

Queensland



**ADOPTION OF CHILDREN
(HAGUE CONVENTION ON
INTERCOUNTRY
ADOPTION) AMENDMENT
ACT 1999**

Act No. 3 of 1999

Queensland



ADOPTION OF CHILDREN (HAGUE CONVENTION ON INTERCOUNTRY ADOPTION) AMENDMENT ACT 1999

TABLE OF PROVISIONS

Section	Page
1 Short title	6
2 Commencement	6
3 Act amended	6
4 Omission of s 4 (Severability)	6
5 Relocation and renumbering of s 5 (Savings)	6
6 Amendment of s 6 (Interpretation)	6
7 Insertion of new s 6A	8
6A Convention countries	8
8 Amendment of s 7 (Adoption by order of Director)	8
9 Amendment of s 7A (Nexus with Queensland)	8
10 Amendment of s 13A (Applications)	9
11 Amendment of s 13B (Director's assessments)	9
12 Amendment of s 17 (Keeping of lists)	9
13 Insertion of new pt 3, div 2A	9
<i>Division 2A—Intercountry adoptions</i>	
18B Operation of pt 3 not limited	9
18C Adoption of a child from Queensland by a person habitually resident in a convention country	10
18D Adoption of a child from a convention country by a person habitually resident in Queensland	10

*Adoption of Children (Hague Convention on
Intercountry Adoption) Amendment* No. 3, 1999

14	Replacement of pt 4 hdg	11
	PART 4—RECOGNITION OF ADOPTIONS AND RELATED MATTERS	
	<i>Division 1—Recognition of interstate and foreign adoptions</i>	
15	Omission of s 36 (Definition)	11
16	Insertion of new s 37A	11
	37A Recognition of adoptions granted in convention countries	11
17	Amendment of s 38 (Recognition of foreign adoptions)	13
18	Insertion of new pt 4, div 2	14
	<i>Division 2—Simple adoptions</i>	
	38AA Definitions for div 2	14
	38AB Simple adoption does not end parent-child relationship	14
	38AC Conversion of simple adoption in convention country	15
	38AD Conversion of simple adoption by chief executive	15
19	Insertion of new pt 4, div 3 hdg	16
	<i>Division 3—Other matters concerning foreign adoptions</i>	
20	Amendment of s 39 (Declarations of validity of foreign adoptions)	16
21	Amendment of s 56 (Sending of memoranda of orders to other places) . . .	17
22	Amendment of s 60 (Proof of adoptions)	17
23	Amendment of s 61 (Judicial notice of signatures)	17
24	Amendment of s 65 (Regulations)	17
25	Omission of s 66 (Publication of proclamations etc.)	18
26	Insertion of new pt 7 and div 1, hdgs	18
	PART 7—SAVINGS	
	<i>Division 1—Provision for Adoption of Children Act 1964 No. 54</i>	
27	Insertion of new pt 7, div 2	18
	<i>Division 2—Provision for Adoption of Children (Hague Convention on Intercountry Adoption) Amendment Act 1999</i>	
69	Savings—recognition of foreign adoptions under s 38	19

28	Insertion of new schedule	19
	SCHEDULE	
	HAGUE CONVENTION	
	CONVENTION ON PROTECTION OF CHILDREN AND COOPERATION IN RESPECT OF INTERCOUNTRY ADOPTION	
	SCHEDULE	40
	AMENDMENTS TO UPDATE REFERENCES TO ‘DIRECTOR’	

Queensland



Adoption of Children (Hague Convention on Intercountry Adoption) Amendment Act 1999

Act No. 3 of 1999

**An Act to amend the *Adoption of Children Act 1964* to implement the
Hague Convention on Protection of Children and Cooperation in
Respect of Intercountry Adoption and for other purposes**

[Assented to 18 March 1999]

The Parliament of Queensland enacts—

Short title

1. This Act may be cited as the *Adoption of Children (Hague Convention on Intercountry Adoption) Amendment Act 1999*.

Commencement

2. This Act commences on a day to be fixed by proclamation.

Act amended

3. This Act amends the *Adoption of Children Act 1964*.

Omission of s 4 (Severability)

4. Section 4—
omit.

Relocation and renumbering of s 5 (Savings)

5. Section 5—
relocate and renumber as section 68.

Amendment of s 6 (Interpretation)

6.(1) Section 6, heading—
omit, insert—

‘Definitions’.

(2) Section 6, definitions “**department**”, “**director**” and “**Minister**”—
omit.

(3) Section 6—

insert—

“**adoption compliance certificate**” means a certificate under article 23 of the Hague convention.

“**central authority**”, of a convention country, means the entity designated under article 6 of the Hague convention as the central authority of the country or, if more than 1 central authority has been designated, the entity designated as the central authority for the relevant function.

“**Commonwealth central authority**” means the Commonwealth Central Authority under the Commonwealth regulation.¹

“**Commonwealth regulation**” means the *Family Law (Hague Convention on Inter-country Adoption) Regulations 1998* (Cwlth).

“**convention country**” see section 6A.

“**country**” includes a territorial unit or other part of a country.

“**Hague convention**” means the Convention on Protection of Children and Cooperation in Respect of Inter-country Adoption, made at the Hague on 29 May 1993, a copy of the English text of which is set out in the schedule.

“**non-convention country**” means a country other than Australia, New Zealand or a convention country.’.

(4) Section 6, definition “**registrar of the Supreme Court**”, ‘*Supreme Court Act 1867*—

omit, insert—

‘*Supreme Court Act 1995*’.

(5) Section 6, definition “**registrar of the Supreme Court**”, ‘*Supreme Court Act 1895*—

omit, insert—

‘*Supreme Court Act 1995*’.

¹ Presently, this is the Secretary to the Commonwealth Attorney-General’s Department.

(6) Section 6, definition “**the repealed Acts**”, after ‘section 5(1)’—
insert—
‘(as in force on the commencement of this Act)’.

Insertion of new s 6A

7. Part 1, after section 6—
insert—

‘Convention countries

‘**6A.(1)** Each of the following is a “**convention country**” for this Act—

- (a) a country prescribed under a regulation to be a convention country;
- (b) another country for which the Hague convention has entered into force, under article 46 of the Hague convention, other than—
 - (i) Australia; or
 - (ii) New Zealand; or
 - (iii) a country to whose accession Australia has raised an objection under article 44 of the Hague convention.

‘(2) However, subsection (1) applies to a country subject to a declaration under article 45 of the Hague convention.’.

Amendment of s 7 (Adoption by order of Director)

8. Section 7(3) to (6)—
omit.

Amendment of s 7A (Nexus with Queensland)

9. Section 7A—
insert—

‘(1A) Subsection (1)(a) does not apply to an adoption order to which section 18C applies.’².

Amendment of s 13A (Applications)

10. Section 13A(5)—

omit.

Amendment of s 13B (Director’s assessments)

11. Section 13B(9)—

omit.

Amendment of s 17 (Keeping of lists)

12. Section 17(4)—

omit.

Insertion of new pt 3, div 2A

13. After section 18A—

insert—

‘Division 2A—Intercountry adoptions

‘Operation of pt 3 not limited

‘**18B.** To remove doubt, it is declared that this division does not limit the operation of another provision in this part, including, in particular, section 10.’³

² Section 18C (Adoption of a child from Queensland by a person habitually resident in a convention country)

³ Section 10 (Welfare and interests of child to be paramount)

‘Adoption of a child from Queensland by a person habitually resident in a convention country

‘18C.(1) This section applies to an application under this Act, by a person who is habitually resident in a convention country, to adopt a child who is habitually resident in Queensland.

‘(2) The chief executive may make an order for the adoption of the child by the applicant only if, at the time of the order—

- (a) the child is not prevented from leaving Australia—
 - (i) under a law of the Commonwealth or a State; or
 - (ii) by an order of a court of the Commonwealth or a State; and
- (b) the chief executive is satisfied that—
 - (i) arrangements for the adoption have been made under the Hague convention and the law of the convention country; and
 - (ii) the central authority of the convention country has agreed to the adoption; and
 - (iii) the child is not prevented by a law of the convention country from residing permanently in that country.

‘Adoption of a child from a convention country by a person habitually resident in Queensland

‘18D.(1) This section applies to an application under this Act, by a person who is habitually resident in Queensland, to adopt a child who is habitually resident in a convention country.

‘(2) The chief executive may make an order for the adoption of the child by the applicant only if, at the time of the order—

- (a) the child is not prevented from residing permanently in Australia—
 - (i) under a law of the Commonwealth or a State; or
 - (ii) by an order of a court of the Commonwealth or a State; and
- (b) the chief executive is satisfied that—

- (i) arrangements for the adoption have been made under the Hague convention and the law of the convention country; and
- (ii) the central authority of the convention country has agreed to the adoption.’.

Replacement of pt 4 hdg

14. Part 4, heading—

omit, insert—

‘PART 4—RECOGNITION OF ADOPTIONS AND RELATED MATTERS

‘Division 1—Recognition of interstate and foreign adoptions’.

Omission of s 36 (Definition)

15. Section 36—

omit.

Insertion of new s 37A

16. After section 37—

insert—

‘Recognition of adoptions granted in convention countries

‘37A.(1) This section applies to an adoption granted in a convention country if—

- (a) when the adoption is granted—
 - (i) the adopted child is habitually resident in a convention country; and
 - (ii) the adopter is habitually resident in a convention country, Australia or New Zealand; and

- (b) an adoption compliance certificate, issued in the convention country in which the adoption is granted, is in force for the adoption.

‘(2) The adoption has effect as if it were an adoption order made under this Act.

‘(3) However, subsection (2) does not apply if the Supreme Court makes a declaration of non-recognition of the adoption.

‘(4) The Supreme Court may make a declaration of non-recognition of the adoption if it is satisfied the adoption is manifestly contrary to public policy, taking into account the child’s best interests.

‘(5) An interested person may apply to the Supreme Court for a declaration of non-recognition of the adoption.

‘(6) Before applying for the declaration, the person must give written notice—

- (a) if the person is the chief executive—to the Commonwealth central authority; or
- (b) otherwise—to the chief executive.

‘(7) The notice must state that the person proposes to apply for the declaration and the reasons for the proposed application.

‘(8) If the chief executive is given a notice under subsection (6)(b), the chief executive must give a copy of the notice to the Commonwealth central authority.

‘(9) If the applicant is not the chief executive, the chief executive is entitled to be joined as a party to the proceedings concerning the application.

‘(10) This section is subject to division 2.

‘(11) In this section—

“declaration of non-recognition”, of an adoption granted in a convention country, means a declaration that the adoption does not have effect as if it were an adoption order made under this Act.

“interested person”, for an adoption, means—

- (a) the chief executive; or

- (b) an adopter; or
- (c) the adopted child.’.

Amendment of s 38 (Recognition of foreign adoptions)

17.(1) Section 38, heading—

omit, insert—

‘Recognition of adoptions granted in non-convention countries’.

(2) Section 38(1), ‘(whether before or after the commencement of this Act) in a country (other than New Zealand) outside the Commonwealth and the Territories of the Commonwealth’—

omit, insert—

‘in a non-convention country’.

(3) Section 38(2), ‘a country’—

omit, insert—

‘a non-convention country’.

(4) Section 38(3) and (3A)—

omit.

(5) Section 38(6), ‘country outside the Commonwealth and the Territories of the Commonwealth’—

omit, insert—

‘non-convention country’.

(6) Section 38(7), ‘(whether before or after the commencement of this Act) in a country (other than New Zealand) outside the Commonwealth and the Territories of the Commonwealth’—

omit, insert—

‘in a non-convention country’.

Insertion of new pt 4, div 2

18. After section 38—

insert—

‘Division 2—Simple adoptions

‘Definitions for div 2

‘38AA. In this division—

“conversion”, of a simple adoption, means conversion into a full adoption under article 27 of the Hague convention.

“declaration of non-recognition”, of the conversion of a simple adoption, means a declaration that, despite the conversion, the adoption is taken to remain a simple adoption.

“full adoption” means an adoption other than a simple adoption.

“interested person”, for an adoption, means—

- (a) the chief executive; or
- (b) an adopter; or
- (c) the adopted child.

“simple adoption” means an adoption granted in a convention country that, under the law of that country, does not end the legal relationship between the adopted child and the individuals who were, immediately before the adoption, the child’s parents.

‘Simple adoption does not end parent-child relationship

‘38AB. Despite section 37A(2),⁴ a simple adoption does not end the legal relationship between the adopted child and the individuals who were, immediately before the adoption, the child’s parents.

⁴ Section 37A (Recognition of adoptions granted in convention countries)

‘Conversion of simple adoption in convention country

‘38AC.(1) If a simple adoption is converted in a convention country, the adoption is taken to be a full adoption.

‘(2) However, subsection (1) does not apply if the Supreme Court makes a declaration of non-recognition of the conversion.

‘(3) The Supreme Court may make a declaration of non-recognition of the conversion if it is satisfied the conversion is manifestly contrary to public policy, taking into account the child’s best interests.

‘(4) An interested person may apply to the Supreme Court for a declaration of non-recognition of the conversion.

‘(5) Before applying for the declaration, the person must give written notice—

- (a) if the person is the chief executive—to the Commonwealth central authority; or
- (b) otherwise—to the chief executive.

‘(6) The notice must state that the person proposes to apply for the declaration and the reasons for the proposed application.

‘(7) If the chief executive is given a notice under subsection (5)(b), the chief executive must give a copy of the notice to the Commonwealth central authority.

‘(8) If the applicant is not the chief executive, the chief executive is entitled to be joined as a party to the proceedings concerning the application.

‘Conversion of simple adoption by chief executive

‘38AD.(1) On application by an adopter of a child under a simple adoption, the chief executive may, by written order, declare the adoption to have effect as a full adoption.

‘(2) If the chief executive makes the order, the adoption has effect as a full adoption.

‘(3) The chief executive may make the order only if the chief executive is satisfied—

- (a) an adoption compliance certificate, issued in the convention country in which the adoption was granted, is in force for the adoption; and
- (b) the adopter is habitually resident in Queensland; and
- (c) when the adoption was granted, the adopted child was habitually resident in the convention country; and
- (d) if the adopted child is not in Australia when the chief executive proposes to make the declaration—the child is not prevented from entering Australia—
 - (i) under a law of the Commonwealth or a State; or
 - (ii) by an order of a court of the Commonwealth or a State; and
- (e) the child is not prevented from residing permanently in Australia—
 - (i) under a law of the Commonwealth or a State; or
 - (ii) by an order of a court of the Commonwealth or a State.’.

Insertion of new pt 4, div 3 hdg

19. Before section 38A—

insert—

‘Division 3—Other matters concerning foreign adoptions’.

Amendment of s 39 (Declarations of validity of foreign adoptions)

20.(1) Section 39(1), ‘section 38’—

omit, insert—

‘section 37A or 38’.

(2) Section 39(7), ‘section 38’—

omit, insert—

‘section 37A or 38’.

Amendment of s 56 (Sending of memoranda of orders to other places)

21. Section 56, ‘Commonwealth, New Zealand, or in a country specified in a subsisting order in council made under section 38(3),’—

omit, insert—

‘Commonwealth or in New Zealand,’.

Amendment of s 60 (Proof of adoptions)

22.(1) Section 60—

insert—

‘(c) a document purporting to be an order made under section 38AD or a certified copy of an order made under section 38AD;⁵’.

(2) Section 60—

insert—

‘**(2)** An adoption compliance certificate is evidence that the adoption to which it relates—

- (a) was agreed to by the central authorities of the countries stated in it; and
- (b) was carried out under the Hague convention and the laws of the countries stated in it.’.

Amendment of s 61 (Judicial notice of signatures)

23. Section 61—

insert—

‘(d) the chief executive;’.

Amendment of s 65 (Regulations)

24.(1) Section 65, heading—

⁵ Section 38AD (Conversion of simple adoption by chief executive)

omit, insert—

‘Regulation-making power’.

(2) Section 65(1), words before paragraph (a)—

omit, insert—

‘65.(1) The Governor in Council may make regulations under this Act.

‘(1A) A regulation may be made for or about the following matters—’.

(3) Section 65(2)—

omit, insert—

‘(2) A regulation may prescribe a country, other than Australia or New Zealand, to be a convention country for this Act, but only if the country is a convention country for the Commonwealth regulation.’.

Omission of s 66 (Publication of proclamations etc.)

25. Section 66—

omit.

Insertion of new pt 7 and div 1, hdgs

26. After section 67—

insert—

‘PART 7—SAVINGS

***‘Division 1—Provision for Adoption of Children Act 1964, Act No. 54 of
1964’.***

Insertion of new pt 7, div 2

27. After section 68 (as relocated and renumbered under this Act)—

insert—

***‘Division 2—Provision for Adoption of Children (Hague Convention on
Inter-country Adoption) Amendment Act 1999***

‘Savings—recognition of foreign adoptions under s 38

‘**69.(1)** This section applies to an adoption to which section 38 applied immediately before the commencement of the *Adoption of Children (Hague Convention on Inter-country Adoption) Amendment Act 1999*, section 17.

‘**(2)** Section 38, as in force before that commencement, continues to apply to the adoption.’.

Insertion of new schedule

28. After section 69—

insert—

‘SCHEDULE

‘HAGUE CONVENTION

section 6, definition “Hague convention”

**‘CONVENTION ON PROTECTION OF CHILDREN
AND COOPERATION IN RESPECT OF
INTERCOUNTRY ADOPTION**

The States signatory to the present Convention,

Recognising 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,

Recognising 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 20 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 3 December 1986),

Have agreed upon the following provisions—

CHAPTER I—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 recognised in international law;
- b* to establish a system of cooperation 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 authorised 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 cooperate with each other and promote cooperation 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 authorised 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 authorised 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 person 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 provide 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 recognised 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 recognise 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 recognised, 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 recognises 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 recognises 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 consent 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 person 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 be public authorities of that State shall be construed as referring to those authorised 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 person, 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 matter 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 expirations 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 whereof the undersigned, being duly authorised thereto, have signed this Convention.

*Adoption of Children (Hague Convention on
Inter-country Adoption) Amendment* No. 3, 1999

Done at The Hague, on the twenty-ninth day of May 1993, 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.’

SCHEDULE

AMENDMENTS TO UPDATE REFERENCES TO 'DIRECTOR'

section 3

1. Sections 6 (definitions “adoption list” and “special needs child”), 7 (heading), 7(1), 7A(1), 7A(2), 7B, 11(1), 11(2), 12(3), 12(5), 13, 13A(1), 13A(4), 13A(5), 13B(1), 13B(1A), 13B(2), 13B(2A), 13B(3), 13B(3A), 13B(6), 13B(7), 13B(8), 13C, 13D(1), 13D(2), 14(1), 14(1A), 14(2), 14(3), 14B(1), 14B(2), 14B(3), 14B(4), 14C(1), 14C(1A), 14C(3), 14D(1), 15, 16(1), 17(1), 17(5), 17(6), 18, 18A, 19(1), 19(7), 21, 22(1), 22(2), 23(2), 24(1), 24(2), 24(3), 25(1), 25(1A), 25(2), 25(2A), 25(3), 25A, 26(2), 27(1), 27(2), 27(2A), 27(3), 27(4), 27A(1), 27A(3), 27A(4), 27A(5), 27A(6), 27A(7), 27B(1), 27B(2), 27B(3), 27B(4), 27C, 29A(2), 29A(3), 29A(4), 29A(5), 29A(6), 30(1), 30(2), 33(1), 33(2), 33(3), 34(1), 35(1), 38A(1), 38A(2), 38A(3), 39(3), 39AA(3), 39AA(7), 39B(1), 39B(2), 39B(3), 39B(4), 39B(5), 39B(6), 39B(7), 39B(8), 39C, 39E(1), 41(1), 41(3), 41(4), 43(3), 44(2), 45(1), 46(1), 49, 54(1), 57A(1), 57A(3), 59(1), 59(2), 59(4), 59(5), 59(6), 59A(1), 59B, 59C(1), 62A(1), 62A(2), 65(1A) (as inserted by section 24 of this Act), ‘director’—

omit, insert—

‘chief executive’.

2. Section 6, definition “assessment”, ‘director or the director’s delegate’—

omit, insert—

‘chief executive’.

SCHEDULE (continued)

3. Section 13B (heading), ‘Director’s’—*omit, insert—*

‘Chief executive’s’.

4. Sections 14(1), 14(2), 15, 18A, 19(7), 27(1), 27(2), 27A(1), 27A(7), 27B(1), 29A(3), 38A(2), 41(3), 41(4), 57A(1), 59(2), 62A(1), 65(1A) (as inserted by section 24 of this Act), ‘director’s’—*omit, insert—*

‘chief executive’s’.

5. Section 38A (heading), ‘Director’—*omit, insert—*

‘Chief executive’.