



Uimhir 6 de 1991

An tAcht um Fhuadach Leanaí agus Forghníomhú Orduithe Coimeádta, 1991
[An tiontú oifigiúil]



Uimhir 6 de 1991

**AN tACHT UM FHUADACH LEANAÍ AGUS
FORGHNÍOMHÚ ORDUITHE COIMEÁDTA, 1991**

[An tiontú oifigiúil]

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CUID I

RÉAMHRÁITEACH AGUS GINEARÁLTA

Alt

1. Gearrtheideal, forléiriú agus tosach feidhme.
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5. Fianaise ar chinntí agus breitheanna ó údarais Stát Conarthach agus nithe eile a bhaineann le Coinbhinsiún na Háige.
6. Feidhm dlí a bheith ag Coinbhinsiún na Háige.
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[Uimh. 6.] *An tAcht um Fhuadach Leanai agus* [1991.]
Forghníomhú Orduithe Coimeádta,
1991.

15. Dearbhú ón gCúirt gur aistríodh leanbh go héagórach.
16. Cúirteanna sa Stát do chur doiciméad áirithe ar fáil chun críocha Choinbhinsiún na Háige.

CUID III

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17. Léiriú Chuid III.
18. Stáit Chonarthacha agus dearbhuithe, forchoimeádais, tarraingt siar, fógraí agus séanadh faoi Choinbhinsiún Lucsamburg.
19. Fianaise ar chinntí agus dearbhuithe ó údarais Stát Conarthach agus nithe eile a bhaineann le Coinbhinsiún Lucsamburg.
20. Feidhm na Coda seo.
21. Feidhm dlí a bheith ag Coinbhinsiún Lucsamburg.
22. Údarás Lárnach chun críocha Choinbhinsiún Lucsamburg.
23. Dlíne na Cúirte chun críocha Chuid III.
24. Iarratais chun cinntí coimeádta a aithint agus a fhorghníomhú sa Stát.
25. Iarratais, ar an gcéad ásc, chuig an gCúirt.
26. Cumhachtaí eatramhacha na Cúirte chun críocha Chuid III.
27. Fógra i dtaobh imeachtaí áirithe, agus bac orthu, chun críocha Chuid III.
28. Diúltú d'iarratas chun cinneadh coimeádta a aithint nó a fhorghníomhú sa Stát.
29. Cinntí coimeádta a fhorghníomhú.
30. Tuarascálacha chun críocha Chuid III.

[1991.] *An tAcht um Fhuadach Leanaí agus Forghníomhú Orduithe Coimeádta,* [Uimh. 6.]
1991.

31. Cinntí coimeádta a athrú agus a chúlghairm.
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33. Cúirteanna sa Stát do chur doiciméad áirithe ar fáil chun críocha Choinbhinsiún Lucsamburg.
34. Dearbhú ó chúirt gur aistríodh leanbh go neamhdhleathach.

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[Uimh. 6.] *An tAcht um Fhuadach Leanaí agus* [1991.]
Forghníomhú Orduithe Coimeádta,
1991.

AN CHÉAD SCEIDEAL

TÉACS AN CHOINBHINSIÚIN AR NA GNÉITHE SIBHIALTA A BHAINNEANN LE
FUADACH IDIRNÁISIÚNTA LEANAÍ

AN DARA SCEIDEAL

TÉACS AN CHOINBHINSIÚIN EORPAIGH AR AITHINT AGUS FORGHNÍOMHÚ
CINNÍ MAIDIR LE COIMEÁD LEANAÍ AGUS AR CHOIMEÁD LEANAÍ A
ATHBHUNÚ

NA HACHTANNA DÁ DTAGRAÍTEAR

<i>Children Act</i> , 1908	1908,	c.67
Achtanna na gCúirteanna (Forálacha Forlíontacha), 1961 go 1988		
An tAcht um Chaomhnóireacht Naíon, 1964	1964,	Uimh. 7
An tAcht Sláinte, 1970	1970,	Uimh. 1
An tAcht um Idirscaradh Breithiúnach agus Athchóiriú an Dlí Teaghlaigh, 1989	1989,	Uimh. 6



Uimhir 6 de 1991

**AN tACHT UM FHUADACH LEANAÍ AGUS
FORGHNÍOMHÚ ORDUITHE COIMEÁDTA, 1991**

[An tiontú oifigiúil]

ACHT DO THABHAIRT FEIDHM DLÍ DON CHOINBHINSIÚN AR NA GNÉITHE SIBHIALTA A BHAINNEANN LE FUADACH IDIRNÁISIÚNTA LEANAÍ A SÍNÍODH SA HÁIG AN 25ú LÁ DE DHEIREADH FÓMHAIR, 1980, AGUS DON CHOINBHINSIÚN EORPACH AR AITHINT AGUS FORGHNÍOMHÚ CINNTÍ MAIDIR LE COIMEÁD LEANAÍ AGUS AR CHOIMEÁD LEANAÍ A ATHBHUNÚ A SÍNÍODH I LUCSAMBURG AN 20ú LÁ DE BHEALTAINE, 1980, AGUS DO DHÉANAMH SOCRÚ LE HAGHAIDH NITHE DE DHROIM NA NITHE RÉAMHRÁITE AGUS GAOLMHAR LEO THAIRIS SIN. *[27 Márta, 1991]*

ACHTAÍTEAR AG AN OIREACHTAS MAR A LEANAS:

CUID I

RÉAMHRÁITEACH AGUS GINEARÁLTA

1.—(1) Féadfar an tAcht um Fhuadach Leanaí agus Forghníomhú Orduithe Coimeádta, 1991, a ghairm den Acht seo. Gearrtheideal, forléiriú agus tosach feidhme.

(2) Déanfar Achtanna na gCúirteanna (Forálacha Forlíontacha), 1961 go 1988, agus an tAcht seo, sa mhéid go ndéanann sé difear do dhlínse nó do nós imeachta aon chúirte sa Stát, a fhorléiriú le chéile mar aon ní amháin.

(3) Tiocfaidh an tAcht seo i ngníomh cibé lá nó laethanta a shocróidh an tAire le hordú nó le horduithe, i gcoitinne nó faoi threoir aon chríche

nó forála áirithe agus féadfár laethanta éagsúla a shocrú amhlaidh chun críoch éagsúil agus le haghaidh forálacha éagsúla.

Léiriú.

2.—San Acht seo—

déanfar “Údarás Lárnach sa Stát” a fhorléiriú de réir alt 8 nó 22 (de réir mar is cuí) den Acht seo;

folaíonn “leanbh”, mar a n-úsáidtear é i gcomhthéacs an *Children Act*, 1908, duine óg de réir bhrí an Achta sin;

ciallaíonn “an Chúirt” an Ard-Chúirt;

ciallaíonn “Coinbhinsiún na Háige” an Coinbhinsiún ar na Gnéithe Sibhialta a bhaineann le Fuadach Idirnáisiúnta Leanaí, a síníodh sa Háig an 25ú lá de Dheireadh Fómhair, 1980;

ciallaíonn “bord sláinte” bord sláinte arna bhunú faoin Acht Sláinte, 1970;

ciallaíonn “Coinbhinsiún Lucsamburg” an Coinbhinsiún Eorpach ar Aithint agus Forghníomhú Cinntí maidir le Coimeád Leanaí agus ar Choimeád Leanaí a Athbhunú, a síníodh i Lucsamburg an 20ú lá de Bhealtaine, 1980;

ciallaíonn “an tAire” an tAire Dlí agus Cirt;

ciallaíonn “forordaithe” forordaithe le rialacháin arna ndéanamh ag an Aire faoin Acht seo;

ciallaíonn “oifigeach promhaidh agus leasa” duine a bheidh ceaptha ag an Aire le bheith ina oifigeach promhaidh agus leasa nó le bheith ina oifigeach leasa nó ina oifigeach promhaidh.

CUID II

COINBHINSIÚN NA HÁIGE

“Stát Conarthach”.

3.—Sa Chuid seo ciallaíonn “Stát Conarthach” stát a bhfuil Coinbhinsiún na Háige i bhfeidhm maidir leis de réir fhorálacha an Choinbhinsiúin sin agus forléireofar é ionas go mbeidh éifeacht leis an Acht seo—

- (a) i ndáil leis na stáit a d'aontaigh don Choinbhinsiún sin, nó le haon stáit a aontóidh don Choinbhinsiún sin, agus a mbeidh dearbhú déanta ag an Stát ina leith de bhun Airteagal 38 den Choinbhinsiún sin, agus
- (b) i ndáil leis na háiteanna a bhfuil éifeacht leis an gCoinbhinsiún sin maidir leo de bhua Airteagail 39 agus 40 den Choinbhinsiún sin.

4.—(1) Féadfaidh an tAire Gnóthaí Eachtracha a dhearbhu le hordú—

Stáit Chonarthacha agus dearbhuithe, forchoimeádais, tarraingt siar agus séanadh faoi Choinbhinsiún na Háige.

(a) gur Stát Conarthach aon stát a shonraítear san ordú, nó

(b) go bhfuil—

- (i) dearbhú (a mbeidh an téacs de leagtha amach san ordú) déanta de bhun Airteagal 38, 39 nó 40 de Choinbhinsiún na Háige, nó
- (ii) forchoimeádas, nó tarraingt siar forchoimeádais (a mbeidh an téacs de leagtha amach san ordú) déanta de bhun Airteagal 24, 26 nó (i gcás tarraingt siar) 42 den Choinbhinsiún sin, nó
- (iii) séanadh (a mbeidh an téacs de leagtha amach san ordú) déanta de bhun Airteagal 44 den Choinbhinsiún sin,

chun Aireacht Gnóthaí Eachtracha Ríocht na hÍsiltíre.

(2) Aon ordú a bheidh i bhfeidhm faoi fho-alt (1) den alt seo is fianaise é, de réir mar a bheidh—

(a) gur Stát Conarthach aon stát a shonraítear san ordú;

(b) go bhfuil dearbhú, forchoimeádas, tarraingt siar forchoimeádais nó séanadh, a bheidh leagtha amach san ordú, déanta agus ar an ábhar atá ann.

Fianaise ar chinntí
 agus breitheanna
 ó údaráis Stát
 Conarthaigh agus
 nithe eile a bhaineann
 le Choinbhinsiún na
 Háige.

(3) Féadfaidh an tAire Gnóthaí Eachtracha, le hordú, ordú faoin alt seo (lena n-áirítear ordú faoin bhfo-alt seo) a leasú nó a chúlghairm.

5.—(1) Chun críocha Airteagal 14 de Choinbhinsiún na Háige, aon doiciméad, arna fhiordheimhniú go cuí, a airbheartóidh gur cóip é de chinneadh nó de bhreith ó údarás breithiúnach nó riaracháin de chuid Stáit Chonarthaigh seachas an Stát, measfar gan a thuilleadh cruthúnais gur cóip dhílis den chinneadh nó den bhreith é, mura suífear a mhalairt.

(2) Chun críocha Airteagail 14 agus 30 de Choinbhinsiún na Háige, beidh an doiciméad bunaidh nó cóip d'aon doiciméad den sórt a luaitear in Airteagal 8 den Choinbhinsiún sin inghlactha—

(a) sa mhéid gur ráiteas fíoraí é, mar fhianaise ar an bhfíoras sin, agus

(b) a mhéid gur ráiteas tuairime é, mar fhianaise ar an tuairim sin.

(3) Aon doiciméad—

(a) a airbheartóidh gur aistriúchán é ar chinneadh nó ar bhreith ó údarás breithiúnach nó riaracháin de chuid Stáit Chonarthaigh seachas an Stát, nó ar dhoiciméad a luaitear in Airteagal 8 de Choinbhinsiún na Háige, agus

(b) a bheidh deimhnithe a bheith cruinn ag duine a bheidh inniúil chun déanamh amhlaidh,

beidh sé inghlactha mar fhianaise ar an aistriúchán.

(4) Aon doiciméad a airbheartóidh gur cóip é de chinneadh, de bhreith nó de dhearbhu ó údarás breithiúnach nó riaracháin de chuid Stáit Chonarthaigh, measfar, chun críocha na Coda seo, go bhfuil sé fhiordheimhnithe go cuí má airbheartaíonn sé—

(a) séala an údaráis sin a bheith air, nó

(b) é a bheith deimhnithe ag duine ina cháil mar bhreitheamh nó oifigeach de chuid an údaráis sin gur cóip dhílis é de chinneadh, de bhreith nó de dhearbhu ón údarás sin.

6.—(1) Faoi réir fhorálacha na Coda seo, beidh feidhm dlí sa Stát ag Coinbhinsiún na Háige agus tabharfar aird bhreithiúnach air. Feidhm dlí a bheith ag Coinbhinsiún na Háige.

(2) Tá téacs Choinbhinsiún na Háige i mBéarla leagtha amach mar áis tagartha sa Chéad Sceideal a ghabhann leis an Acht seo.

7.—(1) Chun críocha na Coda seo agus Choinbhinsiún na Háige beidh dlínse ag an gCúirt iarratais faoin gCoinbhinsiún sin a éisteacht agus a chinneadh. Dlínse na Cúirte chun críocha Chuid II.

(2) Chun críocha na n-iarratas sin forléireofar an abairt “an t-údarás breithiúnach nó riaracháin”, cibé áit a bhfuil sé i gCoinbhinsiún na Háige, mar thagairt don Chúirt, mura n-éilíonn an comhthéacs a mhalairt.

8.—(1) Féadfaidh an tAire, le hordú, Údarás Lárnach (dá ngairtear an tÚdarás Lárnach sa Stát sa Chuid seo) a cheapadh chun feidhmeanna Údarais Lárnaigh faoi Choinbhinsiún na Háige a chomhlíonadh. Údarás Lárnach chun críocha Choinbhinsiún na Háige.

(2) D’ainneoin fho-alt (1) den alt seo, mura gceapfaidh, agus go dtí go gceapfaidh, an tAire Údarás Lárnach faoin alt seo, comhlíonfaidh an tAire na feidhmeanna sin a dúradh agus déanfar tagairtí sa Chuid seo don Údarás Lárnach sa Stát a fhorléiriú, dá réir sin, mar thagairtí don Aire.

(3) Féadfaidh an tAire, le hordú, ordú faoin alt seo (lena n-áirítear ordú faoin bhfo-alt seo) a leasú nó a chúlghairm.

9.—(1) Aon iarratas, i cibé foirm a bheidh forordaithe, a dhéanfar faoi Choinbhinsiún na Háige maidir le leanbh a aistríodh go dtí an Stát, féadfar é a dhíriú chuig an Údarás Lárnach sa Stát. Iarratas chun leanbh a aistríodh go dtí an Stát a thabhairt ar ais.

(2) I gcás go bhfaighidh an tÚdarás Lárnach sa Stát aon iarratas den sórt sin agus gur deimhin leis gur iarratas lena mbaineann Coinbhinsiún na Háige an t-iarratas, déanfaidh sé beart nó cuirfidh sé faoi deara beart a dhéanamh faoin gCoinbhinsiún sin chun a áirithiú go dtabharfar an leanbh ar ais.

Iarratas chun leanbh a aistríodh as an Stát a thabhairt ar ais.

10.—(1) Aon iarratas, i cibé foirm a bheidh forordaithe, a dhéanfar faoi Choinbhinsiún na Háige maidir le leanbh a aistríodh as an Stát go dtí Stát Conarthach eile, féadfar é a dhíriú chuig an Údarás Lárnach sa Stát.

(2) I gcás go bhfaighidh an tÚdarás Lárnach sa Stát aon iarratas den sórt sin agus gur deimhin leis gur iarratas lena mbaineann Coinbhinsiún na Háige an t-iarratas, déanfaidh sé, thar ceann an iarratasóra, aon bheart a cheanglaítear ar Údarás Lárnach a dhéanamh faoin gCoinbhinsiún sin.

(3) Ní choiscfidh aon ní i bhfo-alt (1) den alt seo an tÚdarás Lárnach sa Stát ar dhéileáil le haon iarratas a bheidh déanta faoi Choinbhinsiún na Háige ag duine nó thar ceann duine maidir le leanbh a aistríodh as Stát Conarthach (nach é an Stát é) go dtí Stát Conarthach eile (nach é an Stát é).

Ní dhéanfaidh oibriú na Coda seo difear do dhlínse na Cúirte.

11.—Ní choiscfidh aon ní sa Chuid seo duine ar iarratas a dhéanamh, ar an gcéad ásc, chuig an gCúirt, cibé acu is faoi Choinbhinsiún na Háige nó nach ea, maidir le sárú ar chearta coimeádta linbh, nó le sárú ar chearta rochtana ar leanbh, a aistríodh go dtí an Stát.

Cumhachtaí eatramhacha na Cúirte chun críocha Chuid II.

12.—(1) Má tá iarratas déanta nó ar tí a dhéanta chuig an gCúirt faoi Choinbhinsiún na Háige, féadfaidh an Chúirt, uaithi féin nó ar iarratas faoin alt seo, tráth ar bith sula geinnfear an t-iarratas, cibé treoracha eatramhacha is cuí léi a thabhairt chun leas an linbh lena mbaineann a áirithiú, nó chun dochar do dhaoine leasmhara, nó athruithe ar na himthosca is iomchuí maidir le cinneadh an iarratais, a chosc.

(2) Féadfar iarratas ar threoracha eatramhacha faoin alt seo a dhéanamh *ex parte* i gcás gur cás práinneach an cás.

Fógra i dtaobh imeachtaí áirithe, agus bac orthu, chun críocha Chuid II.

13.—(1) Aon duine a bhfuil leas aige in imeachtaí sa Chúirt nó in imeachtaí atá ar tí a dtosaithe sa Chúirt faoin gCuid seo maidir le leanbh a aistríodh go dtí an Stát, tabharfaidh sé fógra don chúirt sin, más eol dó go bhfuil iarratas a bhaineann le coimeád an linbh ar feitheamh in aon chúirt nó os comhair aon chúirte sa Stát, i dtaobh na n-imeachtaí, nó na n-imeachtaí atá ar feitheamh (de réir mar a bheidh), faoi Choinbhinsiún na Háige agus déanfaidh an chúirt sin, tar éis di fógra maidir leis an bhfógra sin a thabhairt do na páirtithe sna himeachtaí atá os a comhair, bac a chur, de réir Airteagal 16 den Choinbhinsiún sin, ar na himeachtaí breise go léir san ábhar agus tabharfaidh sí fógra maidir leis an mbac don Chúirt.

(2) Chun críche an ailt seo forléireofar iarratas a bhaineann le coimeád linbh mar ní a fholáionn tagairt d'iarratas ar na nithe seo a leanas—

- (a) ordú lena ndéantar, lena n-athraítear, nó lena n-urscaoiltear ordú maidir le coimeád linbh, nó le ceart rochtana ar leanbh, faoin Acht um Chaomhnóireacht Naíon, 1964;
- (b) ordú arna dhéanamh de bhun Chuid II nó IV den *Children Act*, 1908, i ndáil le cúram linbh;
- (c) aithint nó forghníomhú cinnidh i ndáil le coimeád faoi Chuid III den Acht seo.

14.—I gcás go n-iarrtar ar an Údarás Lárnach sa Stát faisnéis i ndáil le leanbh a thabhairt faoi Airteagal 7.d de Choinbhinsiún na Háige, féadfaidh sé—

Tuarascálacha chun críocha Chuid II.

- (a) a iarraidh ar oifigeach promhaidh agus leasa tuarascáil a thabhairt dó i scríbhinn maidir le haon ní a bhaineann leis an leanbh agus is dealraitheach don Údarás is iomchuí;
- (b) a iarraidh ar bhord sláinte a shocrú go dtabharfaidh duine ag a bhfuil cáilíochtaí oiriúnacha tuarascáil den sórt sin dó; nó
- (c) a iarraidh ar aon chúirt, dár tugadh tuarascáil i scríbhinn i ndáil leis an leanbh, cóip den tuarascáil a chur chuige,

agus déanfar aon iarraidh den sórt sin a chomhlíonadh go cuí.

15.—(1) Féadfaidh an Chúirt, ar iarratas a bheidh déanta chun críocha Airteagal 15 de Choinbhinsiún na Háige ag aon duine ar dealraitheach don Chúirt leas a bheith aige san ábhar, dearbhú a dhéanamh gur go héagórach, de réir bhrí Airteagal 3 den Choinbhinsiún sin, a aistríodh aon leanbh as an Stát nó a coinníodh aon leanbh lasmuigh den Stát.

Dearbhú ón gCúirt gur aistríodh leanbh go héagórach.

(2) Déanfaidh an tÚdarás Lárnach sa Stát beart, nó cuirfidh sé faoi deara beart a dhéanamh, chun cabhrú leis an duine dá dtagraítear i *bhfo-alt (1)* den alt seo i dtaca le hiarratas a dhéanamh faoin alt seo má dhéanann an duine sin, nó má dhéanann Údarás Lárnach Stáit Chonarthaigh eile thar a cheann, cabhair den sórt sin a iarraidh i cibé foirm a bheidh forordaithe.

Cúirteanna sa Stát do chur doiciméad áirithe ar fáil chun críocha Choinbhinsiún na Háige.

16.—Maidir le cinneadh a bhaineann le coimeád a bheidh déanta ag cúirt sa Stát (lena n-áirítear dearbhú arna dhéanamh ag an gCúirt faoi alt 15 den Acht seo), déanfaidh cláráitheoir nó cléireach na cúirte, ar iarraidh ó dhuine ar mian leis iarratas a dhéanamh faoi Choinbhinsiún na Háige i Stát Conarthach seachas an Stát, nó ar iarraidh thar a cheann ón Údarás Lárnach sa Stát, agus faoi réir aon choinníollacha a shonrófar le rialacha cúirte, na doiciméid seo a leanas a thabhairt don duine nó don Údarás Lárnach, de réir mar a bheidh—

(a) cóip den chinneadh arna fhíordheimhniú go cuí;

(b) i gcás gur d'éagmais láithrithe a tugadh an cinneadh, an doiciméad bunaidh nó cóip, a bheidh deimhnithe mar chóip dhílis ag cláráitheoir nó cléireach na cúirte, de dhoiciméad a shuíonn gur seirbheáladh fógra faoi thionscnamh imeachtaí ar an duine a rinne mainneachtain.

CUID III

COINBHINSIÚN LUCSAMBURG

Léiriú Chuid III.

17.—Sa Chuid seo—

ciallaíonn “Stát Conarthach” stát a bhfuil Coinbhinsiún Lucsamburg i bhfeidhm maidir leis de réir fhorálacha an Choinbhinsiúin sin agus forléireofar é ionas go mbeidh éifeacht leis an gCuid seo i ndáil leis na háiteanna a bhfuil éifeacht leis an gCoinbhinsiún sin maidir leo de bhua Airteagail 24 agus 25 den Choinbhinsiún sin;

tá le “cinneadh a bhaineann le coimeád” an bhrí a thugtar dó in Airteagal 1 de Choinbhinsiún Lucsamburg;

ciallaíonn “ordú forghníomhaithe” ordú ón gCúirt chun cinneadh a bhaineann le coimeád, lena mbaineann Airteagal 7 nó 12 de Choinbhinsiún Lucsamburg, a aithint nó a fhorghníomhú.

18.—(1) Féadfaidh an tAire Gnóthaí Eachtracha a dhearbhu le Stáit Chonarthacha agus dearbhuithe, forchoimeádais, tarraingt siar, fógraí agus séanadh faoi Choinbhinsiún Lucsamburg.

(a) gur Stát Conarthach aon stát a shonraítear san ordú, nó

(b) go bhfuil—

(i) forchoimeádas, nó tarraingt siar forchoimeádais (a mbeidh an téacs de leagtha amach san ordú) déanta de bhun Airteagal 6.3, 17, 18 nó (i gcás tarraingt siar) 27 de Choinbhinsiún Lucsamburg, nó

(ii) dearbhú (a mbeidh an téacs de leagtha amach san ordú) déanta de bhun Airteagal 24 nó 25 den Choinbhinsiún sin, nó

(iii) fógra (a mbeidh an téacs de leagtha amach san ordú) faighte de bhun Airteagal 2 den Choinbhinsiún sin, nó

(iv) fógra faoi chinneadh, nó faoi athrú nó cúlghairm ar chinneadh, (a mbeidh an téacs de leagtha amach san ordú) tugtha de bhun Airteagal 20 den Choinbhinsiún sin, nó

(v) séanadh (a mbeidh an téacs de leagtha amach san ordú) déanta de bhun Airteagal 29 den Choinbhinsiún sin,

chun Ard-Rúnaí Chomhairle na hEorpa nó aige, de réir mar a bheidh.

(2) Aon ordú a bheidh i bhfeidhm faoi fho-alt (1) den alt seo is fianaise é, de réir mar a bheidh—

(a) gur Stát Conarthach aon stát a shonraítear san ordú;

(b) go bhfuil forchoimeádas, tarraingt siar forchoimeádais, dearbhú, fôgra nó séanadh, a bheidh leagtha amach san ordú, déanta, tugtha nó faighte, agus ar an ábhar ann.

(3) Féadfaidh an tAire Gnóthaí Eachtracha, le hordú, ordú faoin alt seo (lena n-áirítear ordú faoin bhfo-alt seo) a leasú nó a chúlghairm.

Fianaise ar chinntí agus dearbhuithe ó údarais Stát Conarthach agus nithe eile a bhaineann le Coinbhinsiún Lucsamburg.

19.—(1) Chun críocha Choinbhinsiún Lucsamburg—

(a) aon doiciméad, arna fhíordheimhniú go cuí, a airbheartóidh gur cóip é de chinneadh nó de dhearbhu a bhaineann le coimeád ó údarás breithiúnach nó riaracháin de chuid Stáit Chonarthach seachas an Stát, measfar gan a thuilleadh cruthúnais gur cóip dhílis den chinneadh nó den dearbhú é, mura suítear a mhalairt; agus

(b) beidh an doiciméad bunaidh nó cóip d'aon doiciméad eile den sórt a luaitear in Airteagal 13 de Choinbhinsiún Lucsamburg inghlactha—

(i) sa mhéid gur ráiteas fíoraí é, mar fhianaise ar an bhfíoras sin, agus

(ii) sa mhéid gur ráiteas tuairime é, mar fhianaise ar an tuairim sin.

(2) Aon doiciméad—

(a) a airbheartóidh gur aistriúchán é ar chinneadh nó ar dhearbhu ó údarás breithiúnach nó riaracháin de chuid Stáit Chonarthach seachas an Stát nó ar aon doiciméad eile a luaitear in Airteagal 13 de Choinbhinsiún Lucsamburg, agus

(b) a bheidh deimhnithe a bheith cruinn ag duine a bheidh inniúil chun déanamh amhlaidh,

beidh sé inghlactha mar fhianaise ar an aistriúchán.

(3) Aon doiciméad a airbheartóidh gur cóip é de chinneadh nó de dhearbhu a bhaineann le coimeád arna dhéanamh nó arna thabhairt ag údarás breithiúnach nó riaracháin de chuid Stáit Chonarthach, measfar, chun críocha na Coda seo, go bhfuil sé fíordheimhnithe go cuí má airbheartaíonn sé—

(a) séala an údaráis sin a bheith air, nó

(b) é a bheith deimhnithe ag duine ina cháil mar bhreitheamh nó oifigeach de chuid an údaráis sin gur cóip dhílis é de chinneadh nó de dhearbhu ón údarás sin.

20.—Tá feidhm ag an gCuid seo maidir le haon chinneadh a bhaineann le coimeád (cibé ainm a thugtar air) ar cinneadh a bhaineann le coimeád é chun críocha Choinbhinsiún Lucsamburg. Feidhm na Coda seo.

21.—(1) Faoi réir fhorálacha na Coda seo (lena n-áirítear na srianta le haithint agus forghníomhú cinnidh a bhaineann le coimeád atá in alt 28 den Acht seo), beidh feidhm dlí sa Stát ag Coinbhinsiún Lucsamburg agus tabharfar aird bhreithiúnach air. Feidhm dlí a bheith ag Coinbhinsiún Lucsamburg.

(2) Tá téacs Choinbhinsiún Lucsamburg i mBéarla leagtha amach mar áis tagartha sa Dara Sceideal a ghabhann leis an Acht seo.

22.—(1) Féadfaidh an tAire, le hordú, Údarás Lárnach (dá ngairtear an tÚdarás Lárnach sa Stát sa Chuid seo) a cheapadh chun feidhmeanna Údaráis Lárnaigh faoi Choinbhinsiún Lucsamburg a chomhlíonadh. Údarás Lárnach chun críocha Choinbhinsiún Lucsamburg.

(2) D'ainneoin fho-alt (1) den alt seo, mura gceapfaidh, agus go dtí go gceapfaidh, an tAire Údarás Lárnach faoin alt seo, comhlíonfaidh an tAire na feidhmeanna sin a dúradh agus déanfar tagairtí sa Chuid seo don Údarás Lárnach sa Stát a fhorléiriú, dá réir sin, mar thagairtí don Aire.

(3) Féadfaidh an tAire, le hordú, ordú faoin alt seo (lena n-áirítear ordú faoin bhfo-alt seo) a leasú nó a chúlghairm.

23.—Chun críocha na Coda seo agus Choinbhinsiún Lucsamburg beidh dlínse ag an gCúirt iarratais faoin gCoinbhinsiún sin a éisteacht agus a chinneadh, ar iarratais iad chun cinneadh a bhaineann le coimeád a aithint nó a fhorghníomhú. Dlínse na Cúirte chun críocha Chuid III.

Iarratais chun cinntí coimeáda a aithint agus a fhorghníomhú sa Stát.

24.—(1) Aon iarratas, i cibé foirm a fhorordófar, arna dhéanamh ag duine nó thar ceann duine dá dtugtar cearta le cinneadh i ndáil le coimeád a rinne Údarás i Stát Conarthach seachas an Stát, agus ar iarratas é chun an cinneadh a aithint nó a fhorghníomhú sa Stát, féadfar é a dhíriú chuig an Údarás Lárnach sa Stát.

(2) I gcás go bhfaighidh an tÚdarás Lárnach sa Stát aon iarratas den sórt sin agus gur deimhin leis gur iarratas lena mbaineann Coinbhinsiún Lucsamburg an t-iarratas, déanfaidh sé beart nó cuirfidh sé faoi deara beart a dhéanamh faoin gCoinbhinsiún sin chun a áirithiú go n-aithneofar nó go bhforghníomhófar an cinneadh.

Iarratais, ar an gcéad ásc, chuig an gCúirt.

25.—Ní choiscfidh aon ní sa Chuid seo duine ar iarratas a dhéanamh ar an gcéad ásc chuig an gCúirt, faoi Choinbhinsiún Lucsamburg, chun cinneadh a bhaineann le coimeád, a rinne údarás i Stát Conarthach seachas an Stát, a aithint nó a fhorghníomhú.

Cumhachtaí eatramhacha na Cúirte chun críocha Chuid III.

26.—(1) Má tá iarratas déanta nó ar tí a dhéanta chuig an gCúirt, faoi Choinbhinsiún Lucsamburg, chun cinneadh a bhaineann le coimeád a aithint nó a fhorghníomhú, féadfaidh an Chúirt, uaithi féin nó ar iarratas faoin alt seo, tráth ar bith sula gcinneofar an t-iarratas, cibé treoracha eatramhacha is cuí léi a thabhairt chun leas an linbh lena mbaineann a áirithiú, nó chun dochar do dhaoine leasmhara, nó athruithe ar na himthosca is iomchuí maidir le cinneadh an iarratais, a chosc.

(2) Féadfar iarratas ar threoracha eatramhacha faoin alt seo a dhéanamh *ex parte* i gcás gur cás práinneach an cás.

Fógra i dtaobh imeachtaí áirithe, agus bac orthu, chun críocha Chuid III.

27.—(1) Aon duine a bhfuil leas aige in imeachtaí sa Chúirt faoin gCuid seo chun cinneadh a bhaineann le coimeád a rinne údarás i Stát Conarthach seachas an Stát a aithint nó a fhorghníomhú, déanfaidh sé, más eol dó go bhfuil iarratas a bhaineann le coimeád an linbh ar feitheamh in aon chúirt nó os comhair aon chúirte sa Stát agus gur tosaíodh na himeachtaí sin sular tionscnaíodh na himeachtaí sa Stát Conarthach ba bhun leis an gcinneadh a bhfuil aithint nó forghníomhú á iarraidh ina leith, fógra a thabhairt don Chúirt i dtaobh na n-imeachtaí sin agus féadfaidh an Chúirt bac a chur ar na himeachtaí breise go léir san iarratas ar aithint nó forghníomhú go dtí go mbeidh breith tugtha ar na himeachtaí eile.

(2) Aon duine a bhfuil leas aige in imeachtaí sa Chúirt faoin gCuid seo chun cinneadh a bhaineann le coimeád a rinne údarás i Stát Conarthach seachas an Stát a aithint nó a fhorghníomhú, déanfaidh sé, más eol dó go bhfuil iarratas a bhaineann le coimeád an linbh ar feitheamh in aon chúirt nó os comhair aon chúirte sa Stát agus gur tosaíodh na himeachtaí sin tar éis na himeachtaí sa Stát Conarthach ba bhun leis an gcinneadh a bhfuil aithint nó forghníomhú á iarraidh ina leith a bheith tionscanta, fógra a thabhairt don chúirt sin i dtaobh na n-imeachtaí faoi Choinbhinsiún Lucsamburg agus déanfaidh an chúirt sin, tar éis di fógra maidir leis an bhfógra sin a thabhairt do na páirtithe sna himeachtaí atá os a comhair, bac a chur ar na himeachtaí breise go léir san ábhar go dtí go mbreithneoidh an Chúirt an t-iarratas ar aithint nó forghníomhú. Tabharfaidh an chúirt áirithe sin fógra maidir leis an mbac don Chúirt.

(3) Chun críche an ailt seo forléireofar iarratas a bhaineann le coimeád linbh mar ní a fholaíonn tagairt d'iarratas ar na nithe seo a leanas—

(a) ordú lena ndéantar, lena n-athraítear nó lena n-urscaoiltear ordú maidir le coimeád linbh, nó le ceart rochtana ar leanbh, faoin Acht um Chaomhnóireacht Naíon, 1964;

(b) ordú arna dhéanamh de bhun Chuid II nó IV den *Children Act*, 1908, i ndáil le cúram linbh.

28.—(1) Diúltóidh an Chúirt d'iarratas a dhéanfar faoin gCuid seo chun cinneadh a bhaineann le coimeád a aithint nó a fhorghníomhú sa Stát más rud é—

Diúltú d'iarratas chun cinneadh coimeádta a aithint nó a fhorghníomhú sa Stát.

(a) i ndáil le cinneadh lena mbaineann Airteagal 8 de Choinbhinsiún Lucsamburg, gurb é tuairim na Cúirte nach cóir, ar aon cheann de na forais a shonraítear in Airteagal 10.1.a, b, c nó d den Choinbhinsiún sin, an cinneadh a aithint nó a fhorghníomhú sa Stát;

(b) i ndáil le cinneadh lena mbaineann Airteagal 9 nó 10 den Choinbhinsiún sin, gurb é tuairim na Cúirte nach cóir, ar aon cheann de na forais a shonraítear sna hAirteagail sin, an cinneadh a aithint nó a fhorghníomhú sa Stát;

(c) gurb é tuairim na Cúirte nach bhfuil an cinneadh infhorghníomhaithe sa Stát Conarthach ina ndearnadh é agus nach cinneadh é lena mbaineann Airteagal 12 den Choinbhinsiún.

(2) I gcás go ndéanfar iarratas chuig an gCúirt faoin gCuid seo chun cinneadh a bhaineann le coimeád a aithint nó a fhorghníomhú sa Stát agus go mbeidh iarratas chuig an gCúirt i leith an linbh ar feitheamh faoi *Chuid II* den Acht seo, cuirfidh an Chúirt bac ar na himeachtaí breise go léir faoin gCuid seo go dtí go mbeidh breith tugtha ar na himeachtaí eile.

(3) Na tagairtí in Airteagal 9.1.c de Choinbhinsiún Lucsamburg don leanbh a aistriú, is tagairtí iad don leanbh a aistriú go míchuí de réir bhrí an Choinbhinsiúin sin.

(4) Chun críocha an ailt seo folaíonn cinneadh a bhaineann le coimeád cinneadh ag athrú an chinnidh sin.

Cinntí coimeáda a fhorghníomhú.

29.—Aon chinneadh a bhaineann le coimeád a mbeidh ordú forghníomhaithe déanta ina leith, beidh an fheidhm chéanna aige agus an éifeacht chéanna leis agus, maidir le forghníomhú an chinnidh, beidh na cumhachtaí céanna ag an gCúirt, agus féadfar imeachtaí a thionscnamh, amhail is dá mba chinneadh ón gCúirt an cinneadh.

Tuarascálacha chun críocha Chuid III.

30.—I gcás go n-iarrtar ar an Údarás Lárnach sa Stát fiosrúcháin a dhéanamh i dtaobh linbh faoi Airteagal 15.1.b de Choinbhinsiún Lucsamburg, féadfaidh an tÚdarás Lárnach—

- (a) a iarraidh ar oifigeach promhaidh agus leasa tuarascáil a thabhairt dó i scríbhinn maidir le haon ní a bhaineann leis an leanbh agus is dealraitheach don Údarás is iomchuí;
- (b) a iarraidh ar bhord sláinte a shocrú go dtabharfaidh duine ag a bhfuil cáilíochtaí oiriúnacha tuarascáil den sórt sin dó;
- (c) a iarraidh ar aon chúirt, dar tugadh tuarascáil i scríbhinn i ndáil leis an leanbh, cóip den tuarascáil a chur chuige,

agus déanfar aon iarraidh den sórt sin a chomhlíonadh go cuí.

Cinntí coimeáda a athrú agus a chúlghairm.

31.—(1) I gcás cinneadh a bhaineann le coimeád a bheith athraithe nó cúlghairthe ag údarás sa Stát Conarthach ina ndearnadh é, féadfaidh aon duine ar dealraitheach don Chúirt leas a bheith aige san ábhar iarratas a dhéanamh chun na Cúirte ar ordú chun athrú nó cúlghairm a dhéanamh ar an ordú lena n-aithnítear nó lena bhforghníomhaítear an cinneadh sin.

(2) I gcás go ndéanfar iarratas faoi fho-alt (1) den alt seo chun ordú a chúlghairm, déanfaidh an Chúirt, más deimhin léi go bhfuil an cinneadh (a ndearnadh an t-ordú aitheanta nó forghníomhaithe ina leith) cúlghairthe ag údarás sa Stát Conarthach ina ndearnadh é, an t-ordú a urscaoileadh agus scoirfidh an cinneadh de bheith infhorghníomhaithe sa Stát.

(3) I gcás go ndéanfar iarratas faoi fho-alt (1) den alt seo chun ordú a athrú, féadfaidh an Chúirt, más deimhin léi go bhfuil an cinneadh athraithe ag údarás sa Stát Conarthach ina ndearnadh é agus faoi réir na bhforas diúltaithe a shonraítear in alt 28 (1) den Acht seo, ordú a dhéanamh lena n-athraítear an t-ordú, agus beidh an fheidhm chéanna ag aon chinneadh a athrófar amhlaidh agus an éifeacht chéanna leis agus, maidir le forghníomhú an chinnidh a athrófar amhlaidh, beidh na cumhachtaí céanna ag an gCúirt, agus féadfar imeachtaí a thionscnamh, amhail is dá mba chinneadh ón gCúirt an cinneadh a athrófar amhlaidh.

(4) Cabhróidh an tÚdarás Lárnach sa Stát leis an duine dá dtagraítear i bhfo-alt (1) den alt seo má dhéanann an duine sin, nó má dhéanann Údarás Lárnach an Stáit Chonarthaigh atá i gceist, thar a cheann, cabhair den sórt sin a iarraidh i cibé foirm a bheidh forordaithe.

32.—(1) Maidir le duine dá dtugtar aon chearta le cinneadh a bhaineann le coimeád a rinne cúirt sa Stát nó a rinne údarás, de réir bhrí Choinbhinsiún Lucsamburg, i Stát Conarthach eile, féadfaidh sé iarratas a dhéanamh, i cibé foirm a bheidh forordaithe, chuig an Údarás Lárnach sa Stát faoi Airteagal 4 de Choinbhinsiún Lucsamburg d'fhonn a áirithiú go n-aithneofar nó go bhforghníomhófar an cinneadh sin i Stát Conarthach eile.

Iarratais chun cinntí coimeádta a aithint agus a fhorghníomhú i Stát Conarthach eile.

(2) I gcás go bhfaighidh an tÚdarás Lárnach sa Stát aon iarratas den sórt sin agus gur deimhin leis gur iarratas lena mbaineann Airteagal 4 de Choinbhinsiún Lucsamburg an t-iarratas, déanfaidh sé, thar ceann an iarratasóra, aon bheart a cheanglaítear ar Údarás Lárnach a dhéanamh faoin gCoinbhinsiún sin.

33.—Maidir le cinneadh a bhaineann le coimeád a bheidh déanta ag cúirt sa Stát (lena n-áirítear dearbhú arna dhéanamh ag cúirt faoi alt 34 den Acht seo), déanfaidh cláráitheoir nó cléireach na cúirte, ar iarraidh ó dhuine ar mian leis iarratas a dhéanamh faoi Choinbhinsiún Lucsamburg i Stát Conarthach seachas an Stát, nó ar iarraidh thar a cheann ón Údarás Lárnach sa Stát, agus faoi réir aon choinníollacha a shonrófar le rialacha

Cúirteanna sa Stát do chur doiciméad áirithe ar fáil chun críocha Choinbhinsiún Lucsamburg.

cúirte, na doiciméid go léir nó aon cheann de na doiciméid dá dtagraítear in Airteagal 13.1.b, *c* agus *d* den Choinbhinsiún sin a thabhairt don duine nó don Údarás Lárnach, de réir mar a bheidh, is é sin le rá—

- (a) cóip den chinneadh arna fhíordheimhniú go cuí;
 - (b) deimhniú arna shíniú ag cláraitheoir nó cléireach na cúirte ina luafar—
 - (i) cineál na n-imeachtaí;
 - (ii) an dáta a rachaidh an t-am chun achomharc a thaisceadh i gcoinne an chinnidh in éag nó, má tá sé imithe in éag, an dáta a ndeachaigh sé in éag,
 - (iii) cibé acu a taifeadadh fógra achomhairc i gcoinne an chinnidh nó, in aon chás nach láithríonn an cosantóir, fógra chun an cinneadh a chur ar ceal, agus
 - (iv) cibé sonraí (más ann) a shonrófar le rialacha cúirte,
- agus

- (c) i gcás gur d'éagmais láithrithe a tugadh an cinneadh, an doiciméad bunaidh nó cóip, arna deimhniú mar chóip dhílis ag cláraitheoir nó cléireach na cúirte, de dhoiciméad a shuíonn gur seirbheáladh fógra faoi thionscnamh imeachtaí ar an duine a rinne mainneachtain.

Dearbhú ó chúirt gur aistríodh leanbh go neamhdhleathach.

34.—(1) I gcás go ndéanfaidh cúirt sa Stát cinneadh a bhaineann le coimeád linbh a aistríodh as an Stát, féadfaidh an chúirt sin, freisin, ar iarratas a bheidh déanta ag aon duine chun críocha Airteagal 12 de Choinbhinsiún Lucsamburg, dearbhú a dhéanamh gur go neamhdhleathach a aistríodh an leanbh as an Stát más deimhin léi go bhfuil leas ag an iarratasóir san ábhar agus gur tugadh, gur cuireadh nó gur coinníodh an leanbh amach as an Stát gan toiliú aon duine de na daoine ag a bhfuil an ceart áit chónaithe an linbh a chinneadh faoi dhlí an Stáit.

(2) Déanfaidh an tÚdarás Lárnach sa Stát beart, nó cuirfidh sé faoi deara beart a dhéanamh, chun cabhrú leis an duine dá dtagraítear i bhfo-alt (1) den alt seo iarratas a dhéanamh faoin alt seo má dhéanann an duine

sin, nó má dhéanann Údarás Lárnach Stáit Chonarthaigh eile, thar a cheann, cabhair den sórt sin a iarraidh i cibé foirm a bheidh forordaithe.

CUID IV

FORLÍONTACH

35.—I gcás go ndéanfaidh an Chúirt—

Orduithe coimeádta láithreacha a fhoirceannadh.

(a) ordú chun leanbh a thabhairt ar ais faoi Chuid II den Acht seo, nó

(b) ordú lena n-aithnítear nó lena bhforghníomhaítear cinneadh a bhaineann le coimeád linbh (seachas cinneadh nach mbaineann ach le cearta rochtana) faoi Chuid III den Acht seo,

féadfaidh an Chúirt, ar fhógra a thabhairt d'aon pháirtithe leasmhara, aon ordú maidir le coimeád an linbh, nó le ceart rochtana ar an leanbh, a urscaoileadh.

36.—(1) Más rud é—

Cumhacht na Cúirte a ordú go nochtfar cá bhfuil leanbh.

(a) in imeachtaí chun leanbh a thabhairt ar ais faoi Chuid II den Acht seo, nó

(b) ar iarratas chun cinneadh maidir le leanbh a aithint nó a fhorghníomhú faoi Chuid III den Acht seo,

nach bhfuil faisnéis leordhóthanach ar fáil don Chúirt i dtaobh cá bhfuil an leanbh, féadfaidh an Chúirt a ordú d'aon duine, a bhfuil cúis aici chun a chreidiúint go bhféadfaidh faisnéis iomchuí a bheith aige, an fhaisnéis sin a nochtadh don Chúirt.

(2) Aon duine is ábhar d'ordú faoi fho-alt (1) den alt seo féadfar a ordú dó, d'ainneoin an leanbh a thabhairt ar aird, aon fhaisnéis is iomchuí maidir le himeachtaí faoi Chuid II nó III den Acht seo a nochtadh.

(3) Más rud é—

(a) in imeachtaí i Stát Conarthach seachas an Stát chun leanbh a thabhairt ar ais faoi Choinbhinsiún na Háige, nó

(b) in imeachtaí i Stát Conarthach seachas an Stát chun cinneadh maidir le leanbh a aithint nó a fhorghníomhú faoi Choinbhinsiún Lucsamburg,

nó i gcás imeachtaí den sórt sin a bheith ar tí a dtionscanta, nach bhfuil faisnéis leordhóthanach ar fáil do na húdaráis sa Stát Conarthach i dtaobh cá bhfuil an leanbh, féadfaidh an Chúirt, ar iarratas a bheidh déanta ag aon duine chuici, más deimhin léi go bhfuil leas ag an iarratasóir san ábhar agus gur tugadh, gur cuireadh nó gur coinníodh an leanbh amach as an Stát gan toiliú aon duine de na daoine ag a bhfuil an ceart áit chónaithe an linbh a chinneadh faoi dhlí an Stáit, a ordú d'aon duine, a bhfuil cúis aici chun a chreidiúint go bhféadfaidh faisnéis iomchuí a bheith aige, an fhaisnéis sin a nochtadh don Chúirt.

(4) Aon duine is ábhar d'ordú faoi fho-alt (3) den alt seo féadfar a ordú dó, d'ainneoin an leanbh a thabhairt ar aird sa Stát Conarthach, aon fhaisnéis is iomchuí maidir le himeachtaí sa stát sin a nochtadh.

(5) Ní shaorfar duine ó aon ordú faoin alt seo a chomhlíonadh ar an ábhar go bhféadfadh an comhlíonadh sin é féin nó a chéile a ionchóiriú i gcion; ach ní bheidh ráiteas ná admháil a dhéanfar i gcomhlíonadh aon ordaithe den sórt sin inghlactha i bhfianaise i gcoinne ceachtar acu in imeachtaí i leith ciona seachas mionnú éithigh.

Cumhacht an Gharda Síochána leanbh a choinneáil agus nithe a leanann as an gcoinneáil sin.

37.—(1) Beidh an chumhacht ag comhalta den Gharda Síochána leanbh a choinneáil má tá drochamhras réasúnach air go bhfuiltear á aistriú, nó ar tí é a aistriú, as an Stát de shárú ar aon ordú díobh seo a leanas ó chúirt sa Stát—

(a) ordú maidir le coimeád an linbh, nó le ceart rochtana ar an leanbh (bíodh nó ná bíodh ordú san ordú sin á thoirmeasc an leanbh a aistriú as an dlínse gan cead ón gcúirt) nó aon ordú a bhaineann leis an leanbh a rinne an chúirt i bhfeidhmiú a dlínse i ndáil le coimircíocht linbh;

(b) ordú arna dhéanamh de bhun Chuid II nó IV den *Children Act*, 1908, i ndáil le cúram an linbh;

(c) ordú arna dhéanamh faoi alt 12 den Acht seo nó ordú chun an leanbh a thabhairt ar ais arna dhéanamh faoi Chuid II den Acht seo;

(d) ordú arna dhéanamh faoi alt 26 den Acht seo nó ordú chun cinneadh a bhaineann le coimeád a aithint nó a fhorghníomhú, arna dhéanamh faoi Chuid III den Acht seo,

nó fad a bheidh imeachtaí le haghaidh aon ordú acu sin ar feitheamh nó fad a bheidh iarratas ar aon ordú acu sin ar tí a dhéanta.

(2) I gcás go gcoinneofar leanbh faoin alt seo déanfaidh comhalta den Gharda Síochána, a luaithe is féidir—

(a) an leanbh a chur ar ais faoi choimeád duine (nach bord sláinte) a ndearna cúirt ordú dá dtagraítear i bhfo-alt (1) den alt seo ina fhabhar, mura mbeidh forais réasúnacha ag an gcomhalta chun a chreidiúint go ngníomhóidh an duine sin de shárú ar an ordú sin, nó

(b) i gcás go raibh an leanbh faoi chúram boird sláinte, an leanbh a thabhairt ar ais don bhord sin, nó

(c) i gcás seachas cás lena mbaineann mír (a) nó (b) den fho-alt seo, nó má chreideann an comhalta amhail mar a luaitear sa mhír sin (a), an leanbh a chur faoi chúram an bhoird sláinte don limistéar ina bhfuil an leanbh de thuras na huaire.

(3) I gcás go gcuirfidh comhalta den Gharda Síochána leanbh faoi chúram boird sláinte de réir fho-alt (2)(c) den alt seo, cuirfidh sé in iúl, nó cuirfidh sé faoi deara go gcuirfear in iúl, a luaithe is féidir—

(a) do thuismitheoir de chuid an linbh, nó

(b) do dhuine atá ag gníomhú in *loco parentis*, nó

(c) don Údarás Lárnach dá dtagraítear in alt 8 (i gcás lena mbaineann fo-alt (1)(c) den alt seo) nó alt 22 (i gcás lena mbaineann fo-alt (1)(d) den alt seo) den Acht seo,

gur cuireadh faoin gcúram sin é.

(4) I gcás go gcuirfear aon leanbh faoi chúram boird sláinte de réir fho-alt (2)(c) den alt seo, socróidh an bord sláinte cúram agus cóiríocht oiriúnach don leanbh, a bhféadfaidh sé a bheith i gceist ann an leanbh a chur i gcúram altramais nó i gcúram cónaithe, go dtí go mbreithneoidh an bord sláinte iarratas faoi fho-alt (5) den alt seo.

(5) I gcás go gcuirfear leanbh faoi chúram boird sláinte faoi fho-alt (2)(c) den alt seo, déanfaidh an bord sláinte iarratas, ag an gcéad suí eile den Chúirt Dúiche nó, i gcás nach bhfuil an chéad suí eile le bheith ann laistigh de thrí lá ón dáta a chuirtear an leanbh faoi chúram an bhoird sláinte, ag suí den Chúirt Dúiche a shocrófar go speisialta laistigh de na trí lá sin, ar threoracha maidir leis an leanbh a scaoileadh ón gcúram sin nó thairis sin i ndáil le cúram an linbh agus féadfaidh an Chúirt Dúiche cibé ordú a dhéanamh is dóigh léi is cuí sna himthosca maidir le coimeád an linbh agus, más iomchuí, le rochtain ar an leanbh, á chur aon ordú dá dtagraítear i bhfo-alt (1) den alt seo i ndáil leis an leanbh san áireamh agus gan dochar d'imeachtaí a bheidh ar feitheamh ná d'aon iarratas atá ar tí a dhéanta ar cheann de na horduithe sin i ndáil leis an leanbh.

(6) Aon ordú ina bhfuil treoir faoi fho-alt (5) den alt seo beidh an fheidhm chéanna aige agus an éifeacht chéanna leis amhail is dá mba ordú é arna dhéanamh ag an gCúirt Dúiche faoi alt 11 den Acht um Chaomhnóireacht Naíon, 1964.

(7) Féadfaidh an breitheamh den Chúirt Dúiche a bheidh sannta de thuras na huaire don dúiche cúirte dúiche ina gcónaíonn an leanbh, nó inar chónaigh an leanbh tráth ábhartha, dlinse na Cúirte Dúiche i leith imeachtaí faoi fho-alt (5) den alt seo a fheidhmiú agus i gcás nach mbeidh breitheamh don dúiche ina dtionscnaítear na himeachtaí ar fáil láithreach, féadfaidh aon bhreitheamh den Chúirt Dúiche ordú a dhéanamh.

CUID V

ILGHNÉITHEACH

Rialacha cúirte.

38.—(1) Déanfar imeachtaí faoi Chuid II nó III den Acht seo a thosú ar an tslí achomair.

(2) Féadfar socrú a dhéanamh le rialacha cúirte chun iarratas faoi Chuid II nó III den Acht seo a éisteacht go gasta.

39.—(1) San alt seo ciallaíonn “Acht 1989” an tAcht um Idirscaradh Breithiúnach agus Athchóiriú an Dlí Teaghlaigh, 1989. Leasú ar an Acht um Idirscaradh Breithiúnach agus Athchóiriú an Dlí Teaghlaigh, 1989.

(2) Na himeachtaí lena mbaineann fo-ailt (3) agus (4) d’alt 33 (seoladh imeachtaí teaghlaigh san Ard-Chúirt) d’Acht 1989, measfar go bhfolaíonn siad imeachtaí faoin Acht seo.

(3) Leasaítear leis seo alt 45 d’Acht 1989 tríd an méid seo a leanas a chur in ionad “agus faoin Acht um Stádas Leanaí, 1987” i bhfo-alt (1):

“, faoin Acht um Stádas Leanaí, 1987, agus faoin Acht um Fhuadach Leanaí agus Forghníomhú Orduithe Coimeádta, 1991.”.

40.—(1) Is de réir rogha na cúirte lena mbaineann a íocfar costais aon imeachtaí faoi aon fhoráil den Acht seo. Costais.

(2) Gan dochar do ghinearáltacht *fho-alt (1)* den alt seo, le linn do chúirt ordú a dhéanamh le haghaidh costas in aon imeachtaí faoin Acht seo—

(a) féadfaidh sí a ordú don duine a d’aistrigh nó a choinnigh leanbh, nó a chuir cosc le feidhmiú ceart rochtana i ndáil le leanbh, aon chaiteachais riachtanacha a thabhaigh an t-iarratasóir, nó a tabhaíodh thar a cheann, sna himeachtaí, lena n-áirítear caiteachais taistil, aon chostais a tabhaíodh nó íocaíochtaí a rinneadh chun an leanbh a aimsiú, costais ionadaíochta dlí an iarratasóra agus na costais a bhain leis an leanbh a thabhairt ar ais, a íoc;

(b) beidh aird aici, thairis sin, ar fhorálacha Airteagal 26 de Choinbhinsiún na Háige (i gcás imeachtaí faoi Chuid II den Acht seo a bheith i gceist) nó Airteagal 5.3 de Choinbhinsiún Lucsamburg (i gcás imeachtaí faoi Chuid III den Acht seo a bheith i gceist).

41.—(1) Féadfaidh an tAire rialacháin a dhéanamh chun éifeacht a thabhairt don Acht seo. Rialacháin.

(2) Gan dochar do ghinearáltacht *fho-alt (1)* den alt seo, féadfar, le rialacháin faoin alt seo, foirmeacha a fhorordú a bheidh le húsáid i dtaca le haon fhoráil de chuid an Achta seo.

Orduithe agus rialacháin a leagan faoi bhráid Thithe an Oireachtais.

42.—Déanfar gach ordú nó rialachán a dhéanfaidh an tAire faoin Acht seo (seachas ordú arna dhéanamh faoi alt 1(3) den Acht seo) a leagan faoi bhráid gach Tí den Oireachtas a luaite is féidir tar éis a dhéanta agus má dhéanann ceachtar Teach acu sin, laistigh den lá is fiche a shuífidh an Teach sin tar éis an t-ordú nó an rialachán a leagan faoina bhráid, rún a rith lena neamhnaítear an t-ordú nó an rialachán, beidh an t-ordú nó an rialachán ar neamhní dá réir sin, ach sin gan dochar do bhailíocht aon ní a rinneadh roimhe sin faoin ordú nó faoin rialachán.

Caiteachais.

43.—Déanfar na caiteachais a thabhoídh an tAire nó Údarás Lárnach arna cheapadh faoi alt 8 nó 22 den Acht seo ag riar an Achta seo a íoc, a mhéid a cheadóidh an tAire Airgeadais, as airgead a sholáthróidh an tOireachtas.

Alt 6

AN CHÉAD SCEIDEAL

TÉACS AN CHOINBHINSIÚIN AR NA GNÉITHE SIBHIALTA A BHAINNEANN LE
 FUADACH IDIRNÁISIÚNTA LEANAÍ

The States signatory to the present Convention

Firmly convinced that the interests of children are of paramount importance in matters relating to their custody,

Desiring to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access,

Have resolved to conclude a Convention to this effect, and have agreed upon the following provisions—

CHAPTER I

SCOPE OF THE CONVENTION

Article 1

The objects of the present Convention are:

- (a) to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and
- (b) to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.

Article 2

Contracting States shall take all appropriate measures to secure within their territories the implementation of the objects of the Convention. For this purpose they shall use the most expeditious procedures available.

Article 3

The removal or the retention of a child is to be considered wrongful where:

- (a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and
- (b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The rights of custody mentioned in sub-paragraph (a) above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

Article 4

The Convention shall apply to any child who was habitually resident in a Contracting State immediately before any breach of custody or access rights. The Convention shall cease to apply when the child attains the age of 16 years.

Article 5

For the purposes of this Convention:

- (a) 'rights of custody' shall include rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence;

[*Uimh. 6.*] *An tAcht um Fhuadach Leanai agus Forghníomhú Orduithe Coimeádta,* [1991.]
1991.

- (b) ‘rights of access’ shall include the right to take a child for a limited period of time to a place other than the child's habitual residence.

CHAPTER II

CENTRAL AUTHORITIES

Article 6

A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities.

Federal States, States with more than one system of law or States having autonomous territorial organizations shall be free to appoint more than one Central Authority and to specify the territorial extent of their powers. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which applications may be addressed for transmission to the appropriate Central Authority within that State.

Article 7

Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective State to secure the prompt return of children and to achieve the other objects of this Convention.

In particular, either directly or through any intermediary, they shall take all appropriate measures—

- (a) to discover the whereabouts of a child who has been wrongfully removed or retained;
- (b) to prevent further harm to the child or prejudice to interested parties by taking or causing to be taken provisional measures;
- (c) to secure the voluntary return of the child or to bring about an amicable resolution of the issues;

- (d) to exchange, where desirable, information relating to the social background of the child;
- (e) to provide information of a general character as to the law of their State in connection with the application of the Convention;
- (f) to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organizing or securing the effective exercise of rights of access;
- (g) where the circumstances so require, to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers;
- (h) to provide such administrative arrangements as may be necessary and appropriate to secure the safe return of the child;
- (i) to keep each other informed with respect to the operation of this Convention and, as far as possible, to eliminate any obstacles to its application.

CHAPTER III

RETURN OF CHILDREN

Article 8

Any person, institution or other body claiming that a child has been removed or retained in breach of custody rights may apply either to the Central Authority of the child's habitual residence or to the Central Authority of any other Contracting State for assistance in securing the return of the child.

The application shall contain—

- (a) information concerning the identity of the applicant, of the child and of the person alleged to have removed or retained the child;
- (b) where available, the date of birth of the child;

[Uimh. 6.] *An tAcht um Fhuadach Leanai agus Forghníomhú Orduithe Coimeádta,* [1991.]
1991.

- (c) the grounds on which the applicant's claim for return of the child is based;
- (d) all available information relating to the whereabouts of the child and the identity of the person with whom the child is presumed to be.

The application may be accompanied or supplemented by—

- (e) an authenticated copy of any relevant decision or agreement;
- (f) a certificate or an affidavit emanating from a Central Authority, or other competent authority of the State of the child's habitual residence, or from a qualified person, concerning the relevant law of that State;
- (g) any other relevant document.

Article 9

If the Central Authority which receives an application referred to in Article 8 has reason to believe that the child is in another Contracting State, it shall directly and without delay transmit the application to the Central Authority of that Contracting State and inform the requesting Central Authority, or the applicant, as the case may be.

Article 10

The Central Authority of the State where the child is shall take or cause to be taken all appropriate measures in order to obtain the voluntary return of the child.

Article 11

The judicial or administrative authorities of Contracting States shall act expeditiously in proceedings for the return of children.

If the judicial or administrative authority concerned has not reached a decision within six weeks from the date of commencement of the proceedings, the applicant or the Central Authority of the requested State, on its own initiative or if asked by the Central Authority of the requesting State, shall have the right to request a statement of the reasons for the delay.

If a reply is received by the Central Authority of the requested State, that Authority shall transmit the reply to the Central Authority of the requesting State, or to the applicant, as the case may be.

Article 12

Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith.

The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year referred to in the preceding paragraph, shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment.

Where the judicial or administrative authority in the requested State has reason to believe that the child has been taken to another State, it may stay the proceedings or dismiss the application for the return of the child.

Article 13

Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that—

- (a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or
- (b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence.

Article 14

In ascertaining whether there has been a wrongful removal or retention within the meaning of Article 3, the judicial or administrative authorities of the requested State may take notice directly of the law of, and of judicial or administrative decisions, formally recognized or not in the State of the habitual residence of the child, without recourse to the specific procedures for the proof of that law or for the recognition of foreign decisions which would otherwise be applicable.

Article 15

The judicial or administrative authorities of a Contracting State may, prior to the making of an order for the return of the child, request that the applicant obtain from the authorities of the State of the habitual residence of the child a decision or other determination that the removal or retention was wrongful within the meaning of Article 3 of the Convention, where such a decision or determination may be obtained in that State. The Central Authorities of the Contracting States shall so far as practicable assist applicants to obtain such a decision or determination.

Article 16

After receiving notice of a wrongful removal or retention of a child in the sense of Article 3, the judicial or administrative authorities of a Contracting State to which the child has been removed or in which it has been retained shall not decide on the merits of rights of custody until it has been determined that the child is not to be returned under this Convention or unless an application under this Convention is not lodged within a reasonable time following receipt of the notice.

Article 17

The sole fact that a decision relating to custody has been given in or is entitled to recognition in the requested State shall not be a ground for refusing to return a child under this Convention, but the judicial or

administrative authorities of the requested State may take account of the reasons for that decision in applying this Convention.

Article 18

The provisions of this Chapter do not limit the power of a judicial or administrative authority to order the return of the child at any time.

Article 19

A decision under this Convention concerning the return of the child shall not be taken to be a determination on the merits of any custody issue.

Article 20

The return of the child under the provisions of Article 12 may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms.

CHAPTER IV

RIGHT OF ACCESS

Article 21

An application to make arrangements for organizing or securing the effective exercise of rights of access may be presented to the Central Authorities of the Contracting States in the same way as an application for the return of a child.

The Central Authorities are bound by the obligations of co-operation which are set forth in Article 7 to promote the peaceful enjoyment of access rights and the fulfilment of any conditions to which the exercise of those rights may be subject. The Central Authorities shall take steps to remove, as far as possible, all obstacles to the exercise of such rights.

The Central Authorities, either directly or through intermediaries, may initiate or assist in the institution of proceedings with a view to organizing or protecting these rights and securing respect for the conditions to which the exercise of these rights may be subject.

CHAPTER V

GENERAL PROVISIONS

Article 22

No security, bond or deposit, however described, shall be required to guarantee the payment of costs and expenses in the judicial or administrative proceedings falling within the scope of this Convention.

Article 23

No legalization or similar formality may be required in the context of this Convention.

Article 24

Any application, communication or other document sent to the Central Authority of the requested State shall be in the original language, and shall be accompanied by a translation into the official language or one of the official languages of the requested State or, where that is not feasible, a translation into French or English.

However, a Contracting State may, by making a reservation in accordance with Article 42, object to the use of either French or English, but not both, in any application, communication or other document sent to its Central Authority.

Article 25

Nationals of the Contracting States and persons who are habitually resident within those States shall be entitled in matters concerned with the application of this Convention to legal aid and advice in any other Contracting State on the same conditions as if they themselves were nationals of and habitually resident in that State.

Article 26

Each Central Authority shall bear its own costs in applying this Convention.

Central Authorities and other public services of Contracting States shall not impose any charges in relation to applications submitted under

this Convention. In particular, they may not require any payment from the applicant towards the costs and expenses of the proceedings or, where applicable, those arising from the participation of legal counsel or advisers. However, they may require the payment of the expenses incurred or to be incurred in implementing the return of the child.

However, a Contracting State may, by making a reservation in accordance with Article 42, declare that it shall not be bound to assume any costs referred to in the preceding paragraph resulting from the participation of legal counsel or advisers or from court proceedings, except in so far as those costs may be covered by its system of legal aid and advice.

Upon ordering the return of a child or issuing an order concerning rights of access under this Convention, the judicial or administrative authorities may, where appropriate, direct the person who removed or retained the child, or who prevented the exercise of rights of access, to pay necessary expenses incurred by or on behalf of the applicant, including travel expenses, any costs incurred or payments made for locating the child, the costs of legal representation of the applicant, and those of returning the child.

Article 27

When it is manifest that the requirements of this Convention are not fulfilled or that the application is otherwise not well founded, a Central Authority is not bound to accept the application. In that case, the Central Authority shall forthwith inform the applicant or the Central Authority through which the application was submitted, as the case may be, of its reasons.

Article 28

A Central Authority may require that the application be accompanied by a written authorization empowering it to act on behalf of the applicant, or to designate a representative so to act.

Article 29

This Convention shall not preclude any person, institution or body who claims that there has been a breach of custody or access rights within the meaning of Article 3 or 21 from applying directly to the judicial or administrative authorities of a Contracting State, whether or not under the provisions of this Convention.

Article 30

Any application submitted to the Central Authorities or directly to the judicial or administrative authorities of a Contracting State in accordance with the terms of this Convention, together with documents and any other information appended thereto or provided by a Central Authority, shall be admissible in the courts or administrative authorities of the Contracting States.

Article 31

In relation to a State which in matters of custody of children has two or more systems of law 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 the State of habitual residence shall be construed as referring to the law of the territorial unit in that State where the child habitually resides.

Article 32

In relation to a State which in matters of custody of children 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 33

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

Article 34

This Convention shall take priority in matters within its scope over the Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors, as between Parties to both Conventions. Otherwise the present Convention shall not restrict the application of an international instrument in force between the State of origin and the State addressed or other law of the State addressed for

the purposes of obtaining the return of a child who has been wrongfully removed or retained or of organizing access rights.

Article 35

This Convention shall apply as between Contracting States only to wrongful removals or retentions occurring after its entry into force in those States.

Where a declaration has been made under Article 39 or 40 the reference in the preceding paragraph to a Contracting State shall be taken to refer to the territorial unit or units in relation to which this Convention applies.

Article 36

Nothing in this Convention shall prevent two or more Contracting States, in order to limit the restrictions to which the return of the child may be subject, from agreeing among themselves to derogate from any provisions of this Convention which may imply such a restriction.

CHAPTER VI

FINAL CLAUSES

Article 37

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 Fourteenth Session.

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.

Article 38

Any other State may accede to the Convention.

The instruments of accession shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

The Convention shall enter into force for a State acceding to it on the first day of the third calendar month after the deposit of its instrument of accession.

The accession will have effect only as regards the relations between the acceding State and such Contracting States as will have declared their acceptance of the accession. Such a declaration will also have to be made by any Member State ratifying, accepting or approving the Convention after an accession. Such declaration shall be deposited at the Ministry of Foreign Affairs of the Kingdom of the Netherlands; this Ministry shall forward, through diplomatic channels, a certified copy to each of the Contracting States.

The Convention will enter into force as between the acceding State and the State that has declared its acceptance of the accession on the first day of the third calendar month after the deposit of the declaration of acceptance.

Article 39

Any State may, at the time of signature, ratification, acceptance, approval or accession, declare that the Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect at the time the Convention enters into force for that State.

Such declaration, as well as any subsequent extension, shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

Article 40

If a Contracting State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this 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. Any such declaration shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands and shall state expressly the territorial units to which the Convention applies.

Article 41

Where a Contracting State has a system of government under which executive, judicial and legislative powers are distributed between central and other authorities within that State, its signature or ratification, acceptance or approval of, or accession to this Convention, or its making of any declaration in terms of Article 40 shall carry no implication as to the internal distribution of powers within that State.

Article 42

Any State may, not later than the time of ratification, acceptance, approval or accession, or at the time of making a declaration in terms of Article 39 or 40, make one or both of the reservations provided for in Article 24 and Article 26, third paragraph. No other reservation shall be permitted.

Any State may at any time withdraw a reservation it has made. The withdrawal shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

The reservation shall cease to have effect on the first day of the third calendar month after the notification referred to in the preceding paragraph.

Article 43

The Convention shall enter into force on the first day of the third calendar month after the deposit of the third instrument of ratification, acceptance, approval or accession referred to in Articles 37 and 38.

Thereafter the Convention shall enter into force—

(1) for each State ratifying, accepting, approving or acceding to it subsequently, on the first day of the third calendar month after the deposit of its instrument of ratification, acceptance, approval or accession;

(2) for any territory or territorial unit to which the Convention has been extended in conformity with Article 39 or 40, on the first day of the third calendar month after the notification referred to in that Article.

Article 44

The Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 43 even for States which subsequently have ratified, accepted, approved it or acceded to it.

If there has been no denunciation, it shall be renewed tacitly every five years.

Any denunciation shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands at least six months before the expiry of the five year period. It may be limited to certain of the territories or territorial units to which the Convention applies.

The denunciation shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other Contracting States.

Article 45

The Ministry of Foreign Affairs of the Kingdom of the Netherlands shall notify the States Members of the Conference, and the States which have acceded in accordance with Article 38, of the following:—

(1) the signatures and ratifications, acceptances and approvals referred to in Article 37;

(2) the accessions referred to in Article 38;

(3) the date on which the Convention enters into force in accordance with Article 43;

(4) the extensions referred to in Article 39;

(5) the declarations referred to in Articles 38 and 40;

(6) the reservations referred to in Article 24 and Article 26, third paragraph, and the withdrawals referred to in Article 42;

(7) the denunciations referred to in Article 44.

In Witness Whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at The Hague, on the 25th day of October, 1980, 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 Fourteenth Session and to each other State having participated in the preparation of this Convention at this Session.

(Here follow signatures on behalf of certain States.)

AN DARA SCEIDEAL

Alt 21

TÉACS AN CHOINBHINSIÚIN EORPAIGH AR AITHINT AGUS FORGHNÍOMHÚ
CINNÍ MAIDIR LE COIMEÁD LEANAÍ AGUS AR CHOIMEÁD LEANAÍ A
ATHBHUNÚ

The member States of the Council of Europe, signatory hereto,

Recognising that in the member States of the Council of Europe the welfare of the child is of overriding importance in reaching decisions concerning his custody;

Considering that the making of arrangements to ensure that decisions concerning the custody of a child can be more widely recognised and enforced will provide greater protection of the welfare of children;

Considering it desirable, with this end in view, to emphasise that the right of access of parents is a normal corollary to the right of custody;

Noting the increasing number of cases where children have been improperly removed across an international frontier and the difficulties of securing adequate solutions to the problems caused by such cases;

Desirous of making suitable provision to enable the custody of children which has been arbitrarily interrupted to be restored;

Convinced of the desirability of making arrangements for this purpose answering to different needs and different circumstances;

Desiring to establish legal co-operation between their authorities,

Have agreed as follows:

Article 1

For the purposes of this Convention:

- a. child* means a person of any nationality, so long as he is under 16 years of age and has not the right to decide on his own place of residence under the law of his habitual residence, the law of his nationality or the internal law of the State addressed;
- b. authority* means a judicial or administrative authority;
- c. decision relating to custody* means a decision of an authority in so far as it relates to the care of the person of the child, including the right to decide on the place of his residence, or to the right of access to him;
- d. improper removal* means the removal of a child across an international frontier in breach of a decision relating to his custody which has been given in a Contracting State and which is enforceable in such a State; improper removal also includes:
 - i. the failure to return a child across an international frontier at the end of a period of the exercise of the right of access to this child or at the end of any other temporary stay in a territory other than that where the custody is exercised;
 - ii. a removal which is subsequently declared unlawful within the meaning of Article 12.

PART I

Central authorities

Article 2

1. Each Contracting State shall appoint a central authority to carry out the functions provided for by this Convention.

2. Federal States and States with more than one legal system shall be free to appoint more than one central authority and shall determine the extent of their competence.

3. The Secretary General of the Council of Europe shall be notified of any appointment under this Article.

Article 3

1. The central authorities of the Contracting States shall co-operate with each other and promote co-operation between the competent authorities in their respective countries. They shall act with all necessary despatch.

2. With a view to facilitating the operation of this Convention, the central authorities of the Contracting States:

- a.* shall secure the transmission of requests for information coming from competent authorities and relating to legal or factual matters concerning pending proceedings;
- b.* shall provide each other on request with information about their law relating to the custody of children and any changes in that law;
- c.* shall keep each other informed of any difficulties likely to arise in applying the Convention and, as far as possible, eliminate obstacles to its application.

Article 4

1. Any person who has obtained in a Contracting State a decision relating to the custody of a child and who wishes to have that decision recognised or enforced in another Contracting State may submit an application for this purpose to the central authority in any Contracting State.

2. The application shall be accompanied by the documents mentioned in Article 13.

3. The central authority receiving the application, if it is not the central authority in the State addressed, shall send the documents directly and without delay to that central authority.

4. The central authority receiving the application may refuse to intervene where it is manifestly clear that the conditions laid down by this Convention are not satisfied.

5. The central authority receiving the application shall keep the applicant informed without delay of the progress of his application.

Article 5

1. The central authority in the State addressed shall take or cause to be taken without delay all steps which it considers to be appropriate, if necessary by instituting proceedings before its competent authorities, in order:

- a.* to discover the whereabouts of the child;
- b.* to avoid, in particular by any necessary provisional measures, prejudice to the interests of the child or of the applicant;
- c.* to secure the recognition or enforcement of the decision;
- d.* to secure the delivery of the child to the applicant where enforcement is granted;
- e.* to inform the requesting authority of the measures taken and their results.

2. Where the central authority in the State addressed has reason to believe that the child is in the territory of another Contracting State it shall send the documents directly and without delay to the central authority of that State.

3. With the exception of the cost of repatriation, each Contracting State undertakes not to claim any payment from an applicant in respect of any measures taken under paragraph 1 of this Article by the central authority of that State on the applicant's behalf, including the costs of proceedings and, where applicable the costs incurred by the assistance of a lawyer.

4. If recognition or enforcement is refused, and if the central authority of the State addressed considers that it should comply with a request by the applicant to bring in that State proceedings concerning the substance of the case, that authority shall use its best endeavours to secure the representation of the applicant in the proceedings under conditions no less favourable than those available to a person who is resident in and a

national of that State and for this purpose it may, in particular, institute proceedings before its competent authorities.

Article 6

1. Subject to any special agreements made between the central authorities concerned and to the provisions of paragraph 3 of this Article:

- (a) communications to the central authority of the State addressed shall be made in the official language or in one of the official languages of that State or be accompanied by a translation into that language;
- (b) the central authority of the State addressed shall nevertheless accept communications made in English or in French or accompanied by a translation into one of these languages.

2. Communications coming from the central authority of the State addressed, including the results of enquiries carried out, may be made in the official language or one of the official languages of that State or in English or French.

3. A Contracting State may exclude wholly or partly the provisions of paragraph 1 (b) of this Article. When a Contracting State has made this reservation any other Contracting State may also apply the reservation in respect of that State.

PART II

Recognition and enforcement of decisions and restoration of custody of children

Article 7

A decision relating to custody given in a Contracting State shall be recognised and, where it is enforceable in the State of origin, made enforceable in every other Contracting State.

Article 8

1. In the case of an improper removal, the central authority of the State addressed shall cause steps to be taken forthwith to restore the custody of the child where:

- a.* at the time of the institution of the proceedings in the State where the decision was given or at the time of the improper removal, if earlier, the child and his parents had as their sole nationality the nationality of that State and the child had his habitual residence in the territory of that State, and
- b.* a request for the restoration was made to a central authority within a period of six months from the date of the improper removal.

2. If, in accordance with the law of the State addressed, the requirements of paragraph 1 of this Article cannot be complied with without recourse to a judicial authority, none of the grounds of refusal specified in this Convention shall apply to the judicial proceedings.

3. Where there is an agreement officially confirmed by a competent authority between the person having the custody of the child and another person to allow the other person a right of access, and the child, having been taken abroad, has not been restored at the end of the agreed period to the person having the custody, custody of the child shall be restored in accordance with paragraphs 1.b and 2 of this Article. The same shall apply in the case of a decision of the competent authority granting such a right to a person who has not the custody of the child.

Article 9

1. In cases of improper removal, other than those dealt with in Article 8, in which an application has been made to a central authority within a period of six months from the date of the removal, recognition and enforcement may be refused only if:

- a.* in the case of a decision given in the absence of the defendant or his legal representative, the defendant was not duly served with the document which instituted the proceedings or an equivalent document in sufficient time to enable him to arrange his defence; but such a failure to effect service cannot constitute a ground for refusing recognition or enforcement where service was not

effected because the defendant had concealed his whereabouts from the person who instituted the proceedings in the State of origin:

- b. in the case of a decision given in the absence of the defendant or his legal representative, the competence of the authority giving the decision was not founded:
 - i. on the habitual residence of the defendant, or
 - ii. on the last common habitual residence of the child's parents, at least one parent being still habitually resident there, or
 - iii. on the habitual residence of the child;
- c. the decision is incompatible with a decision relating to custody which became enforceable in the State addressed before the removal of the child, unless the child has had his habitual residence in the territory of the requesting State for one year before his removal.

2. Where no application has been made to a central authority, the provisions of paragraph 1 of this Article shall apply equally, if recognition and enforcement are requested within six months from the date of the improper removal.

3. In no circumstances may the foreign decision be reviewed as to its substance.

Article 10

1. In cases other than those covered by Articles 8 and 9, recognition and enforcement may be refused not only on the grounds provided for in Article 9 but also on any of the following grounds:

- a. if it is found that the effects of the decision are manifestly incompatible with the fundamental principles of the law relating to the family and children in the State addressed;
- b. if it is found that by reason of a change in the circumstances including the passage of time not including a mere change in the residence of the child after an improper removal, the effects of the original decision are manifestly no longer in accordance with the welfare of the child;

- c. if at the time when the proceedings were instituted in the State of origin:
 - i. the child was a national of the State addressed or was habitually resident there and no such connection existed with the State of origin:
 - ii. the child was a national both of the State of origin and of the State addressed and was habitually resident in the State addressed:
 - d. if the decision is incompatible with a decision given in the State addressed or enforceable in that State, after being given in a third State, pursuant to proceedings begun before the submission of the request for recognition or enforcement, and if the refusal is in accordance with the welfare of the child.
2. In the same cases, proceedings for recognition or enforcement may be adjourned on any of the following grounds:
- a. if an ordinary form of review of the original decision has been commenced;
 - b. if proceedings relating to the custody of the child, commenced before the proceedings in the State of origin were instituted, are pending in the State addressed;
 - c. if another decision concerning the custody of the child is the subject of proceedings for enforcement or of any other proceedings concerning the recognition of the decision.

Article 11

1. Decisions on rights of access and provisions of decisions relating to custody which deal with the right of access shall be recognised and enforced subject to the same conditions as other decisions relating to custody.
2. However, the competent authority of the State addressed may fix the conditions for the implementation and exercise of the right of access taking into account, in particular, undertakings given by the parties on this matter.

3. Where no decision on the right of access has been taken or where recognition or enforcement of the decision relating to custody is refused, the central authority of the State addressed may apply to its competent authorities for a decision on the right of access, if the person claiming a right of access so requests.

Article 12

Where, at the time of the removal of a child across an international frontier, there is no enforceable decision given in a Contracting State relating to his custody, the provisions of this Convention shall apply to any subsequent decision, relating to the custody of that child and declaring the removal to be unlawful, given in a Contracting State at the request of any interested person.

PART III

PROCEDURE

Article 13

1. A request for recognition or enforcement in another Contracting State of a decision relating to custody shall be accompanied by:

- a.* a document authorising the central authority of the State addressed to act on behalf of the applicant or to designate another representative for that purpose;
- b.* a copy of the decision which satisfies the necessary conditions of authenticity;
- c.* in the case of a decision given in the absence of the defendant or his legal representative, a document which establishes that the defendant was duly served with the document which instituted the proceedings or an equivalent document;
- d.* if applicable, any document which establishes that, in accordance with the law of the State of origin, the decision is enforceable;

[Uimh. 6.] *An tAcht um Fhuadach Leanaí agus Forghníomhú Orduithe Coimeádta,* [1991.]
1991.

- e. if possible, a statement indicating the whereabouts or likely whereabouts of the child in the State addressed;
- f. proposals as to how the custody of the child should be restored.

2. The documents mentioned above shall, where necessary, be accompanied by a translation according to the provisions laid down in Article 6.

Article 14

Each Contracting State shall apply a simple and expeditious procedure for recognition and enforcement of decisions relating to the custody of a child. To that end it shall ensure that a request for enforcement may be lodged by simple application.

Article 15

1. Before reaching a decision under paragraph 1 b of Article 10, the authority concerned in the State addressed:

- a. shall ascertain the child's views unless this is impracticable having regard in particular to his age and understanding; and
- b. may request that any appropriate enquiries be carried out.

2. The cost of enquiries in any Contracting State shall be met by the authorities of the State where they are carried out.

Requests for enquiries and the results of enquiries may be sent to the authority concerned through the central authorities.

Article 16

For the purposes of this Convention, no legalisation or any like formality may be required.

PART IV

RESERVATIONS

Article 17

1. A Contracting State may make a reservation that, in cases covered by Articles 8 and 9 or either of these Articles, recognition and enforcement of decisions relating to custody may be refused on such of the grounds provided under Article 10 as may be specified in the reservation.

2. Recognition and enforcement of decisions given in a Contracting State which has made the reservation provided for in paragraph 1 of this Article may be refused in any other Contracting State on any of the additional grounds referred to in that reservation.

Article 18

A Contracting State may make a reservation that it shall not be bound by the provisions of Article 12. The provisions of this Convention shall not apply to decisions referred to in Article 12 which have been given in a Contracting State which has made such a reservation.

PART V

OTHER INSTRUMENTS

Article 19

This Convention shall not exclude the possibility of relying on any other international instrument in force between the State of origin and the State addressed or on any other law of the State addressed not derived from an international agreement for the purpose of obtaining recognition or enforcement of a decision.

Article 20

1. This Convention shall not affect any obligations which a Contracting State may have towards a non-contracting State under an international instrument dealing with matters governed by this Convention.

2. When two or more Contracting States have enacted uniform laws in relation to custody of children or created a special system of recognition or enforcement of decisions in this field, or if they should do so in the future, they shall be free to apply, between themselves, those laws or that system in place of this Convention or any part of it. In order to avail themselves of this provision the States shall notify their decision to the Secretary General of the Council of Europe. Any alteration or revocation of this decision must also be notified.

PART VI

FINAL CLAUSES

Article 21

This Convention shall be open for signature by the member States of the Council of Europe. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 22

1. This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which three member States of the Council of Europe have expressed their consent to be bound by the Convention in accordance with the provisions of Article 21.

2. In respect of any member State which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

Article 23

1. After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may invite any State not a member of the Council to accede to this Convention, by a decision taken by the majority provided for by Article 20.d of the Statute and by the unanimous vote of the representatives of the Contracting States entitled to sit on the Committee.

2. In respect of any acceding State, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

Article 24

1. Any State may at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.

2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration. In respect of such territory, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt by the Secretary General of such declaration.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of such notification by the Secretary General.

Article 25

1. A State which has two or more territorial units in which different systems of law apply in matters of custody of children and of recognition and enforcement of decisions relating to custody may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that this Convention shall apply to all its territorial units or to one or more of them.

2. Such a State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territorial unit specified in the declaration. In respect of such territorial unit the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt by the Secretary General of such declaration.

3. Any declaration made under the two preceding paragraphs may, in respect of any territorial unit specified in such declaration, be withdrawn

by notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of such notification by the Secretary General.

Article 26

1. In relation to a State which has in matters of custody two or more systems of law of territorial application:

- a.* reference to the law of a person's habitual residence or to the law of a person's nationality shall be construed as referring to the system of law determined by the rules in force in that State or, if there are no such rules, the system of law with which the person concerned is most closely connected;
- b.* reference to the State of origin or to the State addressed shall be construed as referring, as the case may be, to the territorial unit where the decision was given or to the territorial unit where recognition or enforcement of the decision or restoration of custody is requested.

2. Paragraph 1.*a* of this Article also applies *mutatis mutandis* to States which have in matters of custody two or more systems of law of personal application.

Article 27

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it avails itself of one or more of the reservations provided for in paragraph 3 of Article 6, Article 17 and Article 18 of this Convention. No other reservation may be made.

2. Any Contracting State which has made a reservation under the preceding paragraph may wholly or partly withdraw it by means of a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall take effect on the date of receipt of such notification by the Secretary General.

Article 28

At the end of the third year following the date of the entry into force of this Convention and, on his own initiative, at any time after this

date, the Secretary General of the Council of Europe shall invite the representatives of the central authorities appointed by the Contracting States to meet in order to study and to facilitate the functioning of the Convention. Any member State of the Council of Europe not being a party to the Convention may be represented by an observer. A report shall be prepared on the work of each of these meetings and forwarded to the Committee of Ministers of the Council of Europe for information.

Article 29

1. Any Party may at any time denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.

2. Such denunciation shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of the notification by the Secretary General.

Article 30

The Secretary General of the Council of Europe shall notify the member States of the Council and any State which has acceded to this Convention, of:

- a.* any signature;
- b.* the deposit of any instrument of ratification, acceptance, approval or accession;
- c.* any date of entry into force of this Convention in accordance with Articles 22, 23, 24 and 25;
- d.* any other act, notification or communication relating to this Convention.

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

[Uimh. 6.] *An tAcht um Fhuadach Leanai agus* [1991.]
Forghníomhú Orduithe Coimeádta,
 1991.

Done at Luxembourg, the 20th day of May 1980, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe and to any State invited to accede to this Convention.

(Here follow signatures on behalf of certain States.)