish law, of the issues which form the background to intercountry adoption: of the psychological well-being of the child, of economic inequalities, and of the larger system of child care and protection which operates in Ireland. We have tried to bear these issues in mind in making our recommendations.

General Principles

1.07 This Report proceeds on the basis of several core principles, which reflect the terms of the *United Nations Convention on the Rights of the Child, 1989*. They also reflect the objects of the Hague Convention, which are set out in Article 1.

1.08 One principle, which was enunciated in our Consultation Paper, and which met with general approval from consultees, is that **the aim of intercountry**

adoption is to find the best parents for the child, and not to find the best child for adoptive parents. Thus, the entire process is child-centred. Related to this are two further principles. In the intercountry adoption process, the best interests of the child must be paramount at all stages of the adoption process, and in every decision that is taken in regard to the adoption. Finally, it is important to recognise that, as is acknowledged in the preamble to the Hague Convention, intercountry adoption represents a subsidiary means of childcare, which should take place only where the child cannot be cared for in a family within his or her own country. Although it states that, as a matter of priority, a child should be cared for within his or her own family, the Convention recognises that intercountry adoption "may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her State of origin."²

The Hague Convention

1.09 The *Hague Convention on Intercountry Adoption*, concluded and signed on 29 May 1993, represented a significant step in the regulation of adoptions across national frontiers. Its preparation over five years, by the Hague Conference on Private International Law, involved, crucially, representatives of many states which are predominantly countries of origin in intercountry adoptions, and as a result of this the Convention addresses the interests and concerns of both sending and receiving states. The 1993 Convention is the first international instrument which has the potential to regulate intercountry adoption on a worldwide basis. Given the difficulty of national regulation of such a quintessentially international phenomenon, it is likely that it will be through the Hague Convention that standards in intercountry adoption will be raised, procedures streamlined and abuses addressed. Having regard to the importance of the Convention for the development of the regulation of intercountry adoption, *we recommend that Ireland should ratify the Hague Convention on Intercountry Adoption, 1993.*

1.10 In the short period of time since its coming into force, the Convention has had considerable success, with 32 signatories, 17 ratifications, and 4 accessions.³ The Convention has also been an influential model for national laws, in states other than those which are party to the Convention.⁴ Convention-type structures have been employed in bilateral agreements; and the administrative structure based on a Central Authority, a key provision of the Hague Convention, has been used by many states. Some sending states, for example Venezuela and Paraguay, have decided to permit intercountry adoptions only with receiving States which are party to the Convention.

2 Preamble to the Convention.

3 Figures as of 15 May 1998. See Appendix 5.

4 See paper of William Duncan, *The Hague Intercountry Adoption Convention*, given at the International Family Law Conference, London, 5 February 1998.

1.11 According to Article 1 of the Convention, its objects are to establish safeguards to ensure that intercountry adoption takes place in the best interests of the child, to prevent, through cooperation between states, the abduction, sale of, or traffic in children, and to secure recognition of adoption in the laws of State Parties, once the adoption has been effected under the Convention. The emphasis is therefore on the attaining of high standards and the elimination of abuses through the use of a carefully regulated process. Subsequent to this process, recognition is to follow automatically. Therefore, recognition is not to be used as a tool to regulate intercountry adoption, or as a sanction. Careful regulation in the early stages of the adoption process, rather than at the recognition stage, ensures that there will be a minimum impact on the child, if for any reason the adoption cannot proceed.

1.12 It follows from the Convention's emphasis on good process rather than on the legal formalities involved in the recognition and effects of adoptions, that the Convention applies to a wide range of types of adoption, including those where there is a possibility of termination of the adoption relationship, and those where the adopted child retains some links with his or her family of origin. Under the Convention, recognition of adoptions effected abroad can no longer be limited to those adoptions which have a sufficient degree of identity to an Irish adoption. All adoptions, whatever their effects, which have been made through Convention procedures, must be recognised in Irish law. Under Article 2.2, the Convention applies to adoptions which create a permanent parent-child relationship. This definition is intended to be inclusive, and would include adoptions, such as those made in China, where the adoption may be revoked in certain circumstances, as well as adoptions where there is a continuing relationship between the child and the birth parents. In general, the Convention does not attempt to harmonise laws, but to maximise the possibility for cooperation between Contracting States.

Implementation by Legislation and Regulation

1.13 In our Consultation Paper, we provisionally recommended that whilst the Convention itself and key elements of its implementation should be set out in an implementing Act, the detail of the procedures to be followed by the various authorities should be set out in regulations. It will be seen in our consideration of the implementation measures taken by other states,⁵ that the majority of them have taken this approach. Some consultees, in their written submissions, have expressed concern that implementation by way of regulation may result in a lack of transparency and accountability. In any implementing Act, however, the text of the Hague Convention would be given the force of law in Ireland. Any regulations made under the Act would have to comply with the basic standards and principles set out in the Convention. The function of the regulations would be largely to allocate administrative responsibilities, as is envisaged by the

5 See below Chapter 2.

Convention. Given the complexities of the provisions that must be made, it would seem more appropriate that these provisions be made by way of regulation, than in the implementing Act itself. *We therefore recommend that the key elements of the implementation should be set out in an implementing Act, but that much of the detail of the Convention's implementation should be set out in regulations.*

Terminology

1.14 The terminology used in any discussion of intercountry adoption must take account of the sensitivities of those involved in the adoption process. Whilst the term "natural parents" (which is used in Irish legislation and was used in our Consultation Paper) is not intended to be pejorative to any of the parties involved in the adoption process, submissions received by the Commission have argued that the term is insulting to adoptive parents. In order to avoid any misunderstanding, this Report will refer to the parents to whom the adopted child is born as the "birth parents".

1.15 Objection has also been made to the use of the terms "simple" and "full" adoptions. Once again, these are merely legal terms used to conveniently categorise the many forms of adoption, and are not intended to imply the superiority of one type of adoption over another. In general, a "full" adoption is one which terminates the legal relationship between the child and the birth parents, whilst a "simple" adoption is one which allows that relationship to continue in some form. The various categories of adoption will be discussed further in Chapter 5.

Structure of this Report

1.16 Chapter 2 of this Report examines the implementing measures taken by a number of other states which have ratified the Convention or intend to do so. Part II of the Report (Chapters 3, 4 and 5) deal with implementing measures to be taken by Ireland, in relation to the enforcement of Convention standards, the administration of Convention procedures, and the recognition of adoptions effected abroad, under the Convention. A series of recommendations are made relating to the implementation of the Convention in Irish law.

CHAPTER 2: COMPARATIVE APPROACHES TO IMPLEMENTATION

2.01 The majority of states are, like Ireland, still in the early stages of the implementation process for the Hague Convention. However, a number of states have already either enacted implementing legislation, or have put forward proposals for such legislative measures. Before setting out the implementation measures which need to be taken in Ireland, it is useful to consider the relevant laws of other states.

United Kingdom

2.02 The United Kingdom, as a common law jurisdiction which recognises only full adoptions, faces problems of implementation similar to those encountered in Ireland. The United Kingdom has signed the Convention, and draft legislation for the implementation of the Convention has been drawn up. In March 1996, the Department of Health and the Welsh Office issued a joint consultative document entitled *Adoption - A Service for Children*, which put forward proposals for the reform of adoption law, amongst them measures which would permit the ratification of the Hague Convention. The document also set out draft legislation for the implementation of the Convention. It proposes that the Convention be implemented mainly through regulations, which would stand on the bedrock of the Convention principles.¹

2.03 The consultative document proposes that the Central Authority for England and Wales should be the Secretary of State for Health.² The functions of the Central Authority are to be discharged separately for Scotland and Northern Ireland. Where the UK is a receiving State, the initial application by the prospective adoptive parents is to be made to their local authority or to an accredited agency. The application must be in writing and must specify the Convention country from which the applicants wish to adopt. Once the prospective adopters have been declared eligible and suitable to adopt, by the local authority or agency, the documentation in the case is to be passed on to the Central Authority which is then to issue a certificate of approval in respect of the applicants. The matching is to be carried out by the local authority or agency, and the immigration clearance is then to be issued by the Home Office.

1 Section 88 (1) of the Draft Legislation allows for regulations to be made to give effect to the Hague Convention.

2 Para.5.2. Section 89, Draft Legislation.

2.04 The draft regulations provide that, where the child is entrusted to the prospective adoptive parents and brought to the UK for adoption there, the entrustment will have the effect of giving parental responsibility for the child to the prospective adoptive parents, whilst the child is with them, and that in all other cases, the relevant agency is to have parental responsibility.³

2.05 Draft Regulation 8 deals with the duties of agencies in the supervision of placements. It provides that, where a child is entrusted to the prospective adopters, the relevant agency must supervise the placement prior to the making of the adoption order. It also provides that, where an interim adoption order has been made in the State of origin, which is to be made final by the authorities in the State of origin, subject to a satisfactory placement, the relevant agency must both supervise the placement, and send a report concerning the placement to the competent authority in the State of origin.

2.06 The draft legislation states that approved adoption societies are to become accredited bodies under the Convention automatically, provided that their approval extends to the provision of facilities in respect of Convention and overseas adoptions.

2.07 The draft regulations also provide that a Convention adoption may be nullified, on the ground that it is contrary to public policy. Where an adoption is nullified or revoked in another Convention State, this will be recognised and will have effect in the UK. It is provided, in the draft implementing legislation, that a person who brings a child who is habitually resident outside the British Isles into the UK for the purpose of an adoption, without having satisfied the requirements of the regulations, shall be guilty of an offence.⁴

2.08 Where the United Kingdom is the receiving State, in a simple adoption made under the Convention, it is recommended that there should be automatic conversion to a full adoption in the United Kingdom, provided that the UK authorities are satisfied that the birth parents consented to the adoption in the full knowledge that it would be converted into an adoption once the child was brought to the UK.

2.09 This provides only a partial solution to the problem of recognition, however, and the document also outlines proposals for recognition where the UK is obliged to recognise a simple adoption effected between two other Convention states. In such a case, conversion would not be an option. The document proposes that, where the UK is obliged to recognise a simple adoption under the Convention, it is to be recognised as a full adoption, but that the birth parents are to be given the right to apply for a contact order. The document stresses that this option has the advantage of clarifying the status of the child, and of ensuring the equality of the child with other adopted children. However, it does

3 Regulation 7

4 Section 91

acknowledge that this mechanism of recognition may not adequately protect the rights of birth parents, to the extent demanded by the Convention.

2.10 The Bill restricts the recognition which will be given to intercountry adoptions made outside of the Convention.⁵ It allows for the recognition of adoptions from the UK's Overseas Dependant Territories, outside of the Convention's structures. It also allows for the recognition of adoptions made under bilateral agreements between the UK and particular countries of origin. Other intercountry adoptions made outside of the Convention will not be recognised, with the exception of some "foreign domestic adoptions."

France

2.11 France signed the Hague Convention on 5 April 1995, but has yet to ratify. On 24 February 1998, the National Assembly approved the implementing legislation to enable France to ratify the Convention. Under the legislation, the body designated as Central Authority is the International Adoption Mission (Mission de l'adoption internationale) (MAI), which is under the aegis of the Ministry of Foreign Affairs, and which also includes representatives of the ministry of social affairs and the ministry of justice. The role of the MAI is to supervise the conduct of intercountry adoptions under the Convention and to ensure that the child has permission to enter and reside in France.⁶

Sweden

2.12 Sweden ratified the Hague Convention on 28 May 1997, and the Convention entered into force on 1 September 1997. The legislation which implements the Convention is the *Act consequent upon Sweden's accession to The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (1997:191)* (The Hague Convention Act). The *Intercountry Adoption Intermediation Act (1997:192)* also makes provision for intercountry adoptions in which Sweden is the receiving State.

2.13 *The Hague Convention Act* provides that the Central Authority for Sweden is to be the Swedish National Board for Intercountry Adoptions (NIA). The NIA is responsible for issuing certificates under Article 23 of the Convention. Under section 5 of the *Intercountry Adoption Intermediation Act*, the NIA is also responsible for the accreditation of agencies and for their supervision.

2.14 Under section 6 of the same Act, accreditation may only be granted to an agency which has as its main purpose the facilitating of intercountry

5 Section 90

6 See Report No.151 of the Senate, by Mme Monique Cerisier-ben Guiga.

adoptions. It must be shown that the agency will provide adoption assistance in a "competent and judicious manner, without expectation of profit and in the child's best interests". Under section 7, authorization is for a fixed term. Authorization enables the agency to administer intercountry adoptions in respect of specified countries of origin only, and may also be subject to other conditions, for example in relation to the imposition of charges or the rendering of accounts. However, the Act does permit an accredited agency to make some reasonable charges. Accreditation may be revoked by the Central Authority if the agency no longer meets the standards set in section 6.

2.15 Under the Swedish legislation, all intercountry adoptions must be conducted through an accredited agency, except in certain cases where the child is related to the prospective adoptive parents, or where there are other special circumstances.⁷ Provision is made for fines to be imposed where a person provides intercountry adoption services without authorization, or where a child is removed from the country of his or her domicile, without the approval of the NIA.⁸

2.16 A number of the responsibilities of the Central Authority are delegated under the Swedish legislation. Article 14 applications to adopt a child under the Convention are to be made to municipal social welfare committees. The social welfare committee must then prepare reports on the prospective adoptive parents' eligibility and suitability to adopt, under Article 15, and agree to the adoption proceeding to the placement stage under Article 17.c. The social welfare committee is also responsible for taking any necessary measures under Article 21, where the continued placement of the child with the prospective adoptive parents is no longer in the child's best interests. Functions are also delegated to the accredited agency, which is responsible for the transmission of reports on the prospective adoptive parents under Article 15.2, and the receiving of reports on the child drawn up under Article 16.1. Agencies are also charged with obtaining permission for a child to enter and reside in the State,⁹ ensuring the safe transfer of the child under Article 19, and with supplying information to the authorities in the State of origin as to the progress of the adoption.

2.17 Under the *Swedish Code of Parenthood and Guardianship*, the effect of adoptions carried out in Sweden is to terminate the parent-child relationship between the child and the biological parents, and to create a new parent-child relationship with the adoptive parents.¹⁰ The adoption is thus a "full" adoption similar to that under Irish law. Under section 5 of the *1997 Hague Convention Act*, an adoption made abroad which has the effects of a "simple" adoption may be converted to a full adoption in the Swedish courts. As a necessary condition to conversion, the consents required under Article 27.1.b of the Convention and

7 Section 4

8 Section 15

9 Article 18 of the Convention.

10 Chapter 4, Section 8.

Chapter 4, section 5 of the *Code of Parenthood and Guardianship* must have been granted. No provision is made for the recognition of simple adoptions as having the effects of a simple adoption in Swedish law.

Canada

2.18 Implementing legislation for the Hague Convention has been enacted by seven of the twelve Canadian provinces: British Columbia, Prince Edward Island, Manitoba, New Brunswick, Saskatchewan, Alberta and Yukon.¹¹ Each province has a provincial Central Authority, who may be either a government minister or a public official. In British Columbia, the Central Authority is the Director of Adoption at the Ministry of Children and Families; in Prince Edward Island, the Director of Child Welfare; in Manitoba, the Director of Child and Family Services; in New Brunswick, the Minister for Health and Community Services; in Saskatchewan, the Minister for Social Services; and in Yukon, Director of Family and Children's Services. There is a Federal Central Authority for Canada, the National Adoption Desk (NAD).

2.19 The majority of the implementing statutes allow for the delegation of the functions of the Central Authority to public authorities and accredited agencies, and for some functions under the Convention to be performed by independent operators, subject to the approval of the relevant Minister. For example, the legislation of New Brunswick provides as follows:

"5. ... (2) Where the Minister so authorizes, the functions of a Central Authority under Articles 15 to 21 of the Convention may, to the extent determined by the Minister, be performed by a person or body who meets the requirements of subparagraph (a) and (b) of paragraph 2 of Article 22 of the Convention."

However, the implementing legislation of Manitoba does not allow for delegation of functions to independent operators. Under section 5 of the province's *Intercountry Adoption (Hague Convention) and Consequential Amendments Act*, functions of the Central Authority may be delegated to public authorities or accredited bodies only. The legislation of all of the provinces provides that bodies accredited in other Contracting States may operate on their territory, with ministerial authorization, and that the Minister may authorise a body accredited in the province to operate in other Contracting States.

11 Manitoba: *The Intercountry Adoption (Hague Convention) and Consequential Amendments Act, 1995*; Prince Edward Island: *The Intercountry Adoption (Hague Convention) Act, 1994*; New Brunswick: *Intercountry Adoption Act, 1996*; British Columbia, *Adoption Act, 1995*; Yukon: *Intercountry Adoption (Hague Convention) Act, 1997*.

2.20 The legislation of the Yukon and Manitoba provides that the certification of consents provided by State of origin in a Convention adoption shall be accepted as valid by the authorities of the province.¹²

2.21 The legislation for British Columbia makes detailed provision for the conversion of adoptions under Article 27 of the Convention. Section 55 of the British Columbia *Adoption Act* provides that:

"(1) On application by a person resident in British Columbia, the court may make an order converting an adoption referred to in Article 27 of the Convention to have the effect of an adoption under this Act.

(2) An application for an order under this section must be accompanied by proof that the consents required under Article 27 of the Convention have been given."

2.22 Under the Adoption regulations for British Columbia, an adoption cannot be converted unless the court is provided with proof that the required consents have been obtained; a certified copy of the adoption order granted in the State of origin; a certificate of conformity issued by the State of origin; a Convention letter of approval issued by the British Columbia Central Authority; the child's birth registration; and, where applicable, details of any access orders or orders dispensing with consents.¹³

New Zealand

2.23 In 1997, New Zealand passed the *Adoption (Intercountry) Act 1997*, which allowed the State to accede to the Hague Convention.¹⁴ Whilst the Act makes comprehensive provision for implementation, it also allows (under section 24) for regulations to be made by the Governor General for the administration of the Act. The Act provides that the Hague Convention shall have the force of law in New Zealand, and provides for a Central Authority, which is to be the Director General for Social Welfare, the chief executive of the Department of Social Welfare. The Act also provides for delegation of the Central Authority's functions to accredited agencies. The Act makes detailed provision for accreditation of agencies. Agencies are accredited by the New Zealand Central Authority, where it is established that the body in question purses only non-profit objectives, that it is capable and competent to carry out the tasks that may be delegated under the Convention, that it will operate in the best interests of the child, and that it is directed and staffed by persons who are properly qualified

12 *Intercountry Adoption (Hague Convention) Act*, section 10 (2) (Yukon); *The Intercountry Adoption (Hague Convention) and Consequential Amendments Act*, section 9 (3) (Manitoba).

13 *British Columbia Adoption Regulations* (4 November 1996), section 33.

14 The *Adoption (Intercountry) Act 1997* has not yet been brought into force. The New Zealand Government has yet to approve accession to the Convention.

in the field of intercountry adoption. Accredited bodies must report annually, under section 21, to the Director General on the exercise of the functions delegated to them under the Convention.

2.24 The Act provides that foreign agencies may operate in New Zealand, if they are authorised by the Central Authority. In addition, New Zealand agencies may operate in other jurisdictions, with the approval of the Central Authority.

2.25 Where an application is made to the Director General for accreditation, the Director General must place an advertisement in at least one daily newspaper circulating in the area where the organisation's principal office is situated, in order to allow for submissions to be made on whether the organisation should be accredited. Where the Director General refuses accreditation, the unsuccessful applicant must be given a copy of any information on which the Director General relies in proposing to decline the application, and the organisation must be given a reasonable time in which to make submissions in relation to this information.

2.26 Section 19 of the Act provides that the Director General may suspend or revoke accreditation, where an organisation is not performing its functions adequately, is pursuing profit objectives, or has imposed unreasonable charges for its services.

2.27 There is also a provision, in section 20 of the Act, that any decision of the Director General, to decline, revoke or suspend accreditation, may be appealed to the District Court.

2.28 Section 26 of the Act deals with the prohibition of payments to agencies accredited under the Convention. It provides that the prohibition does not extend to the payment of reasonable costs and expenses to any organisation approved as an accredited body, provided that these costs are in connection with a function delegated under the Act. By section 27 of the Act, accredited bodies may not advertise, but may notify the public that they have been accredited under the Act, and that functions have been delegated to them under the Act.

2.29 It is stipulated under the Act that prospective adoptive parents must be offered a choice, of a governmental or a non-governmental authority to prepare the report as to their eligibility to adopt.¹⁵ Reports may be prepared either by the Director General as Central Authority, or by a public authority or an accredited body.¹⁶ Where a prospective adoptive parent applies to the Director General and requests him or her to prepare the report, this request must be complied with.¹⁷

15 Section 7 (3)

16 Section 7 (1) and (2)

17 Section 7 (1)

2.30 With regard to recognition of adoptions effected outside New Zealand, section 11 of the Act provides that an adoption recognised under the Convention has the same effect as a New Zealand adoption, that is, it fully terminates the pre-existing parent-child relationship. The Act does not make provision for the recognition of simple adoptions. Section 12 provides that, if the adoption does not already have the effects of a full adoption, it may be converted to such by an order of the Family Court, if the Court is satisfied that, *inter alia*, the consents to the conversion of the adoption have been given for the purposes of conversion.

2.31 Section 12 (3) of the Act reflects Article 24 of the Convention, in allowing for the New Zealand Central Authority to refuse to recognise an adoption made under the Convention, subject to such terms and conditions as it thinks fit. It appears that this would allow the Central Authority to refuse recognition to a simple adoption where it was not possible to convert it to a full adoption in the New Zealand courts.

2.32 Section 13 of the Act details the right of access to information relating to adoptions effected under the Convention. It places an obligation on the Central Authority to ensure that all reports prepared or received under Article 16, are retained either by the Central Authority or by the Chief Archivist, where such reports result in an adoption.

Ecuador

2.33 Ecuador ratified the Convention on 21 August 1995. It is primarily a sending State in which there is a 2:1 ratio of intercountry to domestic adoptions. Ecuador has a history of corrupt commercial intercountry adoptions which has led to an increase in regulation. The Code of Minors of 7 August 1992 regulates both domestic and intercountry adoption.¹⁸

2.34 The Central Authority for Ecuador is the National Court of Minors.¹⁹ Intercountry adoptions are administered by the Technical Department of Adoptions - a component of the Welfare and Popular Promotion Ministry.²⁰ It is State-financed, and has 3 regional offices, as well as a central national office. The National Court of Minors oversees adoptions, pre-and post-placement. It receives adoption applications from prospective adoptive parents, selects and advises adopters and children, and also prepares all the requisite reports and provides post-adoption services. The matching of the child with the prospective adoptive parents is the responsibility of the Assignment Committee of the Technical Department of Adoptions.

18 International Social Service, *Internal and Intercountry Adoption Laws*, (1996)

19 *ibid.* §III-A(103)

20 *ibid.* §IIIA (104)

2.35 Accreditation agreements, signed by the Ministry of Social Welfare in consultation with the Technical Department of Adoptions, are valid for two years, and are renewable.²¹ Only one indigenous agency has been accredited - the "Adoption Foundation for Our Children".²² There are also foreign agencies which have been accredited through signing agreements with the Ecuadorian authorities. Again, the competent body is the Ministry for Social Welfare, in consultation with the Technical Department of Adoptions.²³

2.36 Prospective adoptive parents must adopt through an accredited agency. The child is consulted where appropriate, and in the case of an adolescent adoptee, he or she is required to give consent to the adoption.²⁴ However, the practice of this varies as between the provinces. A declaration of adoptability can be made where a child is orphaned, or abandoned, or where the birth parents consent. Before adoptability can be declared, there must be a study carried out on the family of origin.²⁵

Conclusions

2.37 Of those states which have already put implementation measures in place, the majority have put in place detailed provisions and administrative structures to allow for the operation of the Convention, and for the recognition of adoptions made through Convention procedures. This has been achieved through implementing legislation, or through a combination of legislation and subsidiary regulation. The designated Central Authorities have in all cases been public bodies, either government ministries, or boards or committees established by the State. There are differing approaches to the making of payments to adoption agencies, to be seen in the law of New Zealand and the less restrictive law of Sweden.

21 *ibid.* §III-B (109)

22 *ibid.* §III-B (106)

23 *ibid.* §III-C (111)

24 *ibid.* §IV-A (125)

25 *ibid.* §IV-B (126)

PART II: IMPLEMENTATION OF THE HAGUE CONVENTION IN IRELAND

CHAPTER 3: IMPLEMENTATION OF CONVENTION STANDARDS

3.01 The Convention sets out the standards to be met in the processing of intercountry adoptions, with regard to consents, adoptability, suitability to adopt, clearances for entry into the State, counselling, and post-adoption services. On the enacting of implementing legislation, which will give the Convention the force of law in Ireland, these standards will become binding. The standards contained in the Convention are intended to be minimum standards only, and states may surpass them in their implementing legislation. Therefore, to some extent, it is left to Ireland to ensure, both the method in which the standards will be respected, and the stringency of the standard which will be set.

Adoptability

Where Ireland is a State of Origin

3.02 Where Ireland is the State of origin in an intercountry adoption, current legislation imposes certain constraints. Section 10 (6) of the *Adoption Act, 1991* provides that an adoption order cannot be made unless the prospective adoptive parents have been ordinarily resident in the State for at least one year prior to the date on which the adoption order is made. This provision does not represent an obstacle to implementation, since it does not preclude the removal of the child from the State for adoption in the receiving State, even where the prospective adoptive parents are resident abroad.

3.03 A further restriction is contained in section 40 of the *Adoption Act, 1952*, which forbids the removal of a child who is an Irish citizen under the age of seven from the State without the approval of a parent, guardian or relative. This does not in itself cause any difficulties, but amendment of the provision is necessary to cover the (rare) cases where the child who is to be adopted abroad is not an Irish citizen.

3.04 *The Commission recommends that the rule in section 40 of the Adoption Act, 1952, that no child may be removed from the jurisdiction without the consent*

of a parent, guardian or relative, should apply to all children who are habitually resident in the State.

3.05 The principal question which arises for Ireland in relation to adoptability is: what standards of adoptability should be applied where a child is sent from Ireland to be adopted abroad? For example, should a child born to married parents be eligible for adoption abroad, where the parents have agreed to the adoption? Where the child is adopted in Ireland and then sent to the receiving State, it is clear that the same criteria apply as apply in domestic adoptions, but there are at present no criteria for cases where the child is sent from Ireland to be adopted abroad.

3.06 In the Consultation Paper, our tentative provisional recommendation on this point was that the same criteria of adoptability should be applied as are applied in domestic adoptions. However, there is room here for the view that wider and more flexible criteria of adoptability, which would allow the adoption of the children of married parents, should be applied in such cases. One submission pointed out that, since the children of married parents can be adopted only in limited circumstances within Ireland,¹ it would be important for their welfare that intercountry adoption should be available to them in appropriate circumstances. It was suggested that married parents should be allowed to make a responsible decision to have their child adopted, where this would be in the best interests of the child.

3.07 We appreciate that a more flexible application of eligibility criteria for the adoption of Irish children abroad would help to mitigate the strictures of the current eligibility criteria. However, we feel that alteration of the eligibility criteria for adoption is an issue which should be addressed in relation to adoption law generally, rather than merely in relation to intercountry Convention adoptions.

3.08 The lack of flexibility in the eligibility criteria is a cause for grave concern. It results in a situation where children of married parents do not have the right to the same range of childcare options as non-marital children, and may be deprived of the secure and permanent parent-child relationship with which adoption could provide them. The hardships caused by our inflexible eligibility criteria were highlighted by the *Review Group on Adoption Services* as far back as 1984,² and have been only partially addressed by the provisions of the *Adoption Act, 1988*.³

1 Under the *Adoption Act, 1988*, the children of married parents may be adopted in certain limited exceptional circumstances, where the parents have failed in their duty towards the child: section 3 (1).

2 *Adoption: Report of the Review Committee on Adoption Services* (1984) at paras.3.2-3.10. The Report stated: 'In all the circumstances, we recommend that all children should be eligible for adoption irrespective of the marital status of their parents.'

3 *op cit.* fn.1.

3.09 Although recommendations for reform of the eligibility criteria for adoption generally would be outside the narrow scope of this Report, it is appropriate to emphasise the need for review of this area. We realise that there may be constitutional implications in any reform of the law on this point, in that the adoption of children who form part of a family based on marriage may undermine constitutional guarantees of the rights of the family.⁴ However, such considerations must be balanced against the rights of the child, which are also recognised under the Constitution.⁵ It is important to highlight the need for further examination of this area, particularly in the light of the changes brought about by the *Status of Children Act, 1987*, which provides for the equal status of all children, irrespective of the marital status of their parents, and in the light of Ireland's obligations, under the *United Nations Convention on the Rights of the Child*, to ensure the equal application of children's rights.⁶

3.10 Concerning the role of intercountry adoption in caring for marital children, it is important to emphasise the principle of subsidiarity set out in the preamble to the Convention. This states that intercountry adoption should be a subsidiary means of childcare only, and that domestic adoption, within the child's own country and culture, should be the first option. The solution to the dilemma of a child of married parents who cannot be cared for by those parents, is not to send the child abroad for adoption, but to allow for the possibility of his or her adoption domestically.

3.11 *We recommend that, where Ireland is the State of origin in a Convention adoption, the same criteria of adoptability should be applied to children who are entrusted to prospective adoptive parents for adoption outside the jurisdiction, as are applied to children in domestic adoptions.*

Where Ireland is a Receiving State

3.12 In our Consultation Paper, we provisionally recommended that, where a child was sent from abroad to be adopted in Ireland, or was adopted abroad and then transferred to Ireland, there should be a more flexible approach to the eligibility requirements applied, especially as regards the adoption of the children of married parents. We provisionally recommended that, as a general principle in the case of Convention adoptions, where Ireland is the receiving State, the determination of the child's eligibility for adoption made by the competent authorities of the State of origin under Article 4.a, should be accepted by the Irish authorities. This would apply where the Adoption Board makes an

4 Article 41.1. See Kelly, *The Irish Constitution*, (3rd ed.) p.1004; *Report of the Constitution Review Group*, (1996) pp.323-324; also, *Report of the Review Committee on Adoption Services*, *op cit.* fn.2, paras.3.7-3.10.

5 *In Re Article 26 and the Adoption (No 2) Bill, 1987* [1989] ILRM 266

6 Article 2.1, *United Nations Convention on the Rights of the Child* states that:

"States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's ... birth or other status."

adoption order, as well as where the adoption takes place abroad. The provisional recommendation was that the Irish authorities should not, as a general principle, object to the adoption proceeding, under Article 17.c, on the sole ground that the child was not eligible for adoption under Irish domestic law.

3.13 Several consultees expressed concern at this recommendation. It was stated in one submission that it would be undesirable to impose one set of rules in cases where a child is brought from abroad and adopted in Ireland, and a second set of rules for domestic adoption. The importance of ensuring that criteria of eligibility for adoption in general are not unintentionally weakened was also emphasised.

3.14 The rationale for accepting the State of origin's determination of adoptability, and allowing such an adoption to go ahead, is that the Hague Convention is based on a system of cooperation and mutual trust between the recognised authorises of Convention states, all of which have to comply with Convention standards. The intention of the Convention is to circumvent problems caused by divergent national laws, by creating a framework within which they can co-exist. Ideally, we should avoid a situation where the letter of the Irish law is imposed on the Convention states with whom we deal.

3.15 In the light of this, we recommend that, as a general principle, where Ireland is the receiving State, the determination of the child's eligibility for adoption made by the competent authorities of the State of origin under Article 4.a should be accepted by the Irish authorities. This would apply where the Adoption Board makes an adoption order, as well as where the adoption takes place abroad. The Irish authorities should not, as a general principle, object to the adoption proceeding, under Article 17.c, on the sole ground that the child is not eligible for adoption under Irish domestic law.

Consents

Where Ireland is a Receiving State

3.16 The consents provided by the birth parents are central to good adoption practice. Article 4.c of the Convention introduces careful regulation to ensure that high standards are adhered to in the obtaining of consents. The persons whose consent is required must have been counselled as necessary, and duly informed as to the effects of their consent. They must have given their consent freely, in the required legal form, and have expressed or evidenced the consent in writing. The consents must not have been induced by payment or

compensation of any kind, and, in the case of a mother, her consent must have been given only after the birth of the child.⁷

3.17 Procedures for the giving of consent vary widely as between states. The Irish consent procedure is a complex one, involving an initial consent to the adoption which may be withdrawn at any stage until it becomes final on the making of the adoption order. The system of withdrawal of consents is not reflected in many other jurisdictions.

3.18 The provisional recommendation made in the Consultation Paper is that, as a general principle in the case of Convention adoptions, where Ireland is the receiving State, the determination of the adequacy of consents by the authorities of the receiving State under Article 4.c and d, should be accepted by the Irish authorities, whether the adoption is effected in Ireland or in the State of origin.

3.19 This recommendation is a recognition of the fact that widely divergent procedures for consent apply in different jurisdictions. These procedures may differ formally, without differing in the standards which they uphold. The Irish procedure for consent to adoption is complex, involving an initial consent followed by a final consent some months later.⁸ It seems unnecessary and indeed possibly unworkable to impose the letter of this procedure on sending countries in Hague Convention adoptions. However, this is not to say that high standards should not be expected and demanded.

3.20 All states which are party to the Hague Convention will have to provide in their implementing laws for procedures which guarantee adequate standards of consent in intercountry adoptions made under the Convention. So long as it is evident that these standards are being adhered to in practice, there seems to be no need not to accept their determination of consent. However, the Irish authorities should require evidence that the consent has been given. Under Article 16.2 of the Convention, the Central Authority of the State of origin must transmit to the receiving State proof that the consent has been validly given.

3.21 It is obviously up to the Irish authorities to insist on proof of consents in any particular form. Presumably, a copy of the birth parent's written consent would be required. The Hague Conference has developed a recommended model form for the statement of consent to an adoption, for use in intercountry adoptions effected under the Convention.⁹ The consent form declares that no payment has been received by the birth parents, that the consent to the adoption

7 There will of course be some Convention adoptions where the issue of consents does not arise, for example where a child is orphaned or has been abandoned. The Convention demands only that the consents be in order where such consents are necessary and appropriate, according to the law of the State of origin. (Article 4)

4) See G Parra-Aranguren, *Explanatory Report*, in *Proceedings of the Seventeenth Session of the Hague Conference on Private International Law*, Tome II, para.119.

8 Shatter, *Family Law in the Republic of Ireland*, (3rd ed.) pp.297-298.

9 See Appendix 4. The use of this form is not mandatory.

is made freely and without coercion, and that it is understood that the child may be adopted abroad and that the existing parent-child relationship will be terminated. The form allows for the withdrawal of consent until a certain date, (where this is provided for in the national law) and is signed by the birth parent and certified by the competent authority. The widespread use of this form by sending countries should assist in allaying fears as to the varying standards of consent.

3.22 A number of parties in their written submissions have expressed concern that lower standards in relation to consent may be accepted for intercountry adoptions in comparison with domestic adoptions. It is certainly the case that, even where proof of written consent is given, it is difficult to establish, especially at a far distance, what pressures have resulted in the giving up of a child for adoption. One submission pointed out that, even where it is established that no payments have been made to the birth family:

"given the levels of poverty in some of the sending countries, the removal of the financial burden of supporting a child may in itself constitute "payment", and therefore standards may not be as enforceable as they appear".

3.23 Whilst we recognise the validity of these concerns, we consider that an acceptance of country of origin consent procedures need not result in lower standards. Where there is any doubt about the standards being applied in a particular sending country, the Irish Central Authority can request information regarding procedures from the Central Authority concerned, and this information must be forwarded. Where serious concerns arise that consents from a particular State are not legitimate, the Irish authorities would have the option, under Article 17.c, of refusing to allow adoptions from that State to proceed to the placement stage. Similar measures could be taken where there were doubts about the circumstances of a particular case.

3.24 We have considered the possibility of making some stipulations as to the consents to be given in the State of origin. In particular, we have considered insisting that there must be a period within which the consent to the adoption could be withdrawn, as may be done under the Irish domestic adoption law. However, we consider that this would not be workable in practice. The requirement in Irish law that there be a waiting period during which consent is revokable is not reflected in many other national laws. It is likely that many State of origin authorities would resist the imposition of such strictures upon them, and would refuse to deal with the Irish authorities on these terms. This would diminish the utility of the Convention from an Irish perspective.

3.25 It is worth noting, on this issue, that the Convention allows scope for its provisions to be modified or elaborated in bilateral agreements between State

parties¹⁰ "with a view to improving the application of the Convention in their mutual relations". There would be scope for the Adoption Board, as the Irish Central Authority, to work towards either informal arrangements, or binding treaties, with particular States of origin which are party to the Convention, which would allow for consent procedures similar to those of Irish domestic law to be employed in the State of origin, in adoptions where Ireland was the receiving State. In the interests of the progressive development of standards under the Convention, and of increased cooperation between Convention States, this would be highly desirable.

3.26 We recommend that, where Ireland is a Receiving State under the Convention, the determination of the competent authorities of the State of origin in accordance with Article 4.c and d of the sufficiency of consents, should as a general principle be accepted by the Irish authorities. This should be the case whether the adoption is to be effected in Ireland or in the State of origin.

Where Ireland is a State of Origin

3.27 Where Ireland is a State of origin, the current law would require that, if the adoption takes place in Ireland and the child is subsequently sent abroad, the fully informed consent of all the relevant persons must be obtained, as would be the case with a domestic adoption. The only unique issue which arises is where the child is sent from Ireland and subsequently adopted abroad.

3.28 In such a case, under the present law, there is no requirement that the birth parents consent to the adoption. Under Article 4.c of the Convention, the Irish authorities would be required to ensure that consents were in place, prior to the sending of the child for adoption abroad.

3.29 We reiterate here the provisional recommendation made in our Consultation Paper. *We recommend that the basic requirements for consent in domestic adoptions be extended, in the implementing legislation, to cover the sending of a child for adoption abroad.*

Consultation with the Child

3.30 In addition to the consent of the birth parents, the Convention also stipulates, in Article 4.d, that the child, depending on his or her age and maturity, is to be given the opportunity to consent to the adoption, after having been counselled and informed of the effects of the adoption. As with parental consent, it is stipulated that the child's consent must be given freely, must be expressed or evidenced in writing, be in the required legal form, and must not have been induced by any payment or compensation. The authorities of the State

of origin must also ensure that, having regard to the age and degree of maturity of the child, he or she has been counselled and duly informed of the effects of the adoption, and that consideration has been given to the wishes and opinions of the child.

3.31 Irish law already allows for substantial compliance with these provisions. There is, however, no statutory duty to counsel a child of any age, or to inform them of the effects of the adoption. This should be remedied, in order to ensure full compliance with Article 4.d. *We recommend that the duty to consult the child where appropriate should be set out in legislation and should apply to all adoptions in which Ireland is the State of origin, whether the adoptions are made in Ireland, or are to be made abroad.*

Counselling

3.32 Counselling of prospective adoptive parents is provided for under Article 5.b of the Convention, which outlines the responsibilities of receiving States prior to the making of the adoption order. One of the key elements which, under Article 5, the receiving State must ensure before the adoption can take place, is that the prospective adoptive parents have been counselled as may be necessary. At present, although counselling is often provided, Irish law contains no requirement that the prospective adopters be counselled, or that counselling services be provided.

3.33 Our provisional recommendation on this matter was that counselling services should be put on a statutory footing, and that there should be an obligation on health boards to inform prospective adoptive parents of the counselling services available. One written submission pointed out that it was not strictly necessary to place counselling on a statutory footing, in order to comply with the Convention. The majority of consultees expressed agreement with the recommendation, however, and some thought that it did not go far enough, in merely placing a burden on the relevant authorities to inform couples about counselling services. It was argued that all prospective adoptive parents should be required, under the terms of the legislation, to be counselled and to attend preparation sessions, and that this should be a condition of a declaration of suitability to adopt. It was pointed out by another consultee that a choice of counselling agencies should be facilitated wherever possible.

3.34 *The Commission recommends that the provision of counselling services to prospective adoptive parents be placed on a statutory footing, in order to comply fully with Article 5.b of the Convention, and that an obligation should be placed on health boards and accredited agencies to inform prospective adoptive parents of the availability of counselling services. Both health boards and accredited agencies should be required to provide such services as appropriate.*

Immigration Clearances

3.35 Under Article 5.c, a further responsibility of the receiving State authorities is that they should have obtained authorization for the child to enter and remain in the receiving State. This authorization must be in place before the adoption order is made, whether the adoption is effected in the State of origin, or in the receiving State.

3.36 The current procedure in Irish law for the admission to Ireland of a child adopted abroad is that the prospective adoptive parents apply, on the advice of the Adoption Board, for an immigration clearance from the Department of Justice. The difficulty with the grant of immigration clearances is that, as the system presently operates, the clearance does not refer to a specific child by name, and does not even refer to a specific number of children. Often, the immigration clearance is not checked at points of entry to the State, and is not required to be surrendered at any point after it has been used. It would therefore be possible to use a single immigration clearance several times, to bring a number of children into the State, without authorization. It may also result in a child being brought into Ireland and residing here, without the knowledge of the authorities.

3.37 In our Consultation Paper, we made a number of detailed provisional recommendations containing proposals to regularise this situation. In our consultations, we detected serious concern at the present situation, and strong support for our proposals from professionals involved in intercountry adoption.

3.38 One suggestion which was made to us was that the law be amended to ensure that the certificate of clearance is surrendered at the point of entry to the State, and returned to the Adoption Board by the Department of Justice. Another proposal made was that it should be stipulated that Immigration Control Officers should notify the Central Authority of the details of any child brought into the country on foot of an immigration clearance.

3.39 Our proposal that failure to furnish the authorities with information as to the identity of a child brought into the country on foot of an immigration clearance, should be a criminal offence, was opposed by some consultees, who viewed with concern the possible criminalisation of adoptive parents. It is important to emphasise that, in imposing the strict regulation proposed, including criminal sanctions, the sole aim is to provide a deterrent and a sanction in cases which are not genuine instances of intercountry adoption. The aim is to separate cases of genuine intercountry adoption from cases of child trafficking and abduction and, by imposing penalties in cases of the latter, to ensure the protection of children.

3.40 The ambiguities which exist at present with regard to the number of children who may be brought into the country on foot of a single immigration clearance must be viewed as separate from issues of the advisability or otherwise of adopting more than one child at any one time. The number of children to be

adopted is to be determined by the responsible social worker in each individual case. The issue which we are concerned with here is that the number and identity of children, whether a single child or more, is not being adequately indicated on the formal documents which admit them to this State.

3.41 The Commission continues to feel grave concern at the present lax regulation of this area. The most serious concern is clearly the possibility that the present situation may facilitate child abduction, or the sale or trafficking in children. The present situation is inadequate for the protection of children, and is contrary to the spirit of the Convention. *We recommend as follows:*

(a) *that a separate clearance should be issued in respect of each particular child to be brought into the country (this should apply whether the child is to be adopted abroad or in the State) and that the name, age and sex of the child be clearly stipulated on the immigration clearance;*

(b) *that, upon entry into the State with the child, the (prospective) adoptive parents should be under a legal obligation to inform the authorities of the identity of the child and to surrender the immigration clearance to the Department of Justice; and*

(c) *that it should be an offence to fail to furnish information as to the identity of the child, or to surrender an immigration clearance as required by (b) above, or to use or attempt to use an immigration clearance to obtain entry for more than one child.*

3.42 *We recommend that in determining whether to grant an immigration clearance to a child the subject of an intercounty adoption, the Department of Justice should work in close co-operation with the Central Authority and the concerned health board or accredited agency.*

Right of Permanent Residency

3.43 A difficult issue of implementation arises where a child is adopted from abroad by adoptive parents who are habitually resident in Ireland, but who are not Irish citizens. In the case of such an adoption, as in the case of any adoption under the Convention, permission must be obtained for the child not only to enter but also to reside permanently in the receiving State, in order for an adoption to take place under the Convention. In a case where the child had been born outside Ireland, and where the adoptive parents were not entitled to Irish citizenship, it is uncertain whether the child would be entitled to become an Irish citizen. The *Adoption Act, 1952* makes particular provision for the granting of rights of citizenship to a child adopted abroad, where the adoptive parents are Irish citizens.¹¹ This would seem to exclude the automatic grant of

citizenship rights where the adoptive parents are non-nationals. There is no provision made for a right to permanent residence for the adopted children of non-nationals.¹²

3.44 If the child does not have the right to Irish citizenship, he or she could not be guaranteed a right to remain in Ireland on a permanent basis; and without assurances of this right, the adoption could not proceed under the Convention, and would have to be vetoed under Article 17.c. It would be against the spirit of the Convention to use the Article 17.c veto in these circumstances.

3.45 This situation is not likely to arise in many cases, but we consider that, nevertheless, some provision should be made for it in law. If at all possible, we should avoid a situation where non-Irish citizens resident here would be prohibited, because of the difficulties discussed above, from engaging in intercountry adoption. Non-Irish citizens may obviously have close ties abroad, or particular understanding of the culture of a sending country, and therefore intercountry adoption may be particularly appropriate or likely in such cases. The aim of adoption under the Convention must be to secure the best parents for the child, irrespective of the citizenship of those parents.

3.46 The difficulty could be resolved by granting the child Irish citizenship, or, as would be sufficient under the Convention, a right of permanent residency. If the right of the child to reside in Ireland is to have any substance, it would be necessary that the parents should also be permitted to reside here, for so long as the child is dependant on them. Granting Irish citizenship to the child would have the necessary consequence that, in all but the most exceptional cases, the adoptive parents of the child be permitted to reside in Ireland, at least for as long as the child remains dependant on the parents.

3.47 The question of the family rights of a child who is an Irish citizen but whose parents are non-nationals, was considered by the Supreme Court in the case of *Fajujonu v Minister for Justice*.¹³ In that case, the Minister for Justice issued a deportation order in respect of the parents of a family, the mother and father being citizens of Nigeria and Morocco respectively, and the three children of the marriage being Irish citizens, having been born in Ireland. It was held by the Supreme Court that the constitutional rights of the children, as Irish citizens, required the *Aliens Act, 1935* to be interpreted in such a way as to restrict the deportation of the parents to the most exceptional circumstances. Finlay CJ held that the children of the family, as Irish citizens, had a constitutional right to the company, care and parentage of their parents within the family unit. Having regard to these rights, the parents of the family were entitled to a choice of

12 Under present Irish law, a right to permanent residency, short of nationality, is not granted. Provision is made, under the *Aliens Act, 1835*, (Section 5 (5)) for the grant of a right to residence to a person who has been ordinarily resident in the State for a period of five years, and is employed in the State or is engaged in business or professional activities here. However, this right to residence is terminable on three months notice by the Minister for Justice.

13 [1990] 2 IR 151

residence in the interests of their infant children, and could not be deported, in the absence of the most "grave and substantial reason associated with the common good."¹⁴

3.48 Walsh J placed similar emphasis on the constitutional family rights of the children in such a case. He held that, in order to deport the parents of infant Irish citizens, the Minister for Justice would have to be satisfied, for stated reasons, that:

"the interests of the common good of the people of Ireland and of the protection of the State and its society are so predominant and so overwhelming in the circumstances of the case, that an action which can have the effect of breaking up this family is not so disproportionate to the aim sought to be achieved as to be unsustainable."¹⁵

3.49 It was also emphasised in the judgements that the parents of the family had done nothing which could be construed as making them unsuitable parents.¹⁶ This contrasts with the situation which arose in *The State (Bouzagou) v The Station Sergeant, Fitzgibbon Street Garda Station*¹⁷ where a deportation order had been made in respect of a non-national who was separated from his wife and children. He had not been awarded custody of any of his children, and his wife had obtained a barring order against him. It was held that, in these circumstances, the father could not claim family rights under Article 41. It is therefore clear from this case that there will be some, albeit rare, cases in which the non-national parents of an intercountry adopted child who is an Irish citizen may be expelled from the country. This should provide a satisfactory balance between the need to assure permanent residence under the Convention, and the demands of public policy.

3.50 In the Consultation Paper, our provisional recommendation was that provision be made for the granting of a right of permanent residency to children adopted by foreign nationals habitually resident in Ireland. We did recognise, however, that this right might have to be modified, where there might be concerns that such a right could be used to abuse the immigration process. It does not seem likely that such abuses will occur in many cases, given the complex procedures which are involved in the adoption of a child from abroad, and the careful assessment of suitability to adopt which is required under the Convention. In addition, it must be borne in mind that the Ireland will only be the receiving State under the Convention where the adoptive parents are already habitually resident here.

14 Per Finlay CJ, *ibid*, at p.162.

15 *ibid*, p.166.

16 Per Walsh J at p.165.

17 [1986] ILRM 98

3.51 It may be argued that granting a right of citizenship to the child in these circumstances is excessive, since it is not strictly required by the Convention: the Convention requires only that the child have a right to permanent residence. We have considered the possibility of legislating for the child's right to permanent residence, and a corresponding right to residence on the part of the parents, for so long as the child is dependant on them. In these circumstances, we would suggest that the parents would lose their right to permanent residency in exceptional circumstances where overwhelming considerations of public policy so demanded. This approach would, in effect, apply the dicta in the *Fajjonu* case to non-national children with a right to permanent residence.

3.52 Granting citizenship to the child has, however, two important merits. First, it gives the child the full benefit of constitutional rights. Second, it places a child adopted from abroad in the same position as a child who is born to non-national parents habitually resident in Ireland. Irish adoption law has always provided for the equality of adopted children with non-adopted children.

3.53 On balance, and in the interests of the welfare of the child, according the child a right to citizenship appears preferable. *We recommend that, where Ireland is a receiving State in an adoption under the Convention, in which the adoptive parents are habitually resident in Ireland but are not Irish citizens, the child should be entitled to Irish citizenship upon his or her transfer to Ireland.*

Post-adoption Services

3.54 Under Article 9.c, the Central Authority must take measures to promote the development of adoption counselling and post-adoption services in the State. It is clear that any post-adoption services that are put in place must be provided on an optional basis. Constitutionally, any attempt to impose post-adoption services or monitoring on an adoptive family, would almost certainly give rise to difficulties.¹⁸ Therefore, post-adoption services should be available, on an optional basis, to all adoptive families, and should concentrate on providing support and assistance to such families. Post-adoption services could be provided either by health boards, or by accredited agencies or other private agencies.

3.55 It is important, in order that as many as possible adoptive parents will feel able to avail of post-adoption services, that a choice of services be provided to parents. Adoptive parents should not be confined to availing of post-adoption services from the agency or health board which has processed their application to adopt. It is therefore desirable that agencies accredited under the Convention should provide post-adoption services, and that their capacity to provide such services should be taken into account in the determination of their application for accreditation.

18 Article 41 of the Constitution. See Consultation Paper, para.5.21.

3.56 *We recommend that the Child Care Act, 1991 should be amended to place a statutory duty on health boards to provide post-adoption services, for both domestic and intercountry adoptions. We further recommend that agencies accredited under the Convention should be required to provide post-adoption services, as appropriate.*

CHAPTER 4: ESTABLISHING ADMINISTRATIVE STRUCTURES AND PROCEDURES

Central Authority

4.01 The Central Authority is the key to the administration of the Convention within a State Party to the Convention. It has an important supervisory function with regard to other agencies and administrative bodies involved in intercountry adoption, it sets and enforces standards for their operation, and it is a point of contact, and an organ of communication for the authorities of other Contracting States, in the system of information exchange which is vital to the effective working of the Convention.

4.02 In our Consultation Paper, we provisionally recommended that the Adoption Board be made the Central Authority for Ireland, with delegation of some of its functions to health boards and accredited agencies. This proposal was supported by all professional groups involved in intercountry adoption, but was opposed by some adoptive parents' groups.

4.03 Those who supported the recommendation cited the Board's long experience in both domestic and intercountry adoption, and its ability to ensure consistency of standards in the services offered by health boards and agencies around the country.

4.04 Those who opposed it favoured either the establishment of a new independent body as Central Authority, or the designation of the Department of Health as Central Authority, with some functions delegated to the Adoption Board, thus ensuring the accountability of the Board.

4.05 We consider that the establishment of an entirely new body as Central Authority, is not a viable or efficient option. It would fail to draw on the experience which has already been attained by the Adoption Board in intercountry adoption. It would be likely to unnecessarily delay the implementation of the Convention, and would necessitate the time-consuming and costly task of setting up entirely new administrative structures.

4.06 Our recommendations envisage that the Adoption Board will in any case perform a large number of the functions under the Convention. Given its continuing central role in intercountry adoption, it would seem to be the most appropriate body to constitute the Central Authority. The independent and non-political status of the Adoption Board also make it well suited to perform the

role of Central Authority. We do not agree that the designation of the Adoption Board as Central Authority would render it unaccountable for its actions as regards intercountry adoptions. The Adoption Board already reports annually to the Minister for Health, as regards its responsibilities under the *Adoption Act, 1952*. Implementing legislation for the Hague Convention would also presumably require the Board to provide information and statistics in its Annual Report, with regard to its fulfilment of its duties under the Hague Convention. In addition, the operation of the Convention in all Contracting States will be subject to the review of the Special Commission, which is to be convened at intervals by the Secretary General of the Hague Conference, under Article 42 of the Convention.

4.07 *We recommend that the Adoption Board should be designated the Central Authority for Ireland for the purposes of the Hague Convention.*

Appeal Structures

4.08 An idea which received broad support amongst consultees was that of an appeal structure through which decisions of the Central Authority could be appealed to an independent body. This mechanism would ensure the accountability of the Central Authority, and would provide a means of redress for those affected by its decisions, outside of lengthy and costly judicial review procedures. Appeals might be made, for example, to the Department of Health, to the Circuit or District courts, or to a newly created independent body.

4.09 Since serious questions of the rights of individuals are involved in decisions made by the Adoption Board, it would seem most appropriate to provide for an appeal to a non-political, independent judicial body. A right of appeal to the Circuit Court has the advantage that it would minimise expenses incurred by those appealing decisions.

4.10 A limited right of appeal is already provided for in section 20 of the *Adoption Act, 1952*. Section 20 allows the Adoption Board to refer any question of law arising on an application for an adoption order to the High Court for determination. In addition, if an applicant for an adoption order, or the mother or guardian of the child, or a person having charge or control of the child so requests, the Adoption Board must refer the question of law to the High Court, unless it considers the request to be frivolous.

4.11 The current right of appeal is limited in that it allows only questions of law to be referred to the Court, and also in the sense that it does not allow a party to the adoption to refer a question directly to the Court. The right could be expanded by allowing for a party to the adoption process (a prospective adopter, birth parent or guardian of the child) to apply to the High Court on a point of law. Such a right would operate parallel to the right of judicial review of the Adoption Board's decisions. Appeals from decisions of tribunals such as

the Adoption Board are most commonly confined to points of law.¹ However, the question of whether an appeal concerns a point of law may be interpreted widely.²

4.12 A further option is to allow for a right of appeal, by parties to the adoption process, to either the High Court or the Circuit Court, which could be grounded on the merits of the Adoption Board's decision, and not merely on a question of law. There are precedents for such a right of appeal. For example, the appeal to the High Court in relation to by-laws made under the *Fisheries (Consolidation) Act, 1959* includes an appeal on the merits, rather than solely on a point of law.³ However, a right of appeal on the merits, in cases of intercountry adoption, has the disadvantage that it will result in the courts adjudicating on matters in which they do not have particular expertise.

4.13 Allowing an appeal from decisions of the Adoption Board might be regarded as imposing too complex an appeal structure. For example, the decision under Article 17.b, to approve the entrustment of the child to the prospective adoptive parents, is to be made by the relevant health board or adoption agency. It is then subject to a right of appeal to the Adoption Board. If there is then a further right of appeal to the Circuit Court, with possible further appeals to higher courts, it will result in an extensive delay during which the child could not be placed for adoption. This would not be in the interests of the child. It would therefore be desirable that a time-limit be placed on the bringing of an appeal.

4.14 *We recommend that there should be a right of appeal on a point of law, on the part of the (prospective) adoptive parents, the birth parents, the guardian of the child or any person having care and control of the child, from decisions of the Adoption Board acting as Central Authority under the Hague Convention, to the Circuit Court. Appeals should be brought promptly, within a period of three months from the making of the decision, which period may be extended in exceptional circumstances, at the discretion of the Court, to six months.*

4.15 *This substantive right of appeal should apply to the decision to allow the adoption to proceed under Article 17.c, the decision on the making of a declaration of suitability to adopt, and, where Ireland is a State of origin, the determination that a particular placement is in the best interests of the child. There should be a similar right of appeal on a point of law to the Circuit Court in regard to decisions of the Adoption Board on the accreditation or revocation of accreditation of agencies under the Convention.*

1 For example, under the *Local Government (Planning and Development) Act, 1976*, section 42(a); the *Social Welfare (Consolidation) Act, 1981*, section 299; the *Housing (Private Rented Dwellings) (Amendment) Act, 1983*, sections 12 and 13. See Gerard Hogan and David Gwynn Morgan, *Administrative Law in Ireland*, (2nd ed. 1991) at p.232.

2 See *Rahill v Brady* [1971] IR 69.

3 *Dunne v Minister for Fisheries* [1984] IR 230. See Hogan and Morgan, *Administrative Law in Ireland*, (2nd ed. 1991) p.395. Other statutory appeals which are on the merits of the case are those under the *Transport (Tour Operators and Travel Agents) Act, 1982* (section 3); and the *Fisheries Act, 1980*, (section 54 (7)).

Accreditation of Agencies

4.16 Much of the work regarding individual adoptions made under the Convention will be done by accredited agencies, as well as by the health boards. Given the long waiting lists which have become a feature of intercountry adoption, and the chronic overburdening of some health boards with intercountry adoption applications, it would be desirable, in principle, to have a substantial number of agencies accredited to administer adoptions under the Convention.

4.17 It must be ensured, however, that those bodies accredited have sufficient capacity, resources and expertise to administer intercountry adoptions. Conditions within which accredited bodies must operate are set out in Articles 10 and 11 of the Convention. Accreditation may only be granted to bodies which demonstrate their capacity to carry out the requisite tasks under the Convention. Accredited bodies must pursue only non-profit objectives; must be directed and staffed by qualified persons; and must be subject to supervision by State authorities.

4.18 Whilst we envisage that many adoption agencies will be accredited under the Convention, we are not in favour of the automatic accreditation of all adoption agencies. Similarly, we do not see it as essential that all accredited agencies under the Convention should also be adoption agencies registered under the 1952 Act, since there may be bodies which have a particular interest in intercountry adoption, or an even more particular interest in adoption from a specific sending country. Such bodies should have the opportunity to become accredited under the Convention.

4.19 It is vital that there be uniformity of standards in the service provided by accredited agencies. In our Consultation Paper, we provisionally recommended that the Minister for Health, in consultation with the Adoption Board, should establish standards of competence for all bodies administering intercountry adoption. We reiterate that recommendation here. We emphasise that these standards are intended to apply to all bodies administering intercountry adoption under the Convention, including both accredited agencies and health boards.

4.20 We also consider that the administration of intercountry adoptions which do not come within the ambit of the Convention should be confined to agencies which have been accredited under the Convention and to health boards. This would ensure that high standards prevail in the administration of all intercountry adoptions.

4.21 We recommend that the Minister for Health, in consultation with the Adoption Board as Central Authority, establish standards of competence for all bodies administering intercountry adoption, based on Articles 10 and 11 of the Hague Convention. We recommend that provision be made for the accreditation by the Central Authority of agencies to administer Convention and other intercountry adoptions. These agencies should be subject to regulation and supervision by the

Central Authority, on terms similar to the regulation and supervision of adoption societies under the Adoption Act, 1952. It should be unlawful for any body, apart from health boards and accredited agencies, to make arrangements in respect of intercountry adoption.

4.22 *Provision should be made for the revocation of the accreditation of an agency, where it is determined by the Adoption Board as Central Authority that the agency no longer meets the requirements of Articles 10 and 11, or where there has been a breach of the Convention by the agency.*

4.23 Consideration should also be given to attaching conditions to accreditation of some agencies. For example, accreditation could be limited to the processing of adoptions from a particular State of origin, where an agency had particular knowledge of adoption practice in that country.⁴ *We recommend that, in the accreditation of agencies, the Adoption Board (as Central Authority) should have the power to attach conditions to the accreditation of a particular agency, including confining its operation under the Convention to adoptions from a particular country of origin.*

Overseas Agencies

4.24 It is also necessary to regulate the operation of overseas adoption agencies which administer intercountry adoptions in Ireland. Article 12 of the Convention provides that a body accredited in one Contracting State may operate in another Contracting State only where the competent authorities of both States have authorised it to do so. Following the provisional recommendation in our Consultation Paper, *we recommend the development of a procedure whereby the Adoption Board may grant authorization, subject to pre-determined standards, for an overseas agency to carry out specified functions relating to the administration of the adoption in Ireland in respect of intercountry adoption, where the competent authority of the relevant Contracting State in which the agency is accredited has also authorised the agency to carry out these functions.*

Charitable Status and Payments to Agencies

4.25 The question of the charitable status of accredited agencies, and of the permissibility of payments to them, is one of the most difficult issues raised by this Report. With regard to the present law, as was stated in the Consultation Paper,⁵ it is unclear whether the designation of adoption societies as "charitable" under the 1952 Act requires them to be strictly non-profit-making.⁶ Article 11

4 This is the model that has been adopted by Sweden. See *supra* para.2.14.

5 Consultation Paper, paras.5.32-5.35.

6 Under section 36(2) (a) of the 1952 Act, an adoption society must be a body which "exists only for the purpose of promoting charitable, benevolent or philanthropic objects, whether or not any such object is charitable within the meaning of any rule of law."

of the Convention is clear in its requirement that agencies accredited under its terms shall "pursue only non-profit objectives". Article 11 should be read in conjunction with Article 32 of the Convention which prohibits improper financial gain from intercountry adoption, and stipulates that only reasonable fees should be charged.

4.26 *We recommend that, in order to ensure full compliance with Article 11 of the Convention, agencies accredited to administer Convention adoptions should be expressly required to be non-profit-making.* The wording of the 1952 Act should therefore be departed from in the implementing legislation.

4.27 In our Consultation Paper, we recommended that accredited agencies and health boards be permitted to levy some reasonable charges for intercountry services.⁷ We were concerned, however, that the making of payments might influence either the level of service, or the outcome of the assessment, and we therefore stipulated that the level of service provided by the agencies must not be dependent on any such payments.

4.28 We have reconsidered this recommendation in the light of the written submissions we have received and the discussion in the course of the consultation process. This is clearly a very difficult issue. Although many consultees expressed uncertainty on this issue and referred to the need for further consideration and debate, the majority also expressed their opposition to the permitting of payments.

4.29 A number of persuasive arguments were made against permitting payments. It was pointed out that the levying of charges would exacerbate inequalities amongst prospective adoptive parents, so that wealthy applicants could appear to buy the service of an accredited agency and side-step health board waiting lists. Where a payment had been made, pressure could be put on social workers to ensure a positive outcome. It was also pointed out that it was important, in the matching process, that there be a diverse range of prospective adoptive parents available for children. Recently, there has been a trend towards such diversity, with couples from all socio-economic groups applying to adopt abroad. Allowing for payments may undermine this diversity.

4.30 A further point made was that it was very important, from the point of view of the welfare and development of the child, that he or she should not have the impression that money had been crucial to his or her adoption.

4.31 It was pointed out by social workers dealing with intercountry adoption that, in the case of adoption, the service is being provided for the child, in the interests of the child; but that the party who would make the payment would be the prospective adopter, who has distinct interests from those of the child.

7 Recommendation 16.

4.32 The arguments for allowing for payments are that intercountry adoption involves considerable expense, and that as a result many agencies have difficulty getting involved in it. Resources are obviously a key factor in the current deficiencies in the intercountry adoption procedure. Allowing for charges might allow more agencies to get involved and thus alleviate waiting lists. However, it could equally well be argued that the lack of resources in intercountry adoption at present places an onus on the State to provide for adequate services.

4.33 In principle, the Commission is opposed to the making of payments in cases of intercountry adoption. However, it must be recognised that the underfunding of agencies and health board intercountry adoption services creates serious problems in the administration of intercountry adoptions. *We recommend that it be permitted that those who can afford to do so may be asked to make some contribution towards the administrative costs of the agency or health board concerned with the adoption. We would stress that the level of service provided should not be dependent on any contribution made.*

Procedures and Delegation of Functions

4.34 In our Consultation Paper, we set out a comprehensive scheme describing the operation and administration of the Convention in Ireland, the allocation of responsibilities between authorities, and the procedures which should be followed.

Ireland as a Receiving State

The Role of the Adoption Board

4.35 The Adoption Board, as Central Authority, is at the centre of this system. Where Ireland is the receiving State, the initial formal application to adopt is made to the Adoption Board, and the Adoption Board makes the formal declaration of eligibility and suitability to adopt. Also, it is the Adoption Board which is the point of receipt for the report on the child, prepared by the authorities of the State of origin under Article 16. Furthermore, crucially, it is the Adoption Board which makes the determination, under Article 17.c, that the adoption may proceed to the entrustment stage. Finally, where the adoption has taken place abroad, the Adoption Board is the designated authority, under Article 23, to certify the adoption as having been made in accordance with the Convention, and thus allow for it to be recognised under Irish law.

4.36 Of these functions, one of the most crucial is the power, under Article 17.c, to prevent the adoption from going ahead to the stage where the child is entrusted to the (prospective) adoptive parents. We have not specified in our recommendations the precise circumstances in which this "veto" power should be used; rather, the use of Article 17.c should depend on the individual circumstances of each case and should be left to the discretion of the Adoption

Board as Central Authority. However, it is important to point out that over-use of Article 17.c would be contrary to the spirit of the Convention. Article 17.c should not be used on a regular basis to block adoptions from states of origin whose laws differ from our own. It should certainly be used where there is evidence of a serious breach of Convention standards: where, for example, it appears that consents have been obtained under duress, or that unauthorised payments have been made.

The Role of the Health Board or Accredited Agency

4.37 The health boards and agencies accredited under the Convention also have a substantial role in its operation. Substantial delegation of the powers of the Central Authority will facilitate a speedier and more efficient processing of adoptions under the Convention. It is the health boards and accredited agencies which will carry out the assessments of the prospective adoptive parents under Article 5. They are also responsible for the provision of counselling to the prospective adopters, and for the preparation of reports on the prospective adoptive parents, which are then transferred to the Adoption Board. It is the responsible health board or agency which arranges the matching of the child with the prospective adoptive parents, and which oversees the safe transfer of the child to them. The health boards, as well as agencies, will also be responsible for the provision of post-adoption services.

4.38 The function of approving the matching or "entrustment" of the child to particular adoptive parents under Article 17.b is clearly of key importance. Since it will be the relevant health board or adoption agency which will have the best knowledge of the prospective adopters, it is that body which will be best able to judge the appropriateness of the match. We have therefore recommended that it should be the health board or accredited agency which makes the decision to approve the match under Article 17.b. However, given the importance of this decision, we have also recommended that prospective adoptive parents should have a right of appeal to the Adoption Board in respect of the decision on matching.

4.39 *In regard to the administration of Convention adoptions, where Ireland is a receiving State, we recommend that the implementing regulations should provide as follows:*

- *Prospective adoptive parents should formally make their application directly to the Adoption Board, with a copy of the application to the relevant health board or accredited adoption agency.*
- *The report on the child provided for in Article 16 should be received by the Adoption Board, with copies sent immediately to the relevant health board or accredited agency.*

- *The body to approve the entrustment of the child to the prospective adoptive parents under Article 17.b should be the relevant health board or accredited agency. The decision of the health board or accredited agency to give or withhold their approval under Article 17.b should be subject to a right of appeal to the Adoption Board, within a reasonable time limit.*
- *The Adoption Board should decide whether agreement should be given, under Article 17.c, to the adoption proceeding to the placement stage. This decision should be made in consultation with the relevant health board or accredited agency. Where the Adoption Board refuses to allow an adoption to proceed, under Article 17.c, reasons should be given for this decision.*
- *The relevant health board or accredited agency should ensure the safe transfer of the child as required by Article 19.2.*
- *Where an adoption which has taken place under the Convention is no longer in the child's best interests, it will be the responsibility of the relevant health board, to ensure that the child is withdrawn from the care of the adoptive parents and, in consultation with the Adoption Board and with the Central Authority of the State of origin, to ensure that measures are taken to care for the child, under the Child Care Act, 1991, and in accordance with Article 21 of the Convention.*

Ireland as a State of Origin

The Role of the Adoption Board

4.40 Where Ireland is the State of origin, the Adoption Board also plays a key role. It makes the determination, under Article 16.1.d, that the particular placement proposed is in the best interests of the child. The Adoption Board is responsible for transmitting the reports and documentation in relation to the child to the receiving State authorities under Article 16.2, and, once again, it is the Adoption Board which gives consent to the adoption proceeding under Article 17.c. It is important to reiterate that Article 17.c should be used only in exceptional circumstances, where there is evidence of the breach of Convention standards. As with adoptions where Ireland is the receiving State, reasons should be given for a refusal to allow an adoption to proceed under Article 17.c.

The Role of the Health Board or Accredited Agency

4.41 According to our proposals, it will be the relevant health board or accredited agency which will determine that the child is adoptable. It will then be responsible for the preparation of the report on the child, under Article 16.1.a. The health board or agency will ensure that the consents are in order in compliance with Article 4.c., and will ensure that the child has been counselled

and consulted as necessary. It will also be the responsibility of the health board or agency to ensure that there is no inappropriate contact between the child and the prospective adoptive parents, as is required by Article 29 of the Convention.

4.42 Once the child has been matched with the prospective adoptive parents, the health board or agency will then confirm the consent of the prospective adoptive parents under Article 17.a, and will ensure that clearance for the child to leave the State has been obtained. The safe transfer of the child to the receiving State will be ensured by the health board or agency.

4.43 *Where Ireland is a State of origin in a Convention adoption, we recommend that implementing regulations should provide that the adoption be administered as follows:*

- *The report on the child provided for in Article 16 should be prepared by the relevant health board or agency and a copy supplied to the Adoption Board.*
- *The determination under Article 16 that the placement is in the child's best interests should be made by the Adoption Board.*
- *The function of confirming the consent of the prospective adoptive parents under Article 17.a should be performed by the health board or accredited agency.*
- *It should be the responsibility of the health board or accredited agency, under Article 29, to ensure that there is no inappropriate contact between the prospective adoptive parents and the child's birth parents, or any other person having control of the child, until final determinations have been made in relation to consents, adoptability, and eligibility to adopt.*
- *The Adoption Board should decide whether agreement should be given, under Article 17.c, to the adoption proceeding to the placement stage. This decision should be made in consultation with the relevant health board or accredited agency. Where the Adoption Board refuses to allow an adoption to proceed, under Article 17.c, reasons should be given for this decision.*
- *The relevant health board or accredited agency should ensure the safe transfer of the child as required by Article 19.2.*

Approval of the Matching Decision

4.44 Article 17.b allows states to impose an additional safeguard in their national laws. If the law of either the State of origin or the receiving State so insists, the matching of the child with the prospective adoptive parents must have been approved by the Central Authority of the receiving State, prior to the

entrustment of the child. It would be in the interests of the protection of the child for Ireland to require that, where a child is sent abroad from Ireland for adoption, the Central Authority of the receiving State must have already approved the matching of the child with the prospective adoptive parents, before the child is entrusted to them.

4.45 We recommend that implementing regulations should provide that, where Ireland is the State of origin in a Convention adoption, the approval of the Central Authority of the receiving country must be obtained before the child can be entrusted for adoption.

Adoption through Independent Intermediaries

4.46 The Convention does not take a firm position on whether independent operators should be permitted to facilitate adoptions under the Convention. However, Article 22.4 allows states parties to exclude the operation of independent intermediaries within their State, and to confine the management of Convention adoptions to public authorities and accredited agencies.

4.47 Making an exclusion in terms of Article 22.4 allows a State of origin to exercise greater control and supervision over the standards according to which its children are adopted abroad, and thus gives maximum protection to the rights of the child. A declaration by Ireland under Article 22.4 will ensure that Irish children are not the subject of Convention adoptions which have been arranged through independent operators, who have been associated with some of the worst abuses of intercountry adoption.

4.48 We recommend that, upon ratification of the Convention, Ireland should make the declaration provided for in Article 22.4, to the effect that adoptions involving children habitually resident in the State may only take place where the arrangements are made by public or accredited bodies.

CHAPTER 5: RECOGNITION AND EFFECTS OF THE ADOPTION

Categories of Adoption

5.01 The legal effects of adoptions vary widely from State to State. The variation is such that any classification of adoptions according to their legal effects is necessarily imperfect. Generally, adoptions are described in two broad categories: "simple" adoptions on the one hand, and "full" or "plenary" adoptions on the other. These very general terms refer to adoptions which are characteristic of civil legal systems and common law systems respectively.¹ In general, although both simple and full adoptions will create a permanent relationship between the child and the adoptive parents, a full adoption will also completely terminate all ties between the child and the birth parents, while a simple adoption will allow these ties to continue in some form, or to be reinstated in certain circumstances.

5.02 Those adoptions which are usually classified as "simple" vary widely in their effects. Some create an adoption which allows the legal relationship between the birth parents and the child to continue. Others do not allow for such continuance, but are generally classified as simple rather than full, because they allow the adoption to be revoked in certain circumstances. The effects of an adoption may vary as to the duration and revocability of the adoption; the continuance of the relationship with the birth parents; inheritance rights and taxation; the creation of legal relationships with members of the adoptive family other than the adoptive parents, the termination of the relationship with other members of the birth family; and restrictions on marriage with members of the adoptive family.²

5.03 The category which lends itself most easily to definition is that of full adoption. Such adoptions involve the creation of a new, permanent, parent-child relationship between the child and the adoptive parents. Also, characteristically, they involve the complete severing of the parent-child relationship between the child and the birth parents. Traditionally, this severance is seen as final and

1 It is interesting to note, however, that a number of common law jurisdictions in the US and Australia, an adoption order does not terminate intestate inheritance rights between an adopted child and the biological family, or establish full rights of inheritance between the adopted child and some adopted relatives. See Van Loon, *Report on Intercountry Adoption*, (Preliminary Document No.1 of April 1990, Hague Conference on Private International Law), para.105.

2 See generally, International Social Service, *Internal and Intercountry Adoption Laws* (1996)

irrevocable: thus, in *In re B*,³ Sir Thomas Bingham MR described an English adoption order as "possessing a peculiar finality". He viewed an adoption order as something which "modifies the most fundamental of human relationships, that of parent and child" and does so by way of a change intended to be permanent.

5.04 The line between the categories of "full" and "simple" adoption may, however, become considerably blurred. This has been particularly apparent in the development of the Irish law in recent years, as both the courts and the legislature have struggled to import some flexibility into the extremely rigid criteria for the recognition of foreign adoptions set out under the *Adoption Act, 1991*. In *An Bord Uchtála v B and B*,⁴ the Supreme Court ruled against the Adoption Board on the question of whether an adoption effected in the People's Republic of China could be considered to approximate to a "full" Irish adoption. The Adoption Board had argued that, since Chinese adoptions allowed for the possibility of revocation, with the consent of all the parties involved in the adoption, the adoption could not be considered permanent, and therefore was not a recognisable adoption within the meaning of the Irish legislation. The Supreme Court disagreed. It held that: "the concept of permanence as an incident of adoption is not absolute in this jurisdiction." Murphy J pointed out in his judgement that Irish law, although it envisaged the adoption relationship as permanent, did not envisage such permanence as absolute, in all circumstances, since where, for example, the adoptive parents had failed in their duty towards the child, the child could be readopted under section 2 of the *Adoption Act, 1988*.⁵

5.05 In equating an adoption which does not irrevocably terminate all of the legal ties between the child and the birth parents, with an Irish adoption, the Supreme Court allowed for the possibility that adoptions traditionally categorised as "simple" adoptions could be equated with full adoptions. The extent to which the courts would be willing to take this flexibility is of course unclear: the Supreme Court's judgement was founded on a finding that, in practice, the possibility of the termination of a Chinese adoption was extremely remote. It was also emphasised by the Supreme Court that the only distinction between an Irish and a Chinese adoption was that relating to revocability; in other respects the adoptions were "remarkably similar" in their effects. Murphy J pointed out that:

"it is not suggested in the Chinese legislation that the possibility of a consensual termination of the adoptive relationship arises from any residual parental right. The termination of such rights is comprehensive and unequivocal."⁶

3 1995 F D 239, at p.251

4 [1997] 1 ILRM 15

5 *ibid.* p.26.

6 *ibid.* p.27.

The ties between the birth parents and the child in the majority of "simple" adoptions would be considerably closer.

5.06 The permeability of the two primary categories of adoption is also apparent in the redefinition of a recognisable adoption in the *Adoption Act, 1998*. The 1991 Act, which until this year governed the recognition of simple adoptions, set out strict criteria for the recognition of foreign adoptions, requiring that, in order to be recognised here, an adoption must have essentially the same legal effect as an Irish adoption, in terminating the parental rights of the birth parents. The 1998 Act modifies this somewhat, providing that the adoption must have, "for so long as it is in force, substantially the same legal effect as respects the guardianship of the child" as an Irish adoption. This allows for the recognition of some simple adoptions in Irish law, but it is by no means clear that it will allow for the recognition of all simple adoptions. Under the Convention, Ireland will be obliged to recognise not only adoptions in which Ireland is either the sending or receiving State, but also adoptions which have been made between other Convention States. Many of these will be simple adoptions. Therefore, as we pointed out in the Consultation Paper, *it will be necessary, for the purposes of ratification of the Convention, to replace the definition of a recognisable adoption in the Adoption Act, 1998, with that contained in Article 2.2 of the Convention.*

Recognition under the Hague Convention

5.07 The Hague Convention is based on the principle that, once the procedures set out in the Convention have been adhered to, recognition should not be withheld from adoptions effected in other Convention states. The Convention adopts a wide definition of a recognisable adoption: Article 2 states that the Convention applies to adoptions which "create a permanent parent-child relationship".⁷ This definition would include both simple and full adoptions. It does not, however, cover arrangements such as the islamic *kafallah*, a form of foster care.⁸

5.08 Once an adoption has taken place, non-recognition of the adoption in the receiving State where the child resides is not in the best interests of the child, since it results in continuing uncertainty as to the child's status within his or her adoptive family. Therefore, it is a cornerstone of the Convention that, in the vast majority of cases, non-recognition should not be used as a sanction, since it penalises the child.

5.09 There are exceptions to this principle, as the result of the balancing of rights and interests which adoption entails. For example, if it becomes clear that an adoption has involved serious abuses, such as the abduction of a child, then

7 "Permanent" should not be read as meaning "irrevocable". See Law Reform Commission Consultation Paper, para.4.14.

8 Parra-Aranguren, Explanatory Report, in Proceedings of the Seventeenth Session of the Hague Conference on Private International Law, Paras.87-94.

refusal to recognise the adoption would clearly be an option for the receiving State. The Convention recognises this possibility. Article 24 of the Convention states that recognition of an adoption may be refused in a Contracting State if the adoption is manifestly contrary to its public policy, taking into account the best interests of the child.

5.10 Aside from exceptional circumstances such as these, States are obliged to recognise all adoptions effected under the Convention. Article 23 provides that an adoption which has been certified in one Contracting State as having been made in accordance with the Convention shall be recognised by operation of law in the other Contracting States.

Recognition of Convention Simple Adoptions in Irish Law

5.11 The obligation to recognise raises difficulties for Ireland where an adoption made in a State of origin is a simple adoption. There is no ideal solution in this matter; the problem of reconciling widely divergent adoption laws is an intractable one, and the compromise solutions arrived at in the implementing legislation of other states are testament to this.⁹ The Irish authorities have a number of options. The primary options are:

1. Conversion of the simple adoption to a full adoption under Article 27.
2. Recognition of the simple adoption as having the effects which it had in the State of origin.
3. Recognition of the minimum consequences of the adoption, ie. those set out in Article 26 (a) and (b). This would entail recognition of the new parental relationship between the child and the adoptive parents, and the parental responsibility of the adoptive parents for the child.

1. Conversion

5.12 The first option, and the one which can be most easily accommodated in our law, is conversion of the simple adoption to a full adoption, in the Irish courts. This option is provided for under Article 27 of the Convention, which states that:

"[w]here an adoption granted in the State of origin does not have the effect of terminating a pre-existing legal parent-child relationship, it may,

9 See *supra* Chapter 2.

in the receiving State which recognises the adoption under the Convention, be converted into an adoption having such an effect."

5.13 The conversion mechanism, though it addresses the recognition problem in a large number of cases, does not provide a comprehensive solution. In the first place, there will be some cases where the birth parents will either refuse to give their consent to the conversion of the adoption, or where it will not be possible to trace the birth parents in order to obtain their consent to the conversion. In addition, there will be cases of Convention adoptions where Ireland is neither the State of origin nor the receiving State. Under Article 23, Ireland is obliged to recognise such adoptions;¹⁰ and because Ireland has played no direct part in the administration of the adoption, it cannot convert it to a full adoption.

5.14 Use of the conversion mechanism is made conditional on the birth parents having consented to the conversion of the adoption. In our Consultation Paper, we provisionally recommended that, where a Convention adoption was converted from a simple adoption to a full adoption under the Article 17 procedure, the Irish law should be limited to requiring that the consent requirements of the State of origin had been complied with.

5.15 During the consultation process, reservations were expressed about this recommendation. It was thought that it might not adequately guarantee the rights of the birth parents. A further argument against relying on the State of origin consents to the conversion is that many states of origin may not have a conversion mechanism in place, and therefore may not have procedures according to which the birth parents can consent to the conversion. In such circumstances it would seem necessary to establish standards and procedures for consents to be given under Irish law, and to require that the birth parents give their consent in accordance with these standards. This approach would have the advantage of standardising the conversion procedure. It would allay some of the concerns expressed by consultees, as to the erosion of the rights of the birth parents.

2. Recognition of the State of Origin Effects

5.16 The second option is that a simple adoption made in the State of origin could be recognised in Ireland as having the same effects which it had in the State of origin. This would have the advantage that an adequate protection of the rights of the birth parents would be assured. However, the disadvantage would be that it would result in considerable uncertainty, as individual simple adoptions would be subject to the legal provisions of their particular State of origin. This could result in difficulties for the courts where the effects of the adoption had to be determined. Access to the terms of the relevant laws might

¹⁰ See *infra*. paras.5.28-5.30.

be difficult, and determinations by the courts of issues such as inheritance rights could prove lengthy and complex. It would result in widely divergent effects of adoptions on matters such as succession and nationality.

5.17 A number of consultees disagree with our provisional recommendations on the recognition of simple adoptions. In particular, they expressed concern about the status and rights of children the subject of these adoptions, in relation to nationality and succession.

5.18 In order to address the ambiguous status of a child who is the subject of a simple adoption, the law could stipulate a supplement to the "State of origin effects rule" which would grant the child Irish citizenship, irrespective of whether this was provided for in the law of the State of origin.

5.19 Provision could also be made to allow the child to inherit from the adoptive parents as though he or she were their natural child. This would be without prejudice to any other right to inherit from the birth parents. We are aware that such a measure would give a child adopted under a simple adoption additional rights, in that he or she could inherit from both the adoptive and the birth parents. However, we feel that this is preferable to according the child a lower status than that of other adopted children.

3. Recognition of Minimum Consequences

5.20 A third option, which was also considered in our Consultation Paper, is that the minimum consequences of the adoption could be recognised, under the terms of Article 26 of the Convention: that is to say, the adoption would be taken as having the effect of creating a new parent-child relationship between the child and the adoptive parents, with all the legal consequences which that would imply, and the adoptive parents would be recognised as assuming parental responsibility for the child. The effects of the adoption in Ireland would not go beyond this to impact in any way on the relationship between the birth parents and the child. Neither irrevocability nor the severance of the legal relationship between the child and the birth parents would be recognised under this approach.

Recommendations

5.21 In our Consultation Paper, the provisional recommendation we made in relation to the recognition of simple adoptions was that such adoptions should be converted to full adoptions wherever possible, i.e., where the consent of the birth parents could be obtained to such conversion.

5.22 Where consent was not forthcoming, our provisional recommendation was that the adoption should be recognised as having the effects which it had in the State of origin; i.e. it should be recognised as a simple adoption in Irish law.

5.23 The alternative to this would be to provide for a conversion option only. This would result in a restricted application of the Convention in Ireland, and could lead to increased numbers of prospective adoptive parents seeking adoptive children from non-Convention states. It would also leave Ireland without a means of recognising simple adoptions between two third states, made under the Convention.¹¹

5.24 *We recommend that, where Ireland is a receiving State in a simple adoption, then in as many cases as possible, the adoption should be converted to a full adoption under Article 27. However, in the absence of the possibility of conversion, for example where the birth parents refuse their consent to the conversion, we are not in favour of a complete veto on simple adoptions, and in such exceptional circumstances we recommend that the adoption be recognised as having the same effects as it has in the State of origin.*

5.25 *Where an adoption is converted, in the Irish courts, from a simple adoption to a full adoption, we recommend that Irish consent standards and procedures should be applied to the conversion of the adoption.*

5.26 *Where Ireland is a receiving State in a simple adoption under the Convention, which is recognised in Ireland as having the effects which it has in the State of origin, we recommend that in all cases in which the adoptive parents (or one of them) are Irish citizens, the child should be entitled to Irish citizenship, on his or her transfer to Ireland.*

5.27 *Where Ireland is the receiving State in a simple adoption under the Convention, which is recognised in Ireland as having the effects which it has in the State of origin, we recommend that in all cases, and without prejudice to any rights of inheritance from the birth parents under the law of the State of origin, the child should have the right to inherit from his or her adoptive parents, as though he or she were the child by birth of the adoptive parents. Where a child has been adopted under a Convention adoption in which Ireland is neither the State of origin nor the receiving State, then, in so far as the applicable law of succession, in the case of the death of either of the adoptive parents, is the Irish law, the child should have the same rights under Irish law as though he or she were the child by birth of the adoptive parents.*

Recognition of Convention Adoptions where Ireland is Neither the State of Origin nor the Receiving State

5.28 There will be cases where there is a simple adoption made under the Convention, in respect of which Ireland is not the receiving State. Under Article 23 of the Convention, Ireland is obliged to recognise not only intercountry adoptions between Ireland and another Convention State, but also adoptions

11 See *infra*, paras.5.28-5.30.

effected under the Convention between two third Convention states. In these latter cases, it is not possible to convert the adoption. If, for example a child is adopted by way of a simple adoption in Portugal, and brought to reside in France, where the adoption is recognised as a simple adoption under the Convention, and then some years later the adoptive family come to reside in Ireland, the Irish authorities have no power to convert the adoption, but must recognise it as having the effects of a simple adoption.

5.29 This could be achieved either by recognising the adoption as having the effects which it had in Portugal, as the State of origin, or by recognising the adoption as having the effects which it had in France, as the receiving State. Alternatively, the "minimum consequences" approach outlined above could be followed, so that the effects of the adoption recognised in Irish law would be the creation of a new parent-child relationship and the parental responsibility of the adoptive parents. A further option is that put forward in England (see Chapter 2 above) which allows for the recognition of an unconvertible simple adoption as a full adoption, with the reservation that the birth parents would have the right to apply for a contact order.

5.30 *Where Ireland is neither the receiving State nor the State of origin in an adoption between two Contracting States, we recommend that the adoption be recognised as having the effects which it has in the receiving State.*

Recognition of Adoptions outside the Convention: Retrospective Recognition of Foreign Simple Adoptions, and Recognition of Adoptions from Non-Convention States

5.31 The recognition of adoptions which are made outside the scope of the Convention is not strictly within the scope of this report. However, the problems associated with the non-recognition of existing simple adoptions, give cause for serious concern. As we stated in our Consultation Paper, it is for Ireland to determine whether and to what extent it will apply the Convention procedures and standards outside of the strict scope of the Convention. In addressing the undoubted difficulties with which we are faced in providing for the recognition of existing and future non-Convention simple adoptions, the Convention provides a useful model. The idea, which is central to the Convention, that non-recognition should not, in general, be used as a sanction, can have a wide application.

5.32 It must be acknowledged that there is a need for additional caution in relation to existing and non-Convention adoptions, since the adoption process in such cases will not have been subject to the same standards and regulation as an adoption effected under the Convention. Regulation of adoptions from non-Convention countries should not become so lax as to undermine the Convention, by deterring prospective adopters from adopting though the carefully regulated Convention procedures. Nevertheless, and especially in relation to the retrospective recognition of adoptions which are already in place, it is not

desirable, from the point of view of the welfare of the child, to leave such adoptions unrecognised, where recognition can be effected without undermining the rights of the birth parents.

5.33 We cannot provide for the automatic recognition of all adoptions, outside of the Convention procedure. This would be to ignore the rights of the birth parents, and to encourage bad practice. At the same time, children who have been adopted through simple adoptions should not, if at all possible, be left in a legal limbo, with their relationship with their adoptive parents, and their rights to citizenship, unacknowledged and uncertain.

5.34 We therefore recommend that the Article 27 conversion mechanism be made applicable retrospectively to adoptions which have not been entitled to recognition, because they did not have the effect of terminating the legal relationship between the child and the biological family. In making this provisional recommendation, we emphasise the requirement that the appropriate consents must have been obtained.

5.35 We further recommend that the same mechanism continue to be available in future for non-Convention adoptions which are not entitled to recognition because they do not have substantially the same legal effect as regards the guardianship of the child, as an Irish adoption. Again, we emphasise the requirement that the appropriate consents must have been obtained.

5.36 We have considered the possibility of allowing for the recognition of simple adoptions, made outside of the Convention process, as having the effects which they had in the State of origin. However, without the protection of Convention safeguards and procedures, this would not be warranted. It would entail lengthy and difficult investigation into the laws and procedures of the State of origin, in situations where there might be no well established channels of communication between the Irish and the sending State authorities. It would also be difficult to guarantee that adequate standards had been applied in the adoption process. Since the object of the Hague Convention, and Ireland's ratification of it, is to raise standards in intercountry adoption, it would be unfortunate to risk undermining these standards by relaxing the requirements for recognition of non-Convention adoptions to the extent that the Convention system would simply become irrelevant.

5.37 The combination of the wider definition of a recognisable adoption in the *Adoption Act, 1998*, and the availability of a conversion procedure, should allow the vast majority of non-Convention simple adoptions to be recognised in Ireland.

Foreign Adoptions by Non-Irish Residents

5.38 In our Consultation Paper we raised the issue of foreign adoptions which are made, outside of the Convention, in favour of non-Irish nationals resident

abroad. Where such adoptions have the effects of a simple adoption, we made a provisional recommendation that a less stringent test should be applied for their recognition in Ireland, than that presently in force. Here, we reiterate this recommendation, and recommend that such adoptions should be recognised as having the effects which they had in the State in which they were effected. Such a measure would address the serious difficulties which face a relatively small number of adopted children who belong to non-Irish families who, subsequent to the adoption, take up residence in this country.

5.39 *We recommend that the definition of foreign adoption in section 1 of the 1991 Act should not apply to an adoption recognised under sections 2, 3 and 4 of that Act (i.e. on the basis of the domicile or residence of the adopting parents abroad, in the State in which the adoption was effected) and that such adoptions should be entitled to recognition except where recognition would be manifestly contrary to public policy, taking into account the best interests of the child. In any such case, where the adoption does not have the effect of terminating the pre-existing legal relationship between the child and the mother or father, the effects of the adoption should be the same as they were in the State where the adoption was granted. In all other cases, the adoption should be treated as if it were made in Ireland.*

CHAPTER 6: SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

Ratification of the Convention

1. We recommend that Ireland should ratify the *Hague Convention on Intercountry Adoption, 1993*. (para.1.09)

Method of Implementation

2. The Commission recommends that the key elements of implementation should be set out in an implementing Act, but that much of the detail of the Convention's implementation should be set out in regulations. (para.1.13)

Standards: Removal of a Child from the State

3. We recommend that the rule in section 40 of the *Adoption Act, 1952*, that no child may be removed from the jurisdiction without the consent of a parent, guardian or relative, should apply to all children who are habitually resident in the State. (para.3.04)

Eligibility for Adoption

4. We recommend that, where Ireland is the State of origin in a Convention adoption, the same criteria of adoptability should be applied to children who are entrusted to prospective adoptive parents for adoption outside the jurisdiction, as are applied to children in domestic adoptions. (para.3.11)
5. We recommend that, as a general principle, where Ireland is the receiving State, the determination of the child's eligibility for adoption made by the competent authorities of the State of origin under Article 4.a should be accepted by the Irish authorities. This would apply where the Adoption Board makes an adoption order, as well as where the adoption takes place abroad. The Irish authorities should not, as a general principle, object to the adoption proceeding, under Article 17.c, on the sole ground that the child is not eligible for adoption under Irish domestic law. (para.3.15)

Consents and Consultation

6. We recommend that, where Ireland is a receiving State under the Convention, the determination of the competent authorities of the State of origin in accordance with Article 4.c and d of the sufficiency of consents should, as a general principle, be accepted by the Irish authorities. This should be the case whether the adoption is to be effected in Ireland or in the State of origin. (para.3.26)
7. We recommend that the basic requirements for consent in domestic adoptions be extended, in the implementing legislation, to cover the sending of a child for adoption abroad. (para.3.29)
8. We recommend that the duty to consult the child where appropriate should be set out in legislation and should apply to all adoptions in which Ireland is the State of origin, whether the adoptions are made in Ireland, or are to be made abroad. (para.3.31)

Counselling Services

9. We recommend that the provision of counselling services to prospective adoptive parents be placed on a statutory footing, in order to comply fully with Article 5.b of the Convention and that an obligation should be placed on health boards and accredited agencies to inform prospective adoptive parents of the availability of counselling services. Both health boards and accredited agencies should be required to provide such services as appropriate. (para.3.34)

Immigration

10. In relation to immigration clearances, we recommend as follows:
 - (a) that a separate clearance should be issued in respect of each particular child to be brought into the country (this should apply whether the child is to be adopted abroad or in the State) and that the name, age and sex of the child be clearly stipulated on the immigration clearance;
 - (b) that, upon entry into the State with the child, the (prospective) adoptive parents should be under a legal obligation to inform the authorities of the identity of the child and to surrender the immigration clearance to the Department of Justice; and
 - (c) that it should be an offence to fail to furnish information as to the identity of the child or to surrender an immigration clearance as

required by (b) above, or to use or attempt to use an immigration clearance to obtain entry for more than one child. (para.3.41)

11. We recommend that in determining whether to grant an immigration clearance to a child the subject of an intercounty adoption, the Department of Justice should work in close co-operation with the Central Authority and the concerned health board or accredited agency. (para.3.42)
12. We recommend that, where Ireland is a receiving State in an adoption under the Convention, in which the adoptive parents are habitually resident in Ireland but are not Irish citizens, the child should be granted Irish citizenship upon his or her transfer to Ireland. (para.3.53)

Post-adoption Services

13. We recommend that the *Child Care Act, 1991* should be amended to place a statutory duty on health boards to provide post-adoption services, for both domestic and intercountry adoptions. We further recommend that agencies accredited under the Convention should be required to provide post-adoption services as appropriate. (para.3.56)

Administration: Central Authority

14. We recommend that the Adoption Board should be designated the Central Authority for Ireland for the purposes of the Hague Convention. (para.4.07)
15. We recommend that there should be a right of appeal on a point of law, on the part of the (prospective) adoptive parents, the birth parents, the guardian of the child or any person having care and control of the child, from decisions of the Adoption Board acting as Central Authority under the Hague Convention, to the Circuit Court. Appeals should be brought promptly, within a period of three months from the making of the decision, which period may be extended in exceptional circumstances, at the discretion of the Court, to six months. (para.4.14)

This substantive right of appeal should apply to the decision to allow the adoption to proceed under Article 17.c, the decision on the making of a declaration of suitability to adopt, and, where Ireland is a State of origin, the determination that a particular placement is in the best interests of the child. There should be a similar right of appeal on a point of law to the Circuit Court in regard to decisions of the Adoption Board on the accreditation or revocation of accreditation of agencies under the Convention. (para.4.15)

Accreditation

16. We recommend that the Minister for Health, in consultation with the Adoption Board, establish standards of competence for all bodies administering intercountry adoption, based on Articles 10 and 11 of the Hague Convention. We recommend that provision be made for the accreditation by the Adoption Board as Central Authority of agencies to administer Convention and other intercountry adoptions. These agencies should be subject to regulation and supervision by the Central Authority, on terms similar to the regulation and supervision of adoption societies under the *Adoption Act, 1952*. It should be unlawful for any body, apart from health boards and accredited agencies, to make arrangements in respect of intercountry adoption. (para.4.21)
17. Provision should be made for the revocation of the accreditation of an agency, where it is determined by the Adoption Board as Central Authority that the agency no longer meets the requirements of Articles 10 and 11, or where there has been a breach of the Convention by the agency. (para.4.22)
18. We recommend that, in the accreditation of agencies, the Central Authority should have the power to attach conditions to the accreditation of a particular agency, including confining its operation under the Convention to adoptions from a particular country of origin. (para.4.23)
19. We recommend the development of a procedure whereby the Central Authority may grant authorization, subject to pre-determined standards, for an overseas agency to carry out specified functions in relation to the administration of the adoption in Ireland in respect of intercountry adoption, where the competent authority of the relevant Contracting State in which the agency is accredited has also authorised the agency to carry out these functions. (para.4.24)
20. We recommend that, in order to ensure full compliance with Article 11 of the Convention, agencies accredited to administer Convention adoptions should be expressly required to be non-profit-making. (para.4.26)
21. We recommend that it be permitted that those who can afford to do so may be asked to make some contribution towards the administrative costs of the agency or health board concerned with the adoption. The level of service provided should not be dependent on any contribution made. (para.4.33)

Procedures: Ireland as a Receiving State

22. In regard to the administration of Convention adoptions, where Ireland is a receiving State, we recommend that the implementing regulations should provide as follows:
- Prospective adoptive parents should formally make their application directly to the Adoption Board, with a copy of the application to the relevant health board or accredited adoption agency.
 - The report on the child provided for in Article 16 should be received by the Adoption Board, with copies sent immediately to the relevant health board or accredited agency.
 - The body to approve the entrustment of the child to the prospective adoptive parents under Article 17.b should be the relevant health board or accredited agency. The decision of the health board or accredited agency to give or withhold their approval under Article 17.b should be subject to a right of appeal to the Adoption Board, within a reasonable time limit.
 - The Adoption Board should decide whether agreement should be given, under Article 17.c, to the adoption proceeding to the placement stage. This decision should be made in consultation with the relevant health board or accredited agency. Where the Adoption Board refuses to allow an adoption to proceed, under Article 17.c, reasons should be given for this decision.
 - The relevant health board or accredited agency should ensure the safe transfer of the child as required by Article 19.2.
 - Where an adoption which has taken place under the Convention is no longer in the child's best interests, it will be the responsibility of the relevant health board, to ensure that the child is withdrawn from the care of the adoptive parents and, in consultation with the Adoption Board and with the Central Authority of the State of origin, to ensure that measures are taken to care for the child, under the Child Care Act, 1991, and in accordance with Article 21 of the Convention. (para.4.39)

Procedures: Ireland as a State of Origin

23. Where Ireland is a State of origin in a Convention adoption, we recommend that implementing regulations should provide that the adoption be administered as follows:

- The report on the child provided for in Article 16 should be prepared by the relevant health board or agency and a copy supplied to the Adoption Board.
 - The determination under Article 16 that the placement is in the child's best interests should be made by the Adoption Board.
 - The function of confirming the consent of the prospective adoptive parents under Article 17.a should be performed by the health board or accredited agency.
 - It should be the responsibility of the health board or accredited agency, under Article 29, to ensure that there is no inappropriate contact between the prospective adoptive parents and the child's birth parents, or any other person having control of the child, until final determinations have been made in relation to consents, adoptability, and eligibility to adopt.
 - The Adoption Board should decide whether agreement should be given, under Article 17.c, to the adoption proceeding to the placement stage. This decision should be made in consultation with the relevant health board or accredited agency. Where the Adoption Board refuses to allow an adoption to proceed, under Article 17.c, reasons should be given for this decision.
 - The relevant health board or accredited agency should ensure the safe transfer of the child as required by Article 19.2. (para.4.43)
24. We recommend that implementing regulations should provide that, where Ireland is the State of origin in a Convention adoption, the approval of the Central Authority of the receiving country must be obtained before the child can be entrusted for adoption. (para.4.45)
25. We recommend that, upon ratification of the Convention, Ireland should make the declaration provided for in Article 22.4, to the effect that adoptions involving children habitually resident in the State may only take place where the arrangements are made by public or accredited bodies. (para.4.48)

Recognition of Adoptions

26. It will be necessary, for the purposes of ratification of the Convention, to replace the definition of a recognisable adoption in the *Adoption Act, 1998*, with that contained in Article 2.2 of the Convention. (para.5.06)

27. We recommend that, where Ireland is a receiving State in a simple adoption, then in as many cases as possible, the adoption should be converted to a full adoption under Article 27. However, in the absence of the possibility of conversion, for example where the birth parents refuse their consent to the conversion, we are not in favour of a complete veto on simple adoptions, and in such exceptional circumstances we recommend that the adoption be recognised as having the same effects as it has in the State of origin. (para.5.24)
28. Where an adoption is converted, in the Irish courts, from a simple adoption to a full adoption, we recommend that Irish consent standards and procedures should be applied to the conversion of the adoption. (para.5.25)
29. Where Ireland is a receiving State in a simple adoption under the Convention, which is recognised in Ireland as having the effects which it has in the State of origin, we recommend that in all cases in which the adoptive parents (or one of them) are Irish citizens, the child should be entitled to Irish citizenship, on his or her transfer to Ireland. (para.5.26)
30. Where Ireland is the receiving State in a simple adoption under the Convention, which is recognised in Ireland as having the effects which it has in the State of origin, we recommend that in all cases, and without prejudice to any rights of inheritance from the birth parents under the law of the State of origin, the child should have the right to inherit from his or her adoptive parents, as though he or she were the child by birth of the adoptive parents. Where a child has been adopted under a Convention adoption in which Ireland is neither the State of origin nor the receiving State, then, in so far as the applicable law of succession, in the case of the death of either of the adoptive parents, is the Irish law, the child should have the same rights under Irish law as though he or she were the child by birth of the adoptive parents. (para.5.27)
31. Where Ireland is neither the receiving State nor the State of origin in an adoption between two Contracting States, we recommend that the adoption be recognised as having the effects which it has in the receiving State. (para.5.30)
32. We recommend that the Article 27 conversion mechanism be made applicable retrospectively to adoptions which have not been entitled to recognition, because they did not have the effect of terminating the legal relationship between the child and the biological family. In making this provisional recommendation, we emphasise the requirement that the appropriate consents must have been obtained. (para.5.34)
33. We further recommend that the same mechanism continue to be available in future for non-Convention adoptions which are not entitled to recognition because they do not have substantially the same legal

effect as regards the guardianship of the child, as an Irish adoption. Again, we emphasise the requirement that the appropriate consents must have been obtained. (para.5.35)

34. We recommend that the definition of foreign adoption in section 1 of the 1991 Act should not apply to an adoption recognised under sections 2, 3 and 4 of that Act (i.e. on the basis of the domicile or residence of the adopting parents abroad, in the State in which the adoption was effected) and that such adoptions should be entitled to recognition except where recognition would be manifestly contrary to public policy, taking into account the best interests of the child. In any such case, where the adoption does not have the effect of terminating the pre-existing legal relationship between the child and the mother or father, the effects of the adoption should be the same as they were in the State where the adoption was granted. In all other cases, the adoption should be treated as if it were made in Ireland. (para.5.39)

BIBLIOGRAPHY

Howard Alstein, Rita J Simon, *Intercountry Adoption: A Multinational Perspective* (1991)

G Parra-Aranguren, *Explanatory Report* (Proceedings of the Seventeenth Session of the Hague Conference on Private International Law, Tome II)

William Binchy, *Irish Conflicts of Law* (1988)

Defence for Children International, International Federation "Terre des Hommes", International Social Service, *Preliminary Findings of a Joint Investigation on Independent Intercountry Adoptions*, (1991)

Defence for Children International, International Federation "Terre des Hommes", International Social Service, *Preliminary Findings of a Joint Investigation on the "Waiting Period" in Intercountry Adoptions* (1991)

Department of Health, Welsh Office, *Adoption - A Service for Children* (1993)

Jaap Doek, Hans van Loon, Paul Vlaadingerbroek, ed. *Children on the Move: How to Implement their Right to Family Life* (1990)

Humphrey and Humphrey, *Intercountry Adoptions: Practical Experiences* (1993)

J M Kelly, *The Irish Constitution*, (1994)

Nigel Lowe and Gillian Douglas, ed, *Families Across Frontiers* (1996)

Mike Milotte, *Banished Babies: The Secret History of Ireland's Baby Export Business* (1997)

Liz Heffernan, ed., *Human Rights, a European Perspective* (1994)

Gerard Hogan and David Gwynn Morgan, *Administrative Law in Ireland*, (2nd. ed. 1991)

International Social Service, *Internal and Intercountry Adoption Laws* (1996)

Paul O'Connor, *Key Issues in Irish Family Law* (1988)

Kerry O'Halloran, *Adoption Law and Practice* (1992)

Adoption: Report of the Review Committee on Adoption Services (1984)

Alan Shatter, *Family Law in the Republic of Ireland* (1986)

J H A Van Loon, *Report on Intercountry Adoption* (Preliminary Document No 1 of April 1990, Hague Conference on Private International Law)

APPENDIX 1

LIST OF WRITTEN SUBMISSIONS

Written Submissions in response to the Consultation Paper on the Hague Convention on Intercountry Adoption were received from the following:

- The Adoption Board;
- Barnardos;
- The Council of Irish Adoption Agencies;
- The Eastern Health Board;
- Ms Delphine Geoghan;
- The Irish Foreign Adoption Group;
- The Parents of Adopted Paraguayan Children;
- Mr Robert Pye.

APPENDIX 2

LIST OF ATTENDEES AT SEMINAR ON INTERCOUNTRY ADOPTION, WEDNESDAY 11TH MARCH 1998

Michelle Clear St. Louise Adoption Society;

Marian Connolly, Parents of Adopted Romanian Children;

Moya Campbell, St. Mura's Adoption Society;

Clodagh Donnelly, Intercountry Adoption Team, Eastern Health Board;

Margaret Dromey, TREOIR;

Hazel Douglas, PACT;

Aveen Evers, Parents of Adopted Romanian Children;

Joe Flynn, Limerick Catholic Adoption Society;

Sr. Frances, St. Patrick's Guild;

Delphine Geoghegan;

Nora Gibbons, Senior Social Worker, Barnardos;

Mary Gormley, Childcare Unit;

Nicki Griffith, Limerick Catholic Adoption Society;

Maria Hayes, RGAS;

Ann Hennon, Secretary to Ms Banotti;

Rosemary Horgan, The Law Centre;

Anne Irvine, PACT;

Mary Lillis, St. Catherine's Adoption Society, Ennis;

Marie Lynch, North Eastern Health Board;

Maria McGonagle, Law Dept. UCG, Galway;
Ann McWilliams, Intercountry Adoption Team, Eastern Health Board;
Mary Murray;
Adrian O'Donovan, Dept. of Health;
Pat O'Dwyer, Southern Health Board, Fostering & Adoption Service;
Sora O'Doherty, Family Lawyers Association;
Robert Pye;
Jacinta Ryan, St. Anne's Adoption Society, Cork;
Sr. Sarto, Sacred Heart Convent, Cork;
Patricia Smith, The Adoption Board;
Carmel Stewart, Family Lawyers Association;
Deirdre Walsh, Dept. of Health;
Peter Wise, Solicitor, Legal Aid Board;
Paul Ward, Law Dept., UCD.

APPENDIX 3

TEXT OF THE HAGUE CONVENTION

CONVENTION ON PROTECTION OF CHILDREN AND CO-OPERATION IN RESPECT OF INTERCOUNTRY ADOPTION

The States signatory to the present Convention,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Recalling that each State should take, as a matter of priority, appropriate measures to enable the child to remain in the care of his or her family of origin,

Recognizing that intercountry adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her State of origin,

Convinced of the necessity to take measures to ensure that intercountry adoptions are made in the best interests of the child and with respect for his or her fundamental rights, and to prevent the abduction, the sale of, or traffic in children,

Desiring to establish common provisions to this effect, taking into account the principles set forth in international instruments, in particular the *United Nations Convention on the Rights of the Child*, of 20th November 1989, and the United Nations Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally (General Assembly Resolution 41/85, of 3rd December 1986),

Have agreed upon the following provisions-

CHAPTER 1 - SCOPE OF THE CONVENTION

Article 1

The objects of the present Convention are-

- a* to establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognized in international law;
- b* to establish a system of co-operation amongst Contracting States to ensure that those safeguards are respected and thereby prevent the abduction, the sale of, or traffic in children;
- c* to secure the recognition in Contracting States of adoptions made in accordance with the Convention.

Article 2

- 1* The Convention shall apply where a child habitually resident in one Contracting State ('the State of origin') has been, is being, or is to be moved to another Contracting State ('the receiving State') either after his or her adoption in the State of origin by spouses or a person habitually resident in the receiving State, or for the purposes of such an adoption in the receiving State or in the State of origin.
- 2* The Convention covers only adoptions which create a permanent parent-child relationship.

Article 3

The Convention ceases to apply if the agreements mentioned in Article 17, sub-paragraph *c*, have not been given before the child attains the age of eighteen years.

CHAPTER II - REQUIREMENTS FOR INTERCOUNTRY ADOPTIONS

Article 4

An adoption within the scope of the Convention shall take place only if the competent authorities of the State of origin-

- a* have established that the child is adoptable;
- b* have determined, after possibilities for placement of the child within the State of origin have been given due consideration, that an intercountry adoption is in the child's best interests;
- c* have ensured that

- (1) the persons, institutions and authorities whose consent is necessary for adoption, have been counselled as may be necessary and duly informed of the effects of their consent, in particular whether or not an adoption will result in the termination of the legal relationship between the child and his or her family of origin,
 - (2) such persons, institutions and authorities have given their consent freely, in the required legal form, and expressed or evidenced in writing,
 - (3) the consents have not been induced by payment or compensation of any kind and have not been withdrawn, and
 - (4) the consent of the mother, where required, has been given only after the birth of the child; and
- d* have ensured, having regard to the age and degree of maturity of the child, that
- (1) he or she has been counselled and duly informed of the effects of the adoption and of his or her consent to the adoption, where such consent is required,
 - (2) consideration has been given to the child's wishes and opinions,
 - (3) the child's consent to the adoption, where such consent is required, has been given freely, in the required legal form, and expressed or evidenced in writing, and
 - (4) such consent has not been induced by payment or compensation of any kind.

Article 5

An adoption within the scope of the Convention shall take place only if the competent authorities of the receiving State-

- a* have determined that the prospective adoptive parents are eligible and suited to adopt;
- b* have ensured that the prospective adoptive parents have been counselled as may be necessary; and
- c* have determined that the child is or will be authorized to enter and reside permanently in that State.

CHAPTER III - CENTRAL AUTHORITIES AND ACCREDITED BODIES

Article 6

- 1 A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities.
- 2 Federal States, States with more than one system of law or States having autonomous territorial units shall be free to appoint more than one Central Authority and to specify the territorial or personal extent of their functions. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which any communication may be addressed for transmission to the appropriate Central Authority within that State.

Article 7

- 1 Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their States to protect children and to achieve the other objects of the Convention.
- 2 They shall take directly all appropriate measures to -
 - a provide information as to the laws of their States concerning adoption and other general information, such as statistics and standard forms;
 - b keep one another informed about the operation of the Convention and, as far as possible, eliminate any obstacles to its application.

Article 8

Central Authorities shall take, directly or through public authorities, all appropriate measures to prevent improper financial or other gain in connection with an adoption and to deter all practices contrary to the objects of the Convention.

Article 9

Central Authorities shall take, directly or through public authorities or other bodies duly accredited in their State, all appropriate measures, in particular to -

- a* collect, preserve and exchange information about the situation of the child and the prospective adoptive parents, so far as is necessary to complete the adoption;
- b* facilitate, follow and expedite proceedings with a view to obtaining the adoption;
- c* promote the development of adoption counselling and post-adoption services in their States;
- d* provide each other with general evaluation reports about experience with intercountry adoption;
- e* reply, in so far as is permitted by the law of their State, to justified requests from other Central Authorities or public authorities for information about a particular adoption situation.

Article 10

Accreditation shall only be granted to and maintained by bodies demonstrating their competence to carry out properly the tasks with which they may be entrusted.

Article 11

An accredited body shall -

- a* pursue only non-profit objectives according to such conditions and within such limits as may be established by the competent authorities of the State of accreditation;
- b* be directed and staffed by persons qualified by their ethical standards and by training or experience to work in the field of intercountry adoption; and
- c* be subject to supervision by competent authorities of that State as to its composition, operation and financial situation.

Article 12

A body accredited in one Contracting State may act in another Contracting State only if the competent authorities of both States have authorized it to do so.

Article 13

The designation of the Central Authorities and, where appropriate, the extent of their functions, as well as the names and addresses of the accredited bodies shall be communicated by each Contracting State to the Permanent Bureau of the Hague Conference on Private International Law.

CHAPTER IV - PROCEDURAL REQUIREMENTS IN INTERCOUNTRY ADOPTION

Article 14

Persons habitually resident in a Contracting State, who wish to adopt a child habitually resident in another Contracting State, shall apply to the Central Authority in the State of their habitual residence.

Article 15

- 1 If the Central Authority of the receiving State is satisfied that the applicants are eligible and suited to adopt, it shall prepare a report including information about their identity, eligibility and suitability to adopt, background, family and medical history, social environment, reasons for adoption, ability to undertake an intercountry adoption, as well as the characteristics of the children for whom they would be qualified to care.
- 2 It shall transmit the report to the Central Authority of the State of origin.

Article 16

- 1 If the Central Authority of the State of origin is satisfied that the child is adoptable, it shall -
 - a* prepare a report including information about his or her identity, adoptability, background, social environment, family history, medical history including that of the child's family, and any special needs of the child;
 - b* give due consideration to the child's upbringing and to his or her ethnic, religious and cultural background;
 - c* ensure that consents have been obtained in accordance with Article 4; and

- d* determine, on the basis in particular of the reports relating to the child and the prospective adoptive parents, whether the envisaged placement is in the best interests of the child.

- 2 It shall transmit to the Central Authority of the receiving State its report on the child, proof that the necessary consents have been obtained and the reasons for its determination on the placement, taking care not to reveal the identity of the mother and the father if, in the State of origin, these identities may not be disclosed.

Article 17

Any decision in the State of origin that a child should be entrusted to prospective adoptive parents may only be made if -

- a* the Central Authority of that State has ensured that the prospective adoptive parents agree;
- b* the Central Authority of the receiving State has approved such decision, where such approval is required by the law of that State or by the Central Authority of the State of origin;
- c* the Central Authorities of both States have agreed that the adoption may proceed; and
- d* it has been determined, in accordance with Article 5, that the prospective adoptive parents are eligible and suited to adopt and that the child is or will be authorized to enter and reside permanently in the receiving State.

Article 18

The Central Authorities of both States shall take all necessary steps to obtain permission for the child to leave the State of origin and to enter and reside permanently in the receiving State.

Article 19

- 1 The transfer of the child to the receiving State may only be carried out if the requirements of Article 17 have been satisfied.

- 2 The Central Authorities of both States shall ensure that this transfer takes place in secure and appropriate circumstances and, if possible, in the company of the adoptive or prospective adoptive parents.
- 3 If the transfer of the child does not take place, the reports referred to in Articles 15 and 16 are to be sent back to the authorities who forwarded them.

Article 20

The Central Authorities shall keep each other informed about the adoption process and the measures taken to complete it, as well as about the progress of the placement if a probationary period is required.

Article 21

- 1 Where the adoption is to take place after the transfer of the child to the receiving State and it appears to the Central Authority of that State that the continued placement of the child with the prospective adoptive parents is not in the child's best interests, such Central Authority shall take the measures necessary to protect the child, in particular-
 - a to cause the child to be withdrawn from the prospective adoptive parents and to arrange temporary care;
 - b in consultation with the Central Authority of the State of origin, to arrange without delay a new placement of the child with a view to adoption or, if this is not appropriate, to arrange alternative long-term care; an adoption shall not take place until the Central Authority of the State of origin has been duly informed concerning the new prospective adoptive parents;
 - c as a last resort, to arrange the return of the child, if his or her interests so require.
- 2 Having regard in particular to the age and degree of maturity of the child, he or she shall be consulted and, where appropriate, his or her consent obtained in relation to measures to be taken under this Article.

Article 22

- 1 The functions of a Central Authority under this Chapter may be performed by public authorities or by bodies accredited under Chapter III, to the extent permitted by the law of its State.
- 2 Any Contracting State may declare to the depositary of the Convention that the functions of the Central Authority under Articles 15 to 21 may be performed in that State, to the extent permitted by the law and subject to the supervision of the competent authorities of that State, also by bodies or persons who -
 - a meet the requirements of integrity, professional competence, experience and accountability of that State; and
 - b are qualified by their ethical standards and by training or experience to work in the field of intercountry adoption.
- 3 A Contracting State which makes the declaration provided for in paragraph 2 shall keep the Permanent Bureau of the Hague Conference on Private International Law informed of the names and addresses of these bodies and persons.
- 4 Any Contracting State may declare to the depositary of the Convention that adoptions of children habitually resident in its territory may only take place if the functions of the Central Authorities are performed in accordance with paragraph 1.
- 5 Notwithstanding any declaration made under paragraph 2, the reports provided for in Articles 15 and 16 shall, in every case, be prepared under the responsibility of the Central Authority or other authorities or bodies in accordance with paragraph 1.

CHAPTER V - RECOGNITION AND EFFECTS OF THE ADOPTION

Article 23

- 1 An adoption certified by the competent authority of the State of the adoption as having been made in accordance with the Convention shall be recognized by operation of law in the other Contracting States. The certificate shall specify when and by whom the agreements under Article 17, sub-paragraph c, were given.

- 2 Each Contracting State shall, at the time of signature, ratification, acceptance, approval or accession, notify the depositary of the Convention of the identity and the functions of the authority or the authorities which, in that State, are competent to make the certification. It shall also notify the depositary of any modification in the designation of these authorities.

Article 24

The recognition of an adoption may be refused in a Contracting State only if the adoption is manifestly contrary to its public policy, taking into account the best interests of the child.

Article 25

Any Contracting State may declare to the depositary of the Convention that it will not be bound under this Convention to recognize adoptions made in accordance with an agreement concluded by application of Article 39, paragraph 2.

Article 26

- 1 The recognition of an adoption includes recognition of
 - a the legal parent-child relationship between the child and his or her adoptive parents;
 - b parental responsibility of the adoptive parents for the child;
 - c the termination of a pre-existing legal relationship between the child and his or her mother and father, if the adoption has this effect in the Contracting State where it was made.
- 2 In the case of an adoption having the effect of terminating a pre-existing legal parent-child relationship, the child shall enjoy in the receiving State, and in any other Contracting State where the adoption is recognized, rights equivalent to those resulting from adoptions having this effect in each such State.
- 3 The preceding paragraphs shall not prejudice the application of any provision more favourable for the child, in force in the Contracting State which recognizes the adoption.

Article 27

- 1 Where an adoption granted in the State of origin does not have the effect of terminating a pre-existing legal parent-child relationship, it may, in the receiving State which recognizes the adoption under the Convention, be converted into an adoption having such an effect -
 - a* if the law of the receiving State so permits; and
 - b* if the consents referred to in Article 4, sub-paragraphs *c* and *d*, have been or are given for the purpose of such an adoption.
- 2 Article 23 applies to the decision converting the adoption.

CHAPTER VI - GENERAL PROVISIONS

Article 28

The Convention does not affect any law of a State of origin which requires that the adoption of a child habitually resident within that State take place in that State or which prohibits the child's placement in, or transfer to, the receiving State prior to adoption.

Article 29

There shall be no contact between the prospective adoptive parents and the child's parents or any other person who has care of the child until the requirements of Article 4, sub-paragraphs *a* to *c*, and Article 5, sub-paragraph *a*, have been met, unless the adoption takes place within a family or unless the contact is in compliance with the conditions established by the competent authority of the State of origin.

Article 30

- 1 The competent authorities of a Contracting State shall ensure that information held by them concerning the child's origin, in particular information concerning the identity of his or her parents, as well as the medical history, is preserved.
- 2 They shall ensure that the child or his or her representative has access to such information, under appropriate guidance, in so far as is permitted by the law of that State.

Article 31

Without prejudice to Article 30, personal data gathered or transmitted under the Convention, especially data referred to in Articles 15 and 16, shall be used only for the purposes for which they were gathered or transmitted.

Article 32

- 1 No one shall derive improper financial or other gain from an activity related to an intercountry adoption.
- 2 Only costs and expenses, including reasonable professional fees of persons involved in the adoption, may be charged or paid.
- 3 The directors, administrators and employees of bodies involved in an adoption shall not receive remuneration which is unreasonably high in relation to services rendered.

Article 33

A competent authority which finds that any provision of the Convention has not been respected or that there is a serious risk that it may not be respected, shall immediately inform the Central Authority of its State. This Central Authority shall be responsible for ensuring that appropriate measures are taken.

Article 34

If the competent authority of the State of destination of a document so requests, a translation certified as being in conformity with the original must be furnished. Unless otherwise provided, the costs of such translation are to be borne by the prospective adoptive parents.

Article 35

The competent authorities of the Contracting States shall act expeditiously in the process of adoption.

Article 36

In relation to a State which has two or more systems of law with regard to adoption applicable in different territorial units -

- a* any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;
- b* any reference to the law of that State shall be construed as referring to the law in force in the relevant territorial unit;
- c* any reference to the competent authorities or to the public authorities of that State shall be construed as referring to those authorized to act in the relevant territorial unit;
- d* any reference to the accredited bodies of that State shall be construed as referring to bodies accredited in the relevant territorial unit.

Article 37

In relation to a State which with regard to adoption has two or more systems of law applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.

Article 38

A State within which different territorial units have their own rules of law in respect of adoption shall not be bound to apply the Convention where a State with a unified system of law would not be bound to do so.

Article 39

- 1 The Convention does not affect any international instrument to which Contracting States are Parties and which contains provisions on matters governed by the Convention, unless a contrary declaration is made by the States Parties to such instrument.
- 2 Any Contracting State may enter into agreements with one or more other Contracting States, with a view to improving the application of the Convention in their mutual relations. These agreements may derogate only from the provisions of Articles 14 to 16 and 18 to 21. The States which have concluded such an agreement shall transmit a copy to the depositary of the Convention.

Article 40

No reservation to the Convention shall be permitted.

Article 41

The Convention shall apply in every case where an application pursuant to Article 14 has been received after the Convention has entered into force in the receiving State and the State of origin.

Article 42

The Secretary General of the Hague Conference on Private International Law shall at regular intervals convene a Special Commission in order to review the practical operation of the Convention.

CHAPTER VII - FINAL CLAUSES

Article 43

- 1 The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Seventeenth Session and by the other States which participated in that Session.
- 2 It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention.

Article 44

- 1 Any other State may accede to the Convention after it has entered into force in accordance with Article 46, paragraph 1.
- 2 The instrument of accession shall be deposited with the depositary.
- 3 Such accession shall have effect only as regards the relations between the acceding State and those Contracting States which have not raised an objection to its accession in the six months after the receipt of the notification referred to in sub-paragraph *b* of Article 48. Such an objection may also be raised by States at the time when they ratify, accept or approve the Convention after an accession. Any such objection shall be notified to the depositary.

Article 45

- 1 If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in the Convention, it

may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

- 2 Any such declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.
- 3 If a State makes no declaration under this Article, the Convention is to extend to all territorial units of that State.

Article 46

- 1 The Convention shall enter into force on the first day of the month following the expiration of three months after the deposit of the third instrument of ratification, acceptance or approval referred to in Article 43.
- 2 Thereafter the Convention shall enter into force -
 - a for each State ratifying, accepting or approving it subsequently, or acceding to it, on the first day of the month following the expiration of three months after the deposit of its instrument of ratification, acceptance, approval or accession;
 - b for a territorial unit to which the Convention has been extended in conformity with Article 45, on the first day of the month following the expiration of three months after the notification referred to in that Article.

Article 47

- 1 A State Party to the Convention may denounce it by a notification in writing addressed to the depositary.
- 2 The denunciation takes effect on the first day of the month following the expiration of twelve months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

Article 48

The depositary shall notify the States Members of the Hague Conference on Private International Law, the other States which participated in the Seventeenth Session and the States which have acceded in accordance with Article 44, of the following -

- a* the signatures, ratifications, acceptances and approvals referred to in Article 43;
- b* The accessions and objections raised to accessions referred to in Article 44;
- c* the date on which the Convention enters into force in accordance with Article 46;
- d* the declarations and designations referred to in Articles 22, 23, 25 and 45;
- e* the agreements referred to in Article 39;
- f* the denunciations referred to in Article 47.

In witness whereof the undersigned, being duly authorized thereto, have signed this Convention.

Done at The Hague, on theday of19.¹, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Seventeenth Session and to each of the other States which participated in that Session.

1

The Convention was signed on the 29th of May 1993 and thus bears that date.

APPENDIX 4

STANDARD HAGUE CONVENTION CONSENT FORM

Hague Conference on Private International Law

**Adoption
Annex B
March 1995**

RECOMMENDED MODEL FORM FOR THE STATEMENT OF CONSENT TO ADOPTION

*Hague Convention of 29 May 1993
on Protection of Children and Co-operation
in Respect of Intercountry Adoption*

*Annex B of the Report of the Special Commission of October 1994
on the implementation of the Hague Convention of 29 May 1993*

RECOMMENDED MODEL FORM

STATEMENT OF CONSENT TO THE ADOPTION

*Hague Convention of 29 May 1993
on Protection of Children and Co-operation
in Respect of Intercountry Adoption*

I STATEMENT OF CONSENT

Read the following statements carefully before completing them. Sign below only when you fully understand each statement. You have the right to receive any counselling or information which you may want to have about the effects of your consent. You have the right, if you so desire, to receive a copy of this document.

You should not have received any payment or compensation of any kind made or offered for the purpose of obtaining your consent to the adoption of the child.

I, the undersigned:

Family name:.....

First name(s):.....

Date of birth: day month year

Habitual residence:

mother father legal representative of the child

Family name:

First name(s):.....

Sex: male female

Date of birth: day month year

Place of birth:

Habitual residence:

declare as follows:

- 1 - I freely consent, without threat or coercion, to the adoption of this child.
- 2 - I understand that my child may be adopted by spouses or a person residing abroad.
- 3 - I understand that the adoption of this child will create a permanent parent-child relationship with the adoptive parent(s).
- 4 - I give my consent for the purpose of an adoption that terminates the pre-existing legal parent-child relationship between the child and his or her mother and father.¹
- 5 - I have been informed that I may withdraw my consent until

.....
and that after that date my consent will be irrevocable.

I declare that I have fully understood the above statements.

Done at on

Signature or Mark:

*

* *

II DECLARATION OF WITNESS(ES) (where required by law or by the circumstances, e.g. in the case of illiterate or handicapped persons)

.....
.....
.....
.....
.....
.....
.....

¹ States whose law permits the pre-existing legal parent-child relationship to continue may, where necessary, adapt this clause, taking into account the requirements of the Convention, in particular Article 27.

*

* *

III CERTIFICATION OF THE AUTHORITY AUTHORISED TO ATTEST THE CONSENT

Name:

Title:.....

I hereby certify that the person (and the witness(es)) named or identified above appeared before me this date and signed this document in my presence.

Done at on

Signature / Seal:

APPENDIX 5

STATES PARTIES TO THE HAGUE CONVENTION

HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW

HAGUE CONVENTION OF 29 MAY 1993

ON

PROTECTION OF CHILDREN AND CO-OPERATION IN RESPECT OF INTERCOUNTRY ADOPTION

(Listing as of 15 May 1998)

The following States have signed the Convention:

Costa Rica	29 May	1993	Peru	16 November	1994
Mexico	29 May	1993	Cyprus	17 November	1994
Romania	29 May	1993	Switzerland	16 January	1995
Brazil	29 May	1993	Spain	27 March	1995
Columbia	1 Sept.	1993	France	5 April	1995
Uruguay	1 Sept.	1993	Luxembourg	6 June	1995
Israel	2 Nov.	1993	Poland	12 June	1995
Netherlands	5 Dec.	1993	Philippines	17 July	1995
United Kingdom	12 Jan.	1994	Italy	11 December	1995
United States	31 March	1994	Norway	20 May	1996
Canada	12 April	1994	Ireland	19 June	1996
Finland	19 April	1994	Sweden	10 October	1996
Burkina Faso	19 April	1994	El Salvador	21 November	1996
Ecuador	3 May	1994	Venezuela	10 January	1997
Sri Lanka	24 May	1994	Denmark	2 July	1997
Germany	7 Nov.	1997	Belarus	10 December	1997

TOTAL NUMBER OF SIGNATORIES: 32

The following States have ratified the Convention:

Entry into force:

Mexico	14 September	1994	1 May	1995
Romania	28 December	1994	1 May	1995
Sri Lanka	23 January	1995	1 May	1995
Cyprus	20 February	1995	1 June	1995
Poland	12 June	1995	1 October	1995
Spain	11 July	1995	1 November	1995
Ecuador	7 September	1995	1 January	1996
Peru	14 September	1995	1 January	1996
Costa Rica	30 October	1995	1 February	1996
Burkina Faso	11 January	1996	1 May	1996
Philippines	2 July	1996	1 November	1996
Canada	19 December	1996	1 April	1997
Venezuela	10 January	1997	1 May	1997
Finland	27 March	1997	1 July	1997
Sweden	28 May	1997	1 September	1997
Denmark	2 July	1997	1 November	1997
Norway	25 September	1997	1 January	1998

TOTAL NUMBER OF RATIFICATIONS: 17

The following States have acceded to the Convention:

Entry into force:

Andorra	3 January	1997	1 May	1997
Moldova	10 April	1998	1 August	1998
Lithuania	29 April	1998	1 August	1998
Paraguay	13 May	1998	1 September	1998

TOTAL NUMBER OF ACCESSIONS: 4

THE CONVENTION ENTERED INTO FORCE ON 1 MAY¹

1. The accession shall have effect only as regards the relations between Andorra and States which have not raised an objection to its accession between 1 February 1997(inclusive) (see Article 44(3).)

LIST OF LAW REFORM COMMISSION'S PUBLICATIONS

- First Programme for Examination of Certain Branches of the Law with a View to their Reform (Dec 1976) (Prl. 5984) [out of print] [photocopy available]
[10p Net]
- Working Paper No. 1-1977, The Law Relating to the Liability of Builders, Vendors and Lessors for the Quality and Fitness of Premises (June 1977)
[£ 1.50 Net]
- Working Paper No. 2-1977, The Law Relating to the Age of Majority, the Age for Marriage and Some Connected Subjects (Nov 1977)[out of print]
[£ 1.00 Net]
- Working Paper No. 3-1977, Civil Liability for Animals (Nov 1977) [£ 2.50 Net]
- First (Annual) Report (1977) (Prl. 6961) [40p Net]
- Working Paper No. 4-1978, The Law Relating to Breach of Promise of Marriage (Nov 1978)
[£ 1.00 Net]
- Working Paper No. 5-1978, The Law Relating to Criminal Conversation and the Enticement and Harboursing of a Spouse (Dec 1978)[out of print]
[£ 1.00 Net]
- Working Paper No. 6-1979, The Law Relating to Seduction and the Enticement and Harboursing of a Child (Feb 1979)
[£ 1.50 Net]
- Working Paper No. 7-1979, The Law Relating to Loss of Consortium and Loss of Services of a Child (March 1979)
[£ 1.00 Net]
- Working Paper No. 8-1979, Judicial Review of Administrative Action: the Problem of Remedies (Dec 1979)
[£ 1.50 Net]
- Second (Annual) Report (1978/79) (Prl. 8855) [75p Net]
- Working Paper No. 9-1980, The Rule Against Hearsay (April 1980)
[£ 3.50 Net]
- Third (Annual) Report (1980) (Prl. 9733) [75p Net]
- First Report on Family Law - Criminal Conversation, Enticement and Harboursing of a Spouse or Child, Loss of Consortium, Personal Injury to a Child, Seduction of a Child, Matrimonial Property and Breach of Promise of Marriage (LRC 1-1981) (March 1981)
[£ 2.00 Net]
- Working Paper No. 10-1981, Domicile and Habitual Residence as Connecting Factors in the Conflict of Laws (Sep 1981)
[£ 1.75 Net]

Fourth (<u>Annual</u>) Report (1981) (Pl. 742)	[75p Net]
Report on Civil Liability for Animals (LRC 2-1982) (May 1982)	[£ 1.00 Net]
Report on Defective Premises (LRC 3-1982) (May 1982)	[£ 1.00 Net]
Report on Illegitimacy (LRC 4-1982) (Sep 1982)	[£ 3.50 Net]
Fifth (<u>Annual</u>) Report (1982) (Pl. 1795)	[75p Net]
Report on the Age of Majority, the Age for Marriage and Some Connected Subjects (LRC 5-1983) (April 1983)	[£ 1.50 Net]
Report on Restitution of Conjugal Rights, Jactitation of Marriage and Related Matters (LRC 6-1983) (Nov 1983)	[£ 1.00 Net]
Report on Domicile and Habitual Residence as Connecting Factors in the Conflict of Laws (LRC 7-1983) (Dec 1983)	[£ 1.50 Net]
Report on Divorce a Mensa et Thoro and Related Matters (LRC 8-1983) (Dec 1983)	[£ 3.00 Net]
Sixth (<u>Annual</u>) Report (1983) (Pl. 2622)	[£ 1.00 Net]
Report on Nullity of Marriage (LRC 9-1984) (Oct 1984)	[£ 3.50 Net]
Working Paper No. 11-1984, Recognition of Foreign Divorces and Legal Separations (Oct 1984)	[£ 2.00 Net]
Seventh (<u>Annual</u>) Report (1984) (Pl. 3313)	[£ 1.00 Net]
Report on Recognition of Foreign Divorces and Legal Separations (LRC 10-1985) (April 1985)	[£ 1.00 Net]
Report on Vagrancy and Related Offences (LRC 11-1985) (June 1985)	[£ 3.00 Net]
Report on the Hague Convention on the Civil Aspects of International Child Abduction and Some Related Matters (LRC 12-1985) (June 1985)	[£ 2.00 Net]
Report on Competence and Compellability of Spouses as Witnesses (LRC 13-1985) (July 1985)	[£ 2.50 Net]
Report on Offences Under the Dublin Police Acts and Related Offences (LRC 14-1985) (July 1985)	[£ 2.50 Net]
Report on Minors' Contracts (LRC 15-1985) (August 1985)	[£ 3.50 Net]

Report on the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters (LRC 16-1985) (August 1985)	[£ 2.00 Net]
Report on the Liability in Tort of Minors and the Liability of Parents for Damage Caused by Minors (LRC 17-1985) (Sep 1985)	[£ 3.00 Net]
Report on the Liability in Tort of Mentally Disabled Persons (LRC 18-1985) (Sep 1985)	[£ 2.00 Net]
Report on Private International Law Aspects of Capacity to Marry and Choice of Law in Proceedings for Nullity of Marriage (LRC 19-1985) (Oct 1985)	[£ 3.50 Net]
Report on Jurisdiction in Proceedings for Nullity of Marriage, Recognition of Foreign Nullity Decrees, and the Hague Convention on the Celebration and Recognition of the Validity of Marriages (LRC 20-1985) (Oct 1985)	[£ 2.00 Net]
Eighth (<u>Annual</u>) Report (1985) (Pl. 4281)	[£ 1.00 Net]
Report on the Statute of Limitations: Claims in Respect of Latent Personal Injuries (LRC 21-1987) (Sep 1987)	[£ 4.50 Net]
Consultation Paper on Rape (Dec 1987)	[£ 6.00 Net]
Report on the Service of Documents Abroad re Civil Proceedings - the Hague Convention (LRC 22-1987) (Dec 1987)	[£ 2.00 Net]
Report on Receiving Stolen Property (LRC 23-1987) (Dec 1987)	[£ 7.00 Net]
Ninth (<u>Annual</u>) Report (1986-1987) (Pl 5625)	[£ 1.50 Net]
Report on Rape and Allied Offences (LRC 24-1988) (May 1988)	[£ 3.00 Net]
Report on the Rule Against Hearsay in Civil Cases (LRC 25-1988) (Sep 1988)	[£ 3.00 Net]
Report on Malicious Damage (LRC 26-1988) (Sep 1988) [out of print]	[£ 4.00 Net]
Report on Debt Collection: (1) The Law Relating to Sheriffs (LRC 27-1988) (Oct 1988)	[£ 5.00 Net]
Tenth (<u>Annual</u>) Report (1988) (Pl 6542)	[£ 1.50 Net]
Report on Debt Collection: (2) Retention of Title (LRC 28-1989) (April 1989) [out of print]	[£ 4.00 Net]

Report on the Recognition of Foreign Adoption Decrees (LRC 29-1989) (June 1989)	[£ 5.00 Net]
Report on Land Law and Conveyancing Law: (1) General Proposals (LRC 30-1989) (June 1989)	[£ 5.00 Net]
Consultation Paper on Child Sexual Abuse (August 1989)	[£10.00 Net]
Report on Land Law and Conveyancing Law: (2) Enduring Powers of Attorney (LRC 31-1989)(Oct 1989)	[£ 4.00 Net]
Eleventh (<u>Annual</u>) Report (1989) (PI 7448)	[£ 1.50 Net]
Report on Child Sexual Abuse (September 1990) (LRC 32-1990)	[£ 7.00 Net]
Report on Sexual Offences Against the Mentally Handicapped (September 1990) (LRC 33-1990)	[£ 4.00 Net]
Report on Oaths and Affirmations (LRC 34-1990) (December 1990)	[£ 5.00 Net]
Report on Confiscation of the Proceeds of Crime (LRC 35-1991) (January 1991)	[£ 6.00 Net]
Consultation Paper on the Civil Law of Defamation (March 1991)	[£20.00 Net]
Report on the Hague Convention on Succession to the Estates of Deceased Persons (LRC 36-1991) (May 1991)	[£ 7.00 Net]
Twelfth (<u>Annual</u>) Report (1990) (PI 8292)	[£ 1.50 Net]
Consultation Paper on Contempt of Court (July 1991)	[£20.00 Net]
Consultation Paper on the Crime of Libel (August 1991)	[£11.00 Net]
Report on The Indexation of Fines (LRC 37-1991) (October 1991)	[£ 6.50 Net]
Report on The Civil Law of Defamation (LRC 38-1991) (December 1991)	[£ 7.00 Net]
Report on Land Law and Conveyancing Law: (3) The Passing of Risk from Vendor to Purchaser (LRC 39-1991) (December 1991); (4) Service of Completion Notices (LRC 40-1991) (December 1991)	[£ 6.00 Net]
Report on The Crime of Libel (LRC 41-1991) (December 1991)	[£ 4.00 Net]
Report on United Nations (Vienna) Convention on Contracts for the	

International Sale of Goods 1980 (LRC 42-1992) (May 1992)	[£ 8.00 Net]
Thirteenth (<u>Annual</u>) Report (1991) (PI 9214)	[£ 2.00 Net]
Report on The Law Relating to Dishonesty (LRC 43-1992) (September 1992)	[£20.00 Net]
Land Law and Conveyancing Law: (5) Further General Proposals (LRC 44-1992) (October 1992) [out of print]	[£ 6.00 Net]
Consultation Paper on Sentencing (March 1993)[out of print]	[£20.00 Net]
Consultation Paper on Occupiers' Liability (June 1993) [out of print]	[£10.00 Net]
Fourteenth (<u>Annual</u>) Report (1992) (PN.0051)	[£ 2.00 Net]
Report on Non-Fatal Offences Against The Person (LRC 45-1994) (February 1994)	[£20.00 Net]
Consultation Paper on Family Courts (March 1994)	[£10.00 Net]
Report on Occupiers' Liability (LRC 46-1994) (April 1994)	[£ 6.00 Net]
Report on Contempt of Court (LRC 47-1994) (September 1994)	[£10.00 Net]
Fifteenth (<u>Annual</u>) Report (1993) (PN.1122)	[£ 2.00 Net]
Report on The Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents (LRC 48-1995) (February 1995)	[£10.00 Net]
Consultation Paper on Intoxication as a Defence to a Criminal Offence (February 1995)	[£10.00 Net]
Report on Interests of Vendor and Purchaser in Land during period between Contract and Completion (LRC 49-1995) (April 1995)	[£ 8.00 Net]
Sixteenth (<u>Annual</u>) Report (1994) (PN. 1919)	[2.00 Net]
An Examination of The Law of Bail (LRC 50-1995) (August 1995)	[£10.00 Net]
Report on Intoxication (LRC 51-1995) (November 1995)	[£ 2.00 Net]
Report on Family Courts (LRC 52-1996) (March 1996)	[£10.00 Net]
Seventeenth (<u>Annual</u>) Report (1995) (PN. 2960)	[£2.50 Net]

Report on Sentencing (LRC 53-1996) (August 1996)	[£ 8.00 Net]
Consultation Paper on Privacy: Surveillance and the Interception of Communications (September 1996)	[£20.00 Net]
Report on Personal Injuries (LRC 54-1996) (December 1996)	[£10.00 Net]
Eighteenth (<u>Annual</u>) Report (1996) (PN. 3760)	[£ 2.50 Net]
Consultation Paper on The Implementation of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, 1993 (September 1997)	[£10.00 Net]
Report on The Unidroit Convention on Stolen or Illegally Exported Cultural Objects (LRC 55-1997) (October 1997)	[£15.00 Net]
Consultation Paper on Aggravated, Exemplary and Restitutionary Damages (April 1998)	[£15.00 Net]
Report on Land Law and Conveyancing Law: (6) Further General Proposals Including the Execution of Deeds (LRC 56-1998)(May 1998)	[£ 8.00 Net]
Report on Privacy: Surveillance and the Interception of Communications (LRC 57-1998)(June 1998)	[£20.00 Net]