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Convention  
on Jurisdiction, Applicable Law  
and Recognition of Decrees  
relating to Adoptions

The Hague, 15 November 1965

[The United Kingdom instrument of ratification was deposited on 24 August 1978  
and the Convention entered into force on 23 October 1978]

*Presented to Parliament  
by the Secretary of State for Foreign and Commonwealth Affairs  
by Command of Her Majesty  
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**CONVENTION  
ON JURISDICTION, APPLICABLE LAW AND RECOGNITION  
OF DECREES RELATING TO ADOPTIONS**

The States signatory to the present Convention,

Desiring to establish common provisions on jurisdiction, applicable law and recognition of decrees relating to adoption,

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

**ARTICLE I**

The present Convention applies to an adoption between:

*on the one hand, a person who, possessing the nationality of one of the contracting States, has his habitual residence within one of these States, or spouses each of whom, possessing the nationality of one of the contracting States, has his or her habitual residence within one of these States, and*

*on the other hand, a child who has not attained the age of eighteen years at the time when the application for adoption is made and has not been married and who, possessing the nationality of one of the contracting States, has his habitual residence within one of these States.*

**ARTICLE 2**

The present Convention shall not apply where:

- (a) the adopters neither possess the same nationality nor have their habitual residence in the same contracting State;
- (b) the adopter or adopters and the child, all possessing the same nationality, habitually reside in the State of which they are nationals;
- (c) an adoption is not granted by an authority having jurisdiction under article 3.

**ARTICLE 3**

Jurisdiction to grant an adoption is vested in:

- (a) the authorities of the State where the adopter habitually resides or, in the case of an adoption by spouses, the authorities of the State in which both habitually reside;
- (b) the authorities of the State of which the adopter is a national or, in the case of an adoption by spouses, the authorities of the State of which both are nationals:

The conditions relating to habitual residence and nationality must be fulfilled both at the time when the application for adoption is made and at the time when the adoption is granted.

#### ARTICLE 4

The authorities who have jurisdiction under the first paragraph of article 3 shall, subject to the provisions of the first paragraph of article 5, apply their internal law to the conditions governing an adoption.

Nevertheless, an authority having jurisdiction by virtue of habitual residence shall respect any provision prohibiting adoption contained in the national law of the adopter or, in the case of an adoption by spouses, any such provision of their common national law, if such a prohibition has been referred to in a declaration of the kind contemplated in article 13.

#### ARTICLE 5

The authorities who have jurisdiction under the first paragraph of article 3 shall apply the national law of the child relating to consents and consultations, other than those with respect to an adopter, his family or his or her spouse.

If according to the said law the child or a member of his family must appear in person before the authority granting the adoption, the authority shall, if the person concerned is not habitually resident in the State of that authority, proceed, where appropriate, by means of a *commission rogatoire*.

#### ARTICLE 6

The authorities referred to in the first paragraph of article 3 shall not grant an adoption unless it will be in the interest of the child. Before granting an adoption they shall carry out, through the agency of the appropriate local authorities, a thorough inquiry relating to the adopter or adopters, the child and his family. As far as possible, this inquiry shall be carried out in co-operation with public or private organisations qualified in the field of inter-country adoptions and the help of social workers having special training or having particular experience concerning the problems of adoption.

The authorities of all contracting States shall promptly give all the assistance requested for the purposes of an adoption governed by the present Convention; for this purpose the authorities may communicate directly with each other.

Each contracting State may designate one or more authorities empowered to communicate in accordance with the preceding paragraph.

## ARTICLE 7

Jurisdiction to annul or to revoke an adoption governed by the present Convention shall be vested in :

- (a) the authorities of the contracting State in which the person adopted habitually resides at the time when the application to annul or to revoke the adoption is made;
- (b) the authorities of the State in which at that time the adopter habitually resides or, in the case of an adoption by spouses, both of them habitually reside;
- (c) the authorities of the State which granted the adoption.

An adoption may be annulled :

- (a) on any ground permitted by the internal law of the State which granted the adoption; or
- (b) in accordance with the national law of the adopter or adopters at the time when that adoption was granted in cases where the application to annul is based on failure to comply with a prohibition to which the second paragraph of article 4 applies; or
- (c) in accordance with the national law of the person adopted at the time when the adoption was granted in cases where the application to annul is based on failure to obtain a consent required by that law.

An adoption may be revoked in accordance with the internal law of the authority exercising jurisdiction.

## ARTICLE 8

Every adoption governed by the present Convention and granted by an authority having jurisdiction under the first paragraph of article 3 shall be recognised without further formality in all contracting States.

Every decision annulling or revoking an adoption granted by an authority having jurisdiction under article 7 shall be recognised without further formality in all contracting States.

If any question arises in a contracting State with respect to the recognition of such an adoption or decision, the authorities of that State, in considering the jurisdiction of the authority which granted the adoption or which gave the decision, shall be bound by the findings of fact on which that authority based its jurisdiction.

## ARTICLE 9

When an authority having jurisdiction under the first paragraph of article 3 has granted an adoption, it shall notify this fact to the other State, if any, the authorities of which would have been empowered to grant an adoption under that article, to the State of which the child is a national and to the contracting State where the child was born.

When an authority having jurisdiction under the first paragraph of article 7 has annulled or revoked an adoption, it shall notify this fact to the State the authority of which had granted the adoption, to the State of which the child is a national and to the contracting State where the child was born.

#### ARTICLE 10

For the purposes of the present Convention, an adopter or a child who is stateless or whose nationality is unknown, is deemed to have the nationality of the State of his habitual residence.

#### ARTICLE 11

For the purposes of the present Convention if in the State of which either an adopter or a child is a national, there is more than one legal system in force, references to the internal law or to the authorities of the State of which a person is a national shall be construed as references to the law or to the authorities determined by the rules in force in that State or, if there are no such rules, to the law or to authorities of that system with which the person concerned is most closely connected.

#### ARTICLE 12

The present Convention does not affect provisions of other Conventions relating to adoption binding contracting States at the moment of its entry into force.

#### ARTICLE 13

Any State may, at the time of signature, ratification or accession, with a view to the application of the second paragraph of article 4, make a declaration specifying the provisions of its internal law prohibiting adoptions founded upon:

- (a) the existence of descendants of the adopter or adopters;
- (b) the fact that a single person is applying to adopt;
- (c) the existence of a blood relationship between an adopter and the child;
- (d) the existence of a previous adoption of the child by other persons;
- (e) the requirement of a difference in age between adopter or adopters and the child;
- (f) the age of the adopter or adopters and that of the child;
- (g) the fact that the child does not reside with the adopter or adopters.

Such declarations may be revoked at any time. The revocation shall be notified to the Ministry of Foreign Affairs of the Netherlands.

Any declaration which has been revoked shall cease to have effect on the sixtieth day after the notification referred to in the preceding paragraph.

#### ARTICLE 14

Any contracting State may make a declaration specifying the persons deemed to possess its nationality for the purposes of the present Convention.

Such declarations and any modification or revocation thereof shall be notified to the Ministry of Foreign Affairs of the Netherlands.

Any such declaration, modification or revocation shall have effect on the sixtieth day after the notification referred to in the preceding paragraph.

#### ARTICLE 15

The provisions of the present Convention may be disregarded in contracting States only when their observance would be manifestly contrary to public policy.

#### ARTICLE 16

Each contracting State shall designate the authorities having power:

- (a) to grant an adoption within the meaning of the first paragraph of article 3;
- (b) to exchange the communications envisaged by the second paragraph of article 6 if it is intended to make use of the power conferred by the third paragraph of article 6;
- (c) to annul or revoke an adoption under article 7;
- (d) to receive information in pursuance of article 9.

Each contracting State shall supply the Ministry of Foreign Affairs of the Netherlands with a list of the foregoing authorities and of any subsequent amendments to that list.

#### ARTICLE 17

With a view to the application of article 5, each contracting State shall inform the Ministry of Foreign Affairs of the Netherlands of the provisions of its internal law relating to consents and consultations.

Any State making a declaration under article 13 shall inform the said Ministry of the provisions of its internal law relating to the prohibitions specified in that declaration.

A contracting state shall inform the said Ministry of any modification of the provisions mentioned in the first and second paragraphs above.

#### ARTICLE 18

The present Convention shall be open for signature by the States represented at the Tenth Session of the Hague Conference on Private International Law.

It shall be ratified, and the instruments of ratification shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

#### ARTICLE 19

The present Convention shall enter into force on the sixtieth day after the deposit of the third instrument of ratification referred to in the second paragraph of article 18<sup>(1)</sup>.

The Convention shall enter into force for each signatory State which ratifies subsequently on the sixtieth day after the deposit of its instrument of ratification.

#### ARTICLE 20

Any State not represented at the Tenth Session of the Hague Conference on Private International Law may accede to the present Convention after it has entered into force in accordance with the first paragraph of article 19. The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Netherlands.

The Convention shall enter into force for such a State in the absence of any objection from a State, which has ratified the Convention before such deposit, notified to the Ministry of Foreign Affairs of the Netherlands within a period of six months after the date on which the said Ministry has notified it of such accession.

In the absence of any such objection, the Convention shall enter into force for the acceding State on the first day of the month following the expiration of the last of the periods referred to in the preceding paragraph.

#### ARTICLE 21

Any state may, at the time of signature, ratification or accession, declare that the present 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 on the date of entry into force of the Convention for the State concerned.

At any time thereafter, such extensions shall be notified to the Ministry of Foreign Affairs of the Netherlands.

The Convention shall enter into force for the territories mentioned in such an extension on the sixtieth day after the notification referred to in the preceding paragraph.

#### ARTICLE 22

Any State may, not later than the moment of its ratification or accession, reserve the right not to recognise an adoption granted by an authority exercising jurisdiction under sub-paragraph (b) of the first paragraph of article 3,

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(1) The Convention entered into force on 23 October 1978.

when at the time of the application to adopt the child had his habitual residence within its own territory and did not possess the nationality of the State in which the adoption was granted. No other reservation shall be permitted.

Each contracting State may also, when notifying an extension of the Convention in accordance with article 21, make the said reservation, with its effect limited to all or some of the territories mentioned in the extension.

Each contracting State may at any time withdraw a reservation it has made. Such a withdrawal shall be notified to the Ministry of Foreign Affairs of the Netherlands.

Such a reservation shall cease to have effect on the sixtieth day after the notification referred to in the preceding paragraph.

#### ARTICLE 23

The present Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of article 19, even for States which have ratified it or acceded to it subsequently.

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 Netherlands at least six months before the end of the five year period.

It may be limited to certain of the territories 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 24

The Ministry of Foreign Affairs of the Netherlands shall give notice to the States referred to in article 18, and to the States which have acceded in accordance with article 20, of the following:

- (a) the declarations and revocations referred to in article 13;
- (b) the declarations, modifications and revocations referred to in article 14;
- (c) the designation of authorities referred to in article 16;
- (d) the legal provisions and modifications thereof referred to in article 17;
- (e) the signatures and ratifications referred to in article 18;
- (f) the date on which the present Convention enters into force in accordance with the first paragraph of article 19;



- (g) the accessions referred to in article 20 and the dates on which they take effect;
- (h) the extensions referred to in article 21 and the dates on which they take effect;
- (i) the reservations and withdrawals referred to in article 22;
- (j) the denunciations referred to in the third paragraph of article 23.

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

Done at The Hague, on the 15th day of November, 1965, in the English and French languages,<sup>(2)</sup> both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Netherlands, and of which a certified copy shall be sent through the diplomatic channel, to each of the States represented at the Tenth Session of the Hague Conference on Private International Law.

[Here follow the signatures]

#### SIGNATURES AND RATIFICATIONS

| <i>State</i>       | <i>Date of signature</i> | <i>Date of deposit of ratification</i> |
|--------------------|--------------------------|--|
| Austria ... ..     | 27 February 1967         | 8 October 1968                         |
| Switzerland ... .. | 4 August 1967            | 7 June 1973                            |
| United Kingdom ... | 15 November 1965         | 24 August 1978                         |

[For reservations, declarations, etc. see pages 10-20.]

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<sup>(2)</sup> After the Convention has been registered with the United Nations, the French language text will be published in the United Nations Treaty Series, available through Agency Section, Her Majesty's Stationery Office, PO Box 569, London, SE1 9NY—Tel. 01-928 6977 ext. 410.

# RESERVATIONS, DECLARATIONS AND NOTIFICATIONS

## AUSTRIA

The declarations made by Austria on 16 April 1969 were modified on 7 April 1978. The texts of both communications with translations are given below.

### DECLARATIONS MADE ON 16 APRIL 1969

#### „ Zum Artikel 16

a) Zur Bewilligung der Annahme an Kindesstatt im Sinne des Artikels 3 Absatz 1 ist das zur Führung der Vormundschaft oder der Pflegschaft über das Wahlkind berufene Gericht zuständig.

Besteht ein solches Gericht in Oesterreich nicht, so ist das Bezirksgericht zuständig, in dessen Sprengel das Wahlkind seinen gewöhnlichen Aufenthalt in Oesterreich hat.

Fehlt auch ein solcher gewöhnlicher Aufenthalt des Wahlkinds in Oesterreich, so ist das Bezirksgericht zuständig, in dessen Sprengel der Annehmende—im Fall der Annahme durch Ehegatten einer von ihnen—seinen gewöhnlichen Aufenthalt in Oesterreich hat.

Fehlt auch ein solcher gewöhnlicher Aufenthalt, so ist das Bezirksgericht Innere Stadt Wien zuständig.

b) Für den im Artikel 6 Absatz 2 vorgesehenen Verkehr wird, soweit es sich um Hilfeleistungen tatsächlicher Art handelt—also nicht Rechtshilfeersuchen—das Bundesministerium für soziale Verwaltung namhaft gemacht.

c) Die oben unter a) wiedergegebenen Zuständigkeitsbestimmungen für die Bewilligung einer Annahme an Kindesstatt gelten auch für die Nichtigerklärung oder die Aufhebung einer Annahme an Kindesstatt nach Artikel 7.

d) Für die Entgegennahme der Benachrichtigungen nach Artikel 9 wird das Bundesministerium für Justiz namhaft gemacht.

#### Zum Artikel 17

a) Was die Zustimmungs- und die Anhörungsrechte im österreichischen Recht betrifft, so ist folgendes zu sagen:

Zunächst ist für das Zustandekommen einer Annahme an Kindesstatt erforderlich, dass ein schriftlicher Vertrag geschlossen wird. Ist das Wahlkind noch nicht eigenberechtigt, so muss auf seiner Vertragsseite ein gesetzlicher Vertreter handeln. Wegen dieses Erfordernisses eines Vertrages muss auch die notwendige Vertragsschlussung durch den gesetzlichen Vertreter oder doch dessen Zustimmung zum Vertrag als eine Zustimmung zur Annahme an Kindesstatt gewertet werden.

Darüber hinaus haben zuzustimmen:

1. der eheliche Vater des minderjährigen Wahlkinds, sofern ihm nicht die väterliche Gewalt auf immer entzogen ist;
2. die Mutter des minderjährigen Wahlkinds;
3. der Ehegatte des Annehmenden und der des Wahlkinds.

Unter gewissen Umständen entfällt das Zustimmungsrecht, unter gewissen anderen Umständen kann die verweigerte Zustimmung vom Gericht ersetzt werden.

Ein Recht auf Anhörung haben:

1. das nicht eigenberechtigte Wahlkind ab dem vollendeten fünften Lebensjahr, ausser es hat bereits seit diesem Zeitpunkt beim Annehmenden gelebt;
2. der eheliche Vater des grossjährigen Wahlkinds, sofern ihm nicht die väterliche Gewalt auf immer entzogen war;
3. die Mutter des grossjährigen Wahlkinds;
4. der uneheliche Vater des Wahlkinds, wenn er die Vaterschaft vor Gericht oder vor dem Amtsvormund anerkannt hat oder seine Vaterschaft gerichtlich festgestellt ist;
5. die pflegeeltern des Wahlkinds, die Person, die das Wahlkind im fremde Pflege übernommen hat, oder der Vorsteher des Heimes, in dem sich das Wahlkind in fremder Pflege befindet;
6. die Bezirksverwaltungsbehörde, in deren Sprengel das minderjährige Wahlkind seinen Aufenthalt hat.

Diese Anhörungsrechte können unter gewissen Umständen entfallen.

b) Zum Artikel 13 Absatz 1 Buchstabe d):

Nach par. 179 Absatz 2 allgemeines bürgerliches Gesetzbuch ist die Annahme eines Wahlkinds 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.

Zum Artikel 13 Absatz 1 Buchstabe e):

Nach par. 180 allgemeines bürgerliches Gesetzbuch müssen die Wahl Eltern 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.

Zum Artikel 13 Absatz 1 Buchstabe f):

Nach par. 180 allgemeines bürgerliches Gesetzbuch muss der Wahlvater das 30., die Wahlmutter das 28. Lebensjahr vollendet haben."

#### MODIFICATIONS MADE ON 7 APRIL 1978

" 1) Es hat zum Art. 17 unter Buchst. a) in der ersten Aufzählung (Zustimmungsrechte) in der Zahl 1 zu heissen:

" 1. der Vater des minderjährigen ehelichen Wahlkindes; "

2) In der dortselbst befindlichen zweiten Aufzählung (Anhörungsrechte) hat es in der Zahl 2 zu heissen:

" 2. der Vater des volljährigen ehelichen Wahlkindes; "

3) In derselben Aufzählung hat es in der Zahl 4 zu heissen:

" 4. der Vater des unehelichen Wahlkindes, wenn die Vaterschaft festgestellt ist; "

4) Das Zustimmungsrecht entfällt, wenn die zustimmungsberechtigte Person den Annahmevertrag als gesetzlicher Vertreter des Wahlkindes geschlossen hat, ferner, wenn sie zu einer verständigen Äusserung nicht nur vorübergehend unfähig oder ihr Aufenthalt seit mindestens sechs Monaten unbekannt ist. Die verweigerte Zustimmung kann durch das Gericht ersetzt werden, wenn keine gerechtfertigten Gründe für die Weigerung vorliegen.

5) Das Anhörungsrecht entfällt, wenn die anhörungsrechtige Person als gesetzlicher Vertreter des Wahlkindes den Adoptionsvertrag geschlossen hat; ferner wenn sie nicht oder nur mit unverhältnismässigen Schwierigkeiten gehört werden könnte.

6) In der Mitteilung zum Art. 17 unter Buchst. b) muss es zum Art. 13 Abs. 1 Buchst. f) des Übereinkommens heissen:

" 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."

7) Da die Volljährigkeit in Österreich mit der Vollendung des 18. Lebensjahres eintritt, ist unter dem in der seitherzeitigen Mitteilung zum Art. 17 unter Buchst. a) genannten nicht eigenberechtigten Wahlkind ein Kind unter 19 Jahren zu verstehen."

#### TRANSLATION OF DECLARATIONS MADE ON 16 APRIL 1969

##### Re Article 16

(a) The Court designated to supervise the guardianship or foster care of the child shall have the power to grant an adoption within the meaning of the first paragraph of Article 3.

If there is no such Court in Austria, the District Court within whose jurisdiction the child has its habitual residence in Austria shall be competent.

In the absence of any such habitual residence in Austria, the District Court within whose jurisdiction the adopter—and in the case of an adoption by spouses—one of the spouses habitually resides shall be competent.

In the absence, also, of any such habitual residence the *Innere Stadt Wien* District Court shall be competent.

(b) For the communication provided for in the Second paragraph of Article 6, the Federal Ministry for Social Affairs (*Bundesministerium für soziale Verwaltung*) shall be responsible in cases where actual assistance is requested and not, therefore, in applications for legal aid.

(c) The provisions regarding the power to grant an adoption referred to under a) shall also apply to the annulment or revocation of an adoption in accordance with Article 7.

(d) The Federal Ministry of Justice (*Bundesministerium für Justiz*) shall be responsible for receiving any notifications under Article 9.

*Re Article 17*

(a) The following comments refer to consents and consultations under Austrian law:

A written contract must be concluded before an adoption can be completed. If the child is under the age of consent, a legal representative shall act on its behalf in the matter of concluding the contract. Since a contract is obligatory, the legal representative's conclusion of the contract, in conformity with this condition, or his consent to the contract, as the case may be, shall be regarded as constituting his consent to the adoption.

In addition, consent is required from:

1. the father of a legitimate minor child, provided he has not been permanently deprived of paternal authority;
2. the mother of a minor child;
3. the spouse of the adopter and that of the child.

Consent may be dispensed with in certain cases; in certain other cases the Court may give consent where it has been withheld.

Those entitled to be consulted on the adoption are:

1. A child under the age of consent, after it has completed its fifth year, unless it has lived with the adopters from that date onwards;
2. the father of a legitimate major child, provided he has not been permanently deprived of paternal authority;
3. the mother of a major child;
4. the natural father of the child if he has acknowledged paternity before the Court or the official guardian (*Amts Vormund*) or if paternity has been established by the Court;
5. the foster parents of the child, the person with whom the child is boarded out or the supervisor of the home in which the child is being cared for;
6. the local authority within whose jurisdiction a minor child resides.

Consultation may be dispensed with in certain cases.

(b) *Re Article 13 (d):*

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.

*Re Article 13 (e):*

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.

*Re Article 13 (f):*

Under paragraph 180 of the General Civil Code the adoptive father shall have completed his thirtieth and the adoptive mother her twenty-eighth year.

**TRANSLATION OF MODIFICATIONS NOTIFIED ON 7 APRIL 1978**

(1) *Re Article 17, under (a), in the first list (rights of consent), No. 1 now reads:*

" 1. the father of a legitimate minor adoptive child "

(2) *Re Article 17, under (a), in the second list (rights of consultation), No. 2 now reads:*

" 2. the father of a legitimate major adoptive child "

(3) *In this same list, No. 4 now reads:*

" 4. the father of an illegitimate child, if paternity has been established; "

(4) *The right of consent lapses if the person entitled to it has concluded the adoption agreement as the legal representative of the adoptive child, or if this person is more than temporarily incapable of making a reasonable statement, or if the whereabouts of this person*

have been unknown for at least six months. A consent that has been withheld can be substituted by the court if there are no justifiable grounds for withholding it.

(5) The right of consultation lapses if the person entitled to it has concluded the adoption agreement as the legal representative of the adoptive child, or if this person cannot be consulted, or if consultation would involve disproportionate difficulties.

(6) In the communication relating to Article 17, under (b), concerning Article 13 (f) of the Convention, the text should now read:

“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.”

(7) As full age in Austria is attained upon the completion of the eighteenth year, the term “adoptive child under the age of consent” used under (a) in the above-mentioned communication relating to Article 17 refers to a child of under 19 years of age.

## SWITZERLAND

The following reservation, declaration and notifications were made on ratification. The notification relating to Article 16 was modified on 24 August 1978 (see page 16).

### I. Réserve et déclaration

#### 1. Réserve

Conformément à l'article 22 de la convention, la Suisse se réserve le droit de ne pas reconnaître les adoptions sur lesquelles ont statué les autorités compétentes en vertu de l'article 3, 1er alinéa, lettre b, lorsque, au jour de la demande d'adoption, l'enfant avait sa résidence habituelle en Suisse et n'avait pas la nationalité de l'Etat dont les autorités ont statué.

#### 2. Déclaration

Se fondant sur les articles 4, 2e alinéa, 13, 1er alinéa, lettres e, f et g, et 17, 2e alinéa, de la convention, la Suisse déclare que les interdictions d'adopter prévues aux articles 264, 264 a, et 265 demeurent réservées.

Ci-joint le texte de ces dispositions.

#### a) En ce qui concerne l'article 13, 1er alinéa, lettre e, de la convention:

Art. 265

- 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. ....

#### b) En ce qui concerne l'article 13, 1er alinéa, lettre f, de la convention:

Art. 264 a

#### 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.

#### c) En ce qui concerne l'article 13, 1er alinéa, lettre g, de la convention:

Art. 264

#### A. Adoption de mineurs

##### 1. 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.

## II. Communication relative à l'article 16 de la convention

a) Les autorités du canton dans lequel les parents adoptifs ont leur résidence habituelle sont compétentes pour statuer sur l'adoption dans le sens de l'article 3, alinéa premier.

Les cantons ont désigné les autorités suivantes:

Zurich: Conseil de district (Bezirksrat)

Berne: Direction de la justice (Justizdirektion)

Lucerne: Vice-Président du Conseil d'Etat (Regierungsstatthalter)

Uri: Direction de la justice (Justizdirektion)

Schwyz: Département de l'intérieur (Departement des Innern)

Obwald: Conseil d'Etat (Regierungsrat)

Nidwald: Président du tribunal cantonal (Kantonsgerichtspräsident)

Glaris: Conseil d'Etat (Regierungsrat)

Zoug: Direction de l'intérieur (Direktion des Innern)

Fribourg: Département de la justice (Justizdepartement)

Soleure: Département de la justice (Justizdepartement)

Bâle-Ville: Département de la justice (Justizdepartement)

Bâle-Campagne: Direction de la justice (Justizdirektion)

Schaffhouse: Direction des Communes (Gemeindedirektion)

Appenzell Rh. Ext.: Conseil d'Etat (Regierungsrat)

Appenzell Rh. Int.: Conseil d'Etat (Standeskommission)

Saint-Gall: Préfet (Bezirksammann)

Grisons: Commission du tribunal de district (Bezirksgerichtsausschuss)

Argovie: Département de l'intérieur (Departement des Innern)

Thurgovie: Conseil d'Etat (Regierungsrat)

Tessin: Conseil d'Etat (Consiglio di Stato)

Vaud: Département de Justice et de Police

Valais: Conseil d'Etat (Staatsrat)

Neuchâtel: Tribunal cantonal

Genève: Cour de justice civile

b) Les demandes d'entraide évoquées à l'article 6, 2e alinéa, de la convention doivent être adressées aux autorités cantonales mentionnées sous lettre a).

c) L'action en annulation d'une adoption dans le sens de l'article 7 de la convention doit être portée devant le juge civil compétent. En droit suisse, l'organisation judiciaire relève des cantons (art. 64, al. 3, de la Constitution fédérale; art. 269, al. 1er, du Code civil suisse). Le code de procédure civile ou la loi d'organisation judiciaire de chaque canton renseigne sur la juridiction compétente; il s'agit généralement, en première instance, du tribunal de district.

d) Les communications prévues à l'article 9 de la convention doivent être adressées à la Division de la justice (Office de l'état civil) du Département fédéral de justice et police à Berne.

## III. Communication relative à l'article 17, 1er alinéa, de la convention

Le droit suisse sur l'adoption exige les consentements suivants:

1. le consentement de l'enfant, si ce dernier est capable de discernement (art. 265, al. 2 Code civil suisse);
2. le consentement de l'autorité tutélaire de surveillance, si l'enfant est sous tutelle (art. 265, al. 3 Code civil suisse—CCS);
3. le consentement du père et de la mère de l'enfant. Ce consentement est déclaré, par écrit ou oralement, à l'autorité tutélaire du domicile ou du lieu de séjour des parents ou de l'enfant et il doit être consigné au procès-verbal. Il est valable, même s'il ne nomme pas les futurs parents adoptifs ou si ces derniers ne sont pas encore désignés (art. 265 a CCS).

Le consentement ne peut être donné avant six semaines à compter de la naissance de l'enfant. Il peut être révoqué dans les six semaines qui suivent sa réception. S'il est renouvelé après avoir été révoqué, il est définitif (art. 265 b CCS).

Il peut être fait abstraction du consentement d'un des parents,

a lorsqu'il est inconnu, absent depuis longtemps sans résidence connue ou incapable de discernement de manière durable,

b lorsqu'il ne s'est pas soucié sérieusement de l'enfant (art. 265 c CCS)."

[Translation]

I. *Reservation and Declaration*

1. *Reservation*

In accordance with Article 22 of the Convention, Switzerland reserves the right not to recognise adoptions granted by the competent authorities under Article 3, first paragraph, sub-paragraph (b), if, on the date the application for adoption was made, the child had its habitual residence in Switzerland and did not possess the nationality of the State of the authorities granting adoption.

2. *Declaration*

Basing itself on Articles 4, second paragraph, 13 (e), (f) and (g), and 17, second paragraph, of the Convention, Switzerland declares that it reserves the right to enforce the provisions prohibiting adoption contained in Articles 264, 264 (a) and 265.

The text of the relevant provisions is given below.

(a) *Article 13 (e) of the Convention:*

IV. Age and consent of the child

- Article 265*
1. The child shall be at least sixteen years younger than the adopters.
  2. ....
  3. ....

(b) *Article 13 (f) of the Convention:*

II. Joint adoption

- Article 264 (a)*
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.

(c) *Article 13 (g) of the Convention:*

A. Adoption of minors  
I. General conditions

- Article 264*
- 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.

II. *Notification relating to Article 16 of the Convention*

(a) The authorities of the Canton where the adopters have their habitual residence are competent to grant adoption within the meaning of Article 3, first paragraph.

The Cantons have designated the following authorities:

- Zurich: Conseil de district (Bezirksrat)
- Berne: Direction de la justice (Justizdirektion)
- Lucerne: Vice-Président du Conseil d'Etat (Regierungsstatthalter)
- Uri: Direction de la justice (Justizdirektion)
- Schwyz: Département de l'intérieur (Département des Innern)
- Obwald: Conseil d'Etat (Regierungsrat)
- Nidwald: Président du tribunal cantonal (Kantonsgerichtspräsident)
- Glaris: Conseil d'Etat (Regierungsrat)
- Zoug: Direction de l'intérieur (Direktion des Innern)
- Fribourg: Département de la justice (Justizdepartement)
- Soleure: Département de la justice (Justizdepartement)
- Bâle-Ville: Département de la justice (Justizdepartement)
- Bâle-Campagne: Direction de la justice (Justizdirektion)
- Schaffhouse: Direction des Communes (Gemeindedirektion)
- Appenzell Rh. Ext.: Conseil d'Etat (Regierungsrat)

Appenzell Rh. Int.: Conseil d'Etat (Standeskommission)  
Saint-Gall: Préfet (Bezirksammann)  
Grisons: Commission du tribunal de district (Bezirksgerichtsausschuss)  
Argovie: Département de l'intérieur (Departement des Innern)  
Thurgovie: Conseil d'Etat (Regierungsrat)  
Tessin: Conseil d'Etat (Consiglio di Stato)  
Vaud: Département de Justice et de Police  
Valais: Conseil d'Etat (Staatsrat)  
Neuchâtel: Tribunal cantonal  
Genève: Cour de justice civile

(b) Applications for assistance as referred to in Article 6, second paragraph, of the Convention should be addressed to one of the cantonal authorities listed under (a).

(c) Proceedings for the annulment of an adoption within the meaning of Article 7 of the Convention should be instituted before a competent civil court. Under Swiss law judicial organisation is the responsibility of the Cantons (Article 64, paragraph 3, of the Federal Constitution; Article 269, paragraph 1, of the Swiss Civil Code). What authorities are competent can be gathered from the Code of Civil Procedure or the judicial organisation of each Canton; in the first instance this will generally be a District Tribunal (*tribunal de district*).

(d) The communications referred to in Article 9 of the Convention should be addressed to the Justice Department (*Division de la justice*), Registry Office (*Office de l'état civil*), of the Federal Ministry of Justice and Police (*Département fédéral de justice et police*) in Berne.

### III. Notification relating to Article 17, first paragraph, of the Convention

Under Swiss adoption law the following consents are required:

1. the consent of the child if the latter has the power of discretion (Article 265, paragraph 2, of the Swiss Civil Code);
2. the consent of the supervising guardianship authority (*l'autorité tutélaire de surveillance*) if the child is under guardianship (Article 265, paragraph 3, of the Swiss Civil Code);
3. the consent of the father and the mother of the child. Such consent is given, either orally or in writing, to the guardianship authority (*l'autorité tutélaire*) of the place of residence or sojourn of the parents or of the child and must be recorded in an official report (*procès-verbal*). It is valid even if the future adopters of the child are not named in it or if the latter have not yet been designated (Article 265 (a) of the Swiss Civil Code).

Consent may not be given until six weeks after the birth of the child. It may be revoked within a period of six weeks after it has been received. If it is renewed after having been revoked, it shall be final (Article 265 (b) of the Swiss Civil Code).

The consent of one of the parents may be dispensed with in the following cases:

- (a) if the parent is unknown, has been absent for a long time without any known place of residence or is incapable of exercising proper judgment permanently;
- (b) if the parent has not taken proper care of the child (Article 265 (c) of the Swiss Civil Code).

### MODIFICATIONS MADE ON 24 AUGUST 1978 TO NOTIFICATION UNDER ARTICLE 16

Add the following sentence immediately after the first sentence of paragraph a): "Les autorités du canton d'origine sont compétentes dans le cas d'adoptants suisses n'ayant pas leur résidence habituelle en Suisse." (Translation—The authorities of the Canton of origin are competent in the case of Swiss adopters who do not have their habitual residence in Switzerland.)

Add the following sentence at the end of paragraph b): "Ces autorités sont également compétentes pour former elles-mêmes une demande." (Translation—For their part, these authorities are equally competent to apply for assistance).

Delete the words "(Office de l'état civil)" in paragraph d).

## UNITED KINGDOM

### 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.

**ARTICLE 14**

2. In accordance with the provisions of Article 14 of the Convention, the United Kingdom declares that a “United Kingdom national” for the purposes of the Convention shall be a citizen of the United Kingdom and Colonies who has the right of abode in the United Kingdom by virtue of section 2 of the Immigration Act 1971.

**ARTICLE 16**

3. In accordance with the provisions of Article 16 (a) of the Convention, the United Kingdom designates as the authorities having power to grant an adoption within the meaning of the first paragraph of Article 3:

- (a) In England and Wales: the High Court of Justice;
- (b) In Scotland: the Court of Session;
- (c) In Northern Ireland: the High Court of Justice.

4. In accordance with the provisions of Article 16 (b) of the Convention, the United Kingdom designates as the authorities having power to exchange the communications envisaged by the second paragraph of Article 6:

- (a) In England and Wales: the council of a county (other than a metropolitan county), a metropolitan district, a London borough or the Common Council of the City of London;
- (b) In Scotland: a regional or islands council;
- (c) In Northern Ireland: a Health and Social Services Board.

5. In accordance with the provisions of Article 16 (c) of the Convention, the United Kingdom designates as the authorities having power to annul or revoke an adoption under Article 7, the same authorities as those designated under Article 16 (a) for England and Wales, Scotland and Northern Ireland respectively.

6. In accordance with the provisions of Article 16 (d) of the Convention, the United Kingdom designates as the authority having power to receive information in pursuance of Article 9 on behalf of the whole of the United Kingdom:

The Registrar General for England and Wales,  
General Register Office,  
St. Catherine's House,  
10 Kingsway,  
London, W.C.2.

**ARTICLE 17**

7. In accordance with the provisions of the first paragraph of Article 17 of the Convention, the United Kingdom declares, with a view to the application of Article 5, that the provisions of its internal law relating to consents and consultations are as follows.

**a. In England and Wales and Scotland:**

- (1) Under section 12 of the Children Act 1975:
  - (i) An adoption order shall not be made unless in the case of each parent or guardian of the child the court is satisfied that:

(a) he freely, and with full understanding of what is involved, agrees unconditionally to the making of the adoption order (whether or not he knows the identity of the applicants), or

(b) his agreement to the making of the adoption order should be dispensed with on a ground specified in (ii) below.

(ii) The grounds mentioned in (1) (i) (b) above are that the parent or guardian:

(a) cannot be found or is incapable of giving agreement;

(b) is withholding his agreement unreasonably;

(c) has persistently failed without reasonable cause to discharge the parental duties in relation to the child;

(d) has abandoned or neglected the child;

(e) has persistently ill-treated the child;

(f) has seriously ill-treated the child and (because of the ill-treatment or for other reasons) the rehabilitation of the child within the household of the parent or guardian is unlikely.

(iii) Agreement at (1) (i) (a) above is ineffective if given by the mother less than six weeks after the child's birth.

“ guardian ” means:—

(a) a person appointed by deed or will in accordance with the provisions of the Guardianship of Infants Acts 1886 and 1925 or the Guardianship of Minors Act 1971 or by a court of competent jurisdiction to be the guardian of the child, and

(b) in relation to the adoption of an illegitimate child, includes the father where he has custody of the child by virtue of an order under section 9 of the Guardianship of Minors Act 1971, or under section 2 of the Illegitimate Children (Scotland) Act 1930.

(2) Under section 3 of the Children Act 1975:

The court shall so far as practicable ascertain the wishes and feelings of the child regarding the adoption and give due consideration to them, having regard to his age and understanding.

**b. Additionally in Scotland only:**

Under section 8 (6) of the Children Act 1975:

An adoption order shall not be made in relation to a child who is a minor unless with the consent of the minor; except that where the court is satisfied that the minor is incapable of giving his consent to the making of the order, it may dispense with that consent.

(A minor in Scotland is a boy aged 14 or over but under 18 or a girl aged 12 or over but under 18).

**c. In Northern Ireland:**

(1) Under section 7 (1) (a) of the Adoption Act (Northern Ireland) 1967 an adoption order shall not be made unless the court is satisfied that every person whose consent is necessary, and whose consent has not been dispensed with, has consented to and understands the nature and effect of the adoption order for which application is made, and in particular in the case of any parent understands that the effect of the adoption order will be permanently to deprive him or her of his or her parental rights.

(2) Under section 4 of the Adoption Act (Northern Ireland) 1967:

(i) An adoption order shall not be made in any case, except with the consent of every person who is a parent or guardian of the child;

(ii) The consent mentioned in (i) may be given either before or after an application has been made for an order and may be given:

(a) either generally in respect of the adoption of the child or only in respect of the adoption of the child by a specified person; and

(b) either unconditionally or subject to conditions with respect to the religious persuasion in which the child is to be brought up.

(iii) The consent of the mother of a child at (i) shall be of no effect if given earlier than six weeks after the birth of the child.

(3) Under section 5 of the Adoption Act (Northern Ireland) 1967:

- (i) The court may dispense with any consent under (2) if it is satisfied that the person whose consent is to be dispensed with:
- (a) has abandoned, neglected or persistently ill-treated the child; or
  - (b) cannot be found, or is incapable of giving his consent; or
  - (c) has persistently failed without reasonable cause to discharge the obligations of a parent or guardian of the child; or
  - (d) is withholding his consent unreasonably; or
  - (e) in any other case is a person whose consent ought in the opinion of the court to be dispensed with;
- and in considering whether the consent of any person should be dispensed with under this provision the welfare of the child shall be the paramount consideration.
- (ii) Where a person who has given his consent to the making of an adoption order without knowing the identity of the applicant, subsequently withdraws his consent on the ground only that he does not know the identity of the applicant, his consent shall be deemed to be unreasonably withheld.

“guardian” means a person appointed by deed or will in accordance with the provisions of the Guardianship of Infants Act 1886, or by a court of competent jurisdiction, to be guardian of the child.

(4) Under section 7 (1) (b) of the Adoption Act (Northern Ireland) 1967:

The court before making an adoption order shall be satisfied that the order if made will be for the welfare of the child, due consideration being given to the wishes of the child, having regard to the age and understanding of the child.