STATUTORY INSTRUMENTS

# 1978 No. 1431

# CHILDREN AND YOUNG PERSONS

## The Convention Adoption (Austria and Switzerland) Order 1978

*Made* - - - 13*th September* 1978

*Coming into Operation* 23*rd October* 1978

The Secretary of State for Social Services, in exercise of the powers conferred on him by sections 7(4) and 11(1) of the Adoption Act 1968(**a**) and sections 24(8) and 107(1) of the Children Act 1975(**b**) and of all other powers enabling him in that behalf, hereby makes the following order:—

*Citation, commencement, extent and interpretation*

**1.**—(1) This order may be cited as the Convention Adoption (Austria and Switzerland) Order 1978 and shall come into operation on 23rd October 1978.

(2) This order shall not apply to Scotland.

(3) The rules for the construction of Acts of Parliament contained in the Interpretation Act 1889(**c**) shall apply for the purposes of the interpretation of this order as they apply for the purposes of the interpretation of an Act of Parliament.

*Designation of "Convention country"*

**2.** For the purposes of the Adoption Act 1968 and the Children Act 1975, Austria and Switzerland are hereby designated as countries in which the Convention on Jurisdiction, Applicable Law and Recognition of Decrees relating to Adoptions concluded at The Hague on 15th November 1965 is in force.

*Meaning of "notified provision" and "specified provision"*

**3.** For the purposes of sections 6 and 7 of the Adoption Act 1968 ("notified provision") and section 24 of the Children Act 1975 ("specified provision"), the provisions set out in Schedule 1 to this order, in relation to Austria, and in Schedule 2 to this order, in relation to Switzerland, are hereby specified as the provisions relating to prohibitions on an adoption contained in the national law of Austria and of Switzerland respectively which have been notified to the Government of the United Kingdom in pursuance of the provisions of the Convention.

*David Ennals,*

Secretary of State for Social Services.

13th September 1978.

(**a**) 1968 c. 53. (**b**) 1975 c. 72. (**c**) 1889 c. 63.

SCHEDULE 1 Article 3.

PROVISIONS RELATING TO PROHIBITIONS ON AN ADOPTION CONTAINED IN THE NATIONAL LAW OF AUSTRIA NOTIFIED UNDER ARTICLES 13, 17 AND 24 OF THE CONVENTION

1. *Zum Artikel 13 Absatz 1 Buchstabe d*

Nach par. 179 Absatz 2 allgemeines bürgerliches Gesetzbuch ist die Annahme eines Wahlkindes durch mehr als eine Person, sei es gleichzeitig, sei es nacheinander, nur zulässig, wenn die Annehmenden mit einander verheiratet sind. Daraus ergibt sich, dass das Bestehen einer früheren Annahme des Kindes durch andere Personen nur erlaubt ist, wenn diese andere Person der Ehegatte des Wahlvaters oder der Wahlmutter ist, sonst nicht.

2. *Zum Artikel 13 Absatz 1 Buchstabe e*

Nach par. 180 allgemeines bürgerliches Gesetzbuch müssen die Wahleltern mindestens 18 Jahre älter als das Wahlkind sein; eine geringfügige Unterschreitung dieses Zeitraums ist unbeachtlich, wenn zwischen dem Annehmenden und dem Wahlkind bereits eine dem Verhältnis zwischen leiblichen Eltern und Kindern entsprechende Beziehung besteht. Ist das Wahlkind ein leibliches Kind des Ehegatten des Annehmenden oder mit dem Annehmenden verwandt, so genügt ein Altersunterschied von 16 Jahren.

3. *Zum Artikel 13 Absatz 1 Buchstabe f*

Der Wahlvater muss das 30., die Wahlmutter das 28. Lebensjahr vollendet haben. Nehmen aber Ehegatten gemeinsam an oder ist das Wahlkind ein leibliches Kind des Ehegatten des Annehmenden, so ist eine Unterschreitung dieser Altersgrenze zulässig, wenn zwischen dem Annehmenden und dem Wahlkind bereits eine dem Verhältnis zwischen leiblichen Eltern und Kindern entsprechende Beziehung besteht. Eine Mindestgrenze nach unten gibt es dann nicht.

TRANSLATION

1. *Article 13(d) of the Convention*

Under paragraph 179(2) of the General Civil Code, the adoption of a child by more than one person, either at the same time or at different times, is permitted only if the adopters are married to each other. From this it follows that the existence of a previous adoption by other persons is permissible only if the other person is the spouse of the adoptive father or of the adoptive mother.

2. *Article 13(e) of the Convention*

Under paragraph 180 of the General Civil Code, the adoptive parents shall be at least 18 years older than the adoptive child; if the difference in age is slightly less than 18 years, the period by which it is less shall be disregarded provided that the relationship which has developed between the adopter and the child corresponds to that existing between parents and their issue. If the child is the issue of the adopter's spouse or is related to the adopter, a difference in age of 16 years shall suffice.

3. *Article 13(f) of the Convention*

The adoptive father must have completed his thirtieth year and the adoptive mother her twenty-eighth year. However, if a husband and wife are adopting a child together, or if the adoptive child is the natural child of the spouse of the adoptive parent, these minimum age limits do not apply provided that the relationship which has developed between the adopter and the child corresponds to that existing between parents and their issue. In this case there is no minimum age.

Article 3.

## SCHEDULE 2

PROVISIONS RELATING TO PROHIBITIONS ON AN ADOPTION CONTAINED IN THE NATIONAL LAW OF SWITZERLAND NOTIFIED UNDER ARTICLES 13, 17 AND 24 OF THE CONVENTION

1. *En ce qui concerne l'article 13, 1er alinéa, lettre e, de la convention:*

*Art. 265 (Code Civil Suisse)*

IV. Age et consentement de l'enfant

1. L'enfant doit être d'au moins seize ans plus jeune que les parents adoptifs.
2. . . . . .
3. . . . . .

2. *En ce qui concerne l'article 13, 1er alinéa, lettre f, de la convention:*

*Art. 264 a (Code Civil Suisse)*

II. Adoption conjointe

1. . . . . .
2. Les époux doivent être mariés depuis cinq ans ou être âgés de trente-cinq ans révolus.
3. Un époux peut cependant adopter l'enfant de son conjoint s'il est marié avec lui depuis deux ans ou s'il est âgé de trente-cinq ans révolus.

3. *En ce qui concerne l'article 13, 1er alinéa, lettre g, de la convention:*

*Art. 264 (Code Civil Suisse)*

A. Adoption de mineurs

I. Conditions générales

Un enfant peut être adopté si les futurs parents adoptifs lui ont fourni des soins et ont pourvu à son éducation pendant au moins deux ans et si toutes les circonstances permettent de prévoir que l'établissement d'un lien de filiation légitime servira au bien de l'enfant sans porter une atteinte inéquitable à la situation d'autres enfants des parents adoptifs.

## TRANSLATION

1. *Article 13(e) of the Convention*

*Article 265 (Swiss Civil Code)*

IV. Age and consent of the child

1. The child shall be at least sixteen years younger than the adopters.
2. . . . . .
3. . . . . .

2. *Article 13(f) of the Convention*

*Article 264(a) (Swiss Civil Code)*

II. Joint adoption

1. . . . . .
2. The spouses shall have been married for five years or shall have completed the thirty-fifth year of their lives.
3. A spouse may, however, adopt the child of his spouse if he has been married to that spouse for two years or if he has completed the thirty-fifth year of his life.

3. *Article 13(g) of the Convention*

*Article 264 (Swiss Civil Code)*

A. Adoption of minors
I. General conditions

A child may be adopted if the future adopters have taken care of and brought up the child for at least two years and if there is every reason to believe that the establishment of a legal filial relationship will benefit the child without unduly affecting the position of other children of the adopters.

## EXPLANATORY NOTE

*(This Note is not part of the Order.)*

In relation to England and Wales, this Order designates Austria and Switzerland as Convention countries for the purposes of the Adoption Act 1968 and the Children Act 1975 and specifies the provisions of Austrian and Swiss national law which prohibit adoptions and which have been notified to the United Kingdom pursuant to Articles 13, 17 and 24 of the Convention on Jurisdiction, Applicable Law and Recognition of Decrees relating to Adoptions concluded at The Hague on 15th November 1965.

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