STATUTORY INSTRUMENTS

1978 No. 1441 (S.132)

CHILDREN AND YOUNG PERSONS

The Convention Adoption (Miscellaneous Provisions) (Scotland) Order 1978

Made - - - - 1*st October* 1978

Coming into Operation 23*rd October* 1978

In exercise of the powers conferred on me by sections 4(3), 7(4) and 11(1 of the Adoption Act 1968**(a)** and section 107(1) of the Children Act 1975(b and of all other powers enabling me in that behalf, I hereby make th following order:—

Citation, commencement and extent

1.—(1) This order may be cited as the Convention Adoption (Miscellaneou Provisions) (Scotland) Order 1978 and shall come into operation on 23r October 1978.

(2) This order shall extend to Scotland only.

Interpretation

2.—(1) Any reference in this order to the provisions of an enactment o statutory instrument shall be construed, unless the context otherwise requires as a reference to that enactment or statutory instrument as amended, extended applied or replaced by or under any other enactment.

(2) The Interpretation Act 1889**(c)** shall apply for the interpretation of thi order as it applies for the interpretation of an Act of Parliament.

Meaning of "convention adoption"

3. For the purpose of the meaning of "convention adoption" in section 5(2) of the Adoption Act 1968 there is hereby designated an overseas adoption which is an adoption of the description specified in the Adoption (Designation of Overseas Adoptions) Order 1973**(d)** regulated by the Convention on Jurisdiction, Applicable Law and Recognition of Decrees relating to Adoptions concluded at The Hague on 15th November 1965.

Evidence of convention adoption

4.—(1) Evidence that an overseas adoption which has been effected is regulated by the Convention may be given by the production of a document purporting to be—

(*a*) a certified copy of an entry made, in accordance with the law of the country or territory concerned, in a public register relating to the recording of adoptions and showing that the adoption is so regulated; or

(*b*) a certificate that the adoption is so regulated, signed or purporting to be signed by a person authorised by the law of the country or territory concerned to sign such a certificate, or a certified copy of such certificate.

(a) 1968 c. 53. (b) 1975 c. 72. (c) 1889 c. 63. (d) S.I. 1973/19.

(2) Where a document produced by virtue of paragraph (1) of this Article is not in English, the Registrar General of Births, Deaths and Marriages for Scotland may require the production of an English translation of the document before satisfying himself of the matters specified in section 8 of the Adoption Act 1968.

(3) Nothing in this Article shall be construed as precluding proof, in accordance with the Evidence (Foreign, Dominion and Colonial Documents) Act 1933(a), or the Oaths and Evidence (Overseas Authorities and Countries) Act 1963(b), or otherwise, that an overseas adoption which has been effected is regulated by the Convention.

Designation of "British territory"

5. For the purposes of the provisions of sections 24 and 107(1) of the Children Act 1975, the United Kingdom is hereby designated as British territory.

Designation of "specified country"

6. For the purposes of the provisions of sections 5(1) and 11(1) of the Adoption Act 1968, Northern Ireland is hereby designated as a specified country.

Meaning of "United Kingdom national"

7. For the purposes of any provision of the Adoption Act 1968 or the Children Act 1975 a United Kingdom national is a citizen of the United Kingdom and Colonies who satisfies the condition hereby specified, that is to say—he has the right of abode in the United Kingdom by virtue of section 2 of the Immigration Act 1971(c).

Meaning of "notified provision"

8. For the purposes of sections 6 and 7 of the Adoption Act 1968 the provisions set out in the Schedule to this order are hereby specified as the provisions relating to prohibitions on an adoption contained in the national law of the United Kingdom which have been notified by the Government of the United Kingdom in pursuance of the provisions of the Convention.

Bruce Millan,
One of Her Majesty's Principal
Secretaries of State.

New St. Andrew's House,
Edinburgh.
1st October 1978.

(a) 1933 c. 4. (b) 1963 c. 27. (c) 1971 c. 77.

Article 8

SCHEDULE

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

Article 13

1. In accordance with the provisions of Article 13 and with reference to the second paragraph of Article 17 of the Convention, the United Kingdom declares, with a view to the application of Article 4, that the provisions of its internal law prohibiting adoptions are as follows.

A—In England and Wales and Scotland:

With reference to Article 13(b) of the Convention

Under section 11(1) of the Children Act 1975 an adoption order may not be made on the application of one person unless one of the following conditions is satisfied:—

(*a*) he is not married, or

(*b*) he is married and the court is satisfied that:—

(i) his spouse cannot be found, or

(ii) the spouses have separated and are living apart, and the separation is likely to be permanent, or

(iii) his spouse is by reason of ill health, whether physical or mental, incapable of making an application for an adoption order.

With reference to Article 13(b) and (c) of the Convention

Under section 11(3) of the Children Act 1975 an adoption order shall not be made on the application of the mother or father of the child alone unless the court is satisfied that:—

(*a*) the other natural parent is dead or cannot be found, or

(*b*) there is some other reason justifying the exclusion of the other natural parent.

With reference to Article 13(f) of the Convention

Under sections 10(1), 11(1) and 107(1) of the Children Act 1975:

(*a*) the adopter or each of joint adopters must have attained the age of 21;

(*b*) the child to be adopted must be under the age of 18.

With reference to Article 13(g) of the Convention

Under section 3(1) of the Adoption Act 1958 an adoption order shall not be made in respect of any child unless he has been continuously in the actual custody of the applicant for at least three consecutive months immediately preceding the date of the order, not counting any time before the date which appears to the court to be the date on which the child attained the age of six weeks.

B—In Northern Ireland:

With reference to Article 13(b) of the Convention

(*a*) Under sections 1(2) and 4(1)(*b*) of the Adoption Act (Northern Ireland) 1967 an adoption order may not be made on the application of one person unless:

(i) he is not married; or

(ii) he is married and *either* his spouse has consented to the making of the order *or* the court dispenses with the consent of the spouse on a ground specified in (*b*) below.

(*b*) The court may dispense with the consent of the spouse of an applicant for an adoption order if it is satisfied that the person whose consent is to be dispensed with cannot be found or is incapable of giving his consent or that the spouses have separated and are living apart and the separation is likely to be permanent.

(*c*) Under section 2(3) of the Adoption Act (Northern Ireland) 1967 an adoption order shall not be made in respect of a child who is a female in favour of a sole applicant who is a male unless the court is satisfied that there are special circumstances which justify as an exceptional measure the making of an adoption order.

With reference to Article 13(f) of the Convention

Under the provisions of sections 2(1) and (2) and 46(1) of the Adoption Act (Northern Ireland) 1967:

(*a*) in the case of a sole applicant who is not a parent of the child:

(i) if he is a relative of the child, the applicant must have attained the age of 21;

(ii) otherwise the applicant must have attained the age of 25.

(*b*) In the case of a joint application where neither spouse is a parent of the child:

(i) if one of the applicants is a relative of the child, (*a*)(i) applies and the spouse must also have attained the age of 21;

(ii) otherwise one of the applicants must satisfy (*a*)(ii) and the spouse must have attained the age of 21.

(*c*) The child to be adopted must be under the age of 18.

"Relative" in relation to a child means a grandparent, brother, sister, uncle or aunt, whether of the full blood, of the half-blood or by affinity, and includes—

(*a*) where an order authorising an adoption has been made in respect of the child or any other person under the Adoption Act (Northern Ireland) 1967 or the Adoption of Children Act (Northern Ireland) 1950 or any enactment repealed by that Act or has been made anywhere in Great Britain, the Isle of Man or any of the Channel Islands, any person who would be a relative of the child within the meaning of this definition if the adopted child were the child of the adopter born in lawful wedlock;

(*b*) where the child is illegitimate, the father of the child and any person who would be a relative of the child within the meaning of this definition if the child were the legitimate child of its mother and father.

With reference to Article 13(g) of the Convention

Under section 3(1) of the Adoption Act (Northern Ireland) 1967 an adoption order shall not be made in respect of any child unless he has been continuously in the care and possession of the applicant in Northern Ireland for at least three consecutive months immediately preceding the date of the order, not counting any time before the date which appears to the court to be the date on which the child attained the age of six weeks.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order contains the definitions of "convention adoption", "British territory", "specified country" and "United Kingdom national" in relation to Scotland for the purposes of the Adoption Act 1968 and the Children Act 1975 in respect of the Convention on Jurisdiction, Applicable Law and Recognition of Decrees relating to Adoptions concluded at The Hague on 15th November 1965. Article 4 of the Order concerns the manner of proof that an overseas adoption is regulated by the Convention. Article 8 of and the Schedule to the Order specify for the purposes of the definition of "notified provision" in the Adoption Act 1968 the provisions of United Kingdom national law which prohibit adoptions and which have been notified by the United Kingdom pursuant to Articles 13 and 17 of the Convention.

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