

The Convention was
previously published
as Miscellaneous
No. 2 (1976)
Cmd. 6358.

PRIVATE
INTERNATIONAL
LAW



Treaty Series No. 43 (1981)

European Convention on the Legal Status of Children born out of Wedlock

Strasbourg, 15 October 1975

[The United Kingdom instrument of ratification was deposited on 24 February 1981
and the Convention entered into force for the United Kingdom on 25 May 1981]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
July 1981*

LONDON
HER MAJESTY'S STATIONERY OFFICE

£1·10 net

Cmd. 8287

**EUROPEAN CONVENTION
ON THE LEGAL STATUS
OF CHILDREN BORN OUT OF WEDLOCK**

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

Considering that the aim of the Council of Europe is to achieve a greater unity between its Members, in particular by the adoption of common rules in the field of law;

Noting that in a great number of member States efforts have been, or are being, made to improve the legal status of children born out of wedlock by reducing the differences between their legal status and that of children born in wedlock which are to the legal or social disadvantage of the former;

Recognising that wide disparities in the laws of member States in this field still exist;

Believing that the situation of children born out of wedlock should be improved and that the formulation of certain common rules concerning their legal status would assist this objective and at the same time would contribute to a harmonisation of the laws of the member States in this field;

Considering however that it is necessary to allow progressive stages for those States which consider themselves unable to adopt immediately certain rules of this Convention,

Have agreed as follows:

ARTICLE 1

Each Contracting Party undertakes to ensure the conformity of its law with the provisions of this Convention and to notify the Secretary General of the Council of Europe of the measures taken for that purpose.

ARTICLE 2

Maternal affiliation of every child born out of wedlock shall be based solely on the fact of the birth of the child.

ARTICLE 3

Paternal affiliation of every child born out of wedlock may be evidenced or established by voluntary recognition or by judicial decision.

ARTICLE 4

The voluntary recognition of paternity may not be opposed or contested in so far as the internal law provides for these procedures unless the person seeking to recognise or having recognised the child is not the biological father.

ARTICLE 5

In actions relating to paternal affiliation scientific evidence which may help to establish or disprove paternity shall be admissible.

ARTICLE 6

1. The father and mother of a child born out of wedlock shall have the same obligation to maintain the child as if it were born in wedlock.

2. Where a legal obligation to maintain a child born in wedlock falls on certain members of the family of the father or mother, this obligation shall also apply for the benefit of a child born out of wedlock.

ARTICLE 7

1. Where the affiliation of a child born out of wedlock has been established as regards both parents, parental authority may not be attributed automatically to the father alone.

2. There shall be power to transfer parental authority; cases of transfer shall be governed by the internal law.

ARTICLE 8

Where the father or mother of a child born out of wedlock does not have parental authority over or the custody of the child, that parent may obtain a right of access to the child in appropriate cases.

ARTICLE 9

A child born out of wedlock shall have the same right of succession in the estate of its father and its mother and of a member of its father's or mother's family, as if it had been born in wedlock.

ARTICLE 10

The marriage between the father and mother of a child born out of wedlock shall confer on the child the legal status of a child born in wedlock.

ARTICLE 11

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

2. This Convention shall enter into force three months after the date of the deposit of the third instrument of ratification, acceptance or approval.⁽¹⁾

3. In respect of a signatory State ratifying, accepting or approving subsequently, the Convention shall come into force three months after the date of the deposit of its instrument of ratification, acceptance or approval.

ARTICLE 12

1. After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may invite any non-member State to accede to this Convention.

2. Such accession shall be effected by depositing with the Secretary General of the Council of Europe an instrument of accession which shall take effect three months after the date of its deposit.

ARTICLE 13

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, when depositing its instrument of ratification, acceptance, approval or accession or at any later date, by declaration addressed to the Secretary General of the Council of Europe, extend this Convention to any other territory or territories specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings.

3. Any declaration made in pursuance of the preceding paragraph may, in respect of any territory mentioned in such declaration, be withdrawn according to the procedure laid down in Article 15 of this Convention.

ARTICLE 14

1. Any State may, at the time of signature, or when depositing its instrument of ratification, acceptance, approval or accession or when making a declaration in accordance with paragraph 2 of Article 13 of this Convention, make not more than three reservations in respect of the provisions of Articles 2 to 10 of the Convention.

Reservations of a general nature shall not be permitted; each reservation may not affect more than one provision.

2. A reservation shall be valid for five years from the entry into force of this Convention for the Contracting Party concerned. It may be renewed for successive periods of five years by means of a declaration addressed to the Secretary General of the Council of Europe before the expiration of each period.

(1) The Convention entered into force on 11 August 1978.

3. Any Contracting Party may wholly or partly withdraw a reservation it has made in accordance with the foregoing paragraphs by means of a declaration addressed to the Secretary General of the Council of Europe, which shall become effective as from the date of its receipt.

ARTICLE 15

1. Any Contracting Party may, in so far as it is concerned, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.

2. Such denunciation shall take effect six months after the date of receipt by the Secretary General of such notification.

ARTICLE 16

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) any deposit of an instrument of ratification, acceptance, approval or accession;
- (c) any date of entry into force of this Convention in accordance with Article 11 thereof;
- (d) any notification received in pursuance of the provisions of Article 1;
- (e) any declaration received in pursuance of the provisions of paragraphs 2 and 3 of Article 13;
- (f) any reservation made in pursuance of the provisions of paragraph 1 of Article 14;
- (g) the renewal of any reservation carried out in pursuance of the provisions of paragraph 2 of Article 14;
- (h) the withdrawal of any reservation carried out in pursuance of the provisions of paragraph 3 of Article 14;
- (i) any notification received in pursuance of the provisions of Article 15 and the date on which denunciation takes effect.

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

Done at Strasbourg, this 15th day of October 1975, in English and in French, both texts being equally authoritative, in a single copy, which shall remain deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each of the signatory and acceding States.

SIGNATURES AND RATIFICATIONS

<i>State</i>	<i>Date of Signature</i>	<i>Date of Ratification</i>
Austria	19 August 1976*	28 May 1980*
Cyprus	1 December 1978	11 July 1979
Denmark	15 October 1975	18 January 1979*
France	2 September 1977	
Iceland	27 January 1977	
Italy	11 February 1981*	
Luxembourg	15 October 1975*	
Norway	15 October 1975	19 August 1976
Portugal	22 November 1979	
Sweden	15 October 1975	8 June 1976
Switzerland	27 January 1977	10 May 1978
United Kingdom	15 October 1975	24 February 1981*

* For Declarations, Reservations and statements on territorial application see below.

RESERVATIONS AND DECLARATIONS

AUSTRIA

On signing the Convention the Government of the Republic of Austria made the following reservation which was repeated on ratification:

“Die Republik Österreich behält sich gemäss Artikel 14 Absatz 1 des Übereinkommens das Recht vor, dem unehelichen Kind nicht nachh Artikel 9 des Übereinkommens ein dem Erbrecht des ehelichen Kindes gleiches Erbrecht zum Nachlass seines Vatters und der Verwandten seines Vaters zuzuerkennen.”

[Translation]

“In pursuance of Article 14.1 of the Convention, the Republic of Austria reserves the right not to accord to a child born out of wedlock, as provided for in Article 9 of the Convention, the same right of succession in the estate of its father and of a member of its father's family, as if it had been born in wedlock.”

DENMARK

The Instrument of Ratification for the Government of Denmark stated that the Convention shall not apply to the Faroe Islands and Greenland.

ITALY

On signing the Convention the Government of Italy made the following reservations:

“1. The provisions of Article 4 of the Convention shall not preclude the application of different domestic Italian rules governing the subject.

2. As regards Article 8 of the Convention, the right of access may not be granted to a person who no longer has parental authority over the minor as a result of the adoption of the latter by a third party.

LUXEMBOURG

On signing the Convention the Government of Luxembourg made the following reservation:

“En application de l'article 14, paragraphe 1, le Gouvernement luxembourgeois se réserve d'appliquer l'article 2 de la Convention de façon à ne faire découler la filiation maternelle automatiquement que du fait de l'indication du nom de la mère dans l'acte de naissance, étant toutefois entendu que la filiation maternelle pourra néanmoins encore être établie judiciairement par voie d'action en recherche de filiation maternelle s'il est prouvé par toutes voies de droit que l'enfant est celui dont la mère prétendue a accouché.”

[Translation]

“In pursuance of Article 14, paragraph 1, the Luxembourg Government reserves the right to apply Article 2 of the Convention in such a way that maternal affiliation follows automatically only from indication of the mother's name on the child's birth certificate, provided however that maternal affiliation may nevertheless be established judicially by means of a maternal affiliation suit if it be proved by due legal process that the child concerned is the one to whom the alleged mother gave birth.”

UNITED KINGDOM

On ratifying the Convention the Government of the United Kingdom made the following reservations and declaration:

“In accordance with Article 14, paragraph 1 of the Convention the Government of the United Kingdom reserve the right:

- (a) not to apply Article 6, paragraph 1 of the Convention in relation to England and Wales and Northern Ireland;
- (b) not to apply Article 6, paragraph 2 in relation to Scotland, and
- (c) to apply Article 9 only in relation to the estates of the father and mother of a child born out of wedlock.

In accordance with Article 13, paragraph 2 of the Convention, it is hereby declared that the Convention shall extend to the Bailiwick of Guernsey, Herm and Jethou, with the reservation, made in accordance with Article 14, paragraph 1 of the Convention, that Article 9 shall apply in Guernsey, Herm and Jethou only in relation to the testate succession in the estate of a father or mother of a child born out of wedlock.

The Government of the United Kingdom also wish to declare their understanding that neither Article 9 nor Article 10 of the Convention is to be interpreted as conferring upon a child born out of wedlock any right of succession to the Crown or a title of honour or any right of inheritance to an entailed interest.”