



BERMUDA

ADOPTION OF CHILDREN ACT 2006

2006 : 39

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WHEREAS it is expedient to enact the Adoption of Children Act 2006:

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

PART 1
INTERPRETATION AND PRINCIPLES

Short title

1 This Act may be cited as the Adoption of Children Act 2006.

Interpretation

2 (1) In this Act—

“Adopter's Register” means the Adopter's Register referred to in section 6;

“Adopted Children Register” means the Adopted Children Register referred to in section 7;

“adoption order” means an order for the adoption of a child made under section 38;

“applicant” means a person who applies to the court for an adoption order;

“child” means a person under 18 years of age, but does not include a person who is or has been married;

“Director” means the Director of Child and Family Services;

“former Adoption Act” means the Adoption Act 1963;

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“guardian”, in relation to a child, means a person appointed by deed or will, or by a court of competent jurisdiction, to be the guardian of the child;

“health care” means anything that is done for a therapeutic, preventative, palliative, diagnostic, cosmetic or other health related purpose, and includes a course of health care;

“health care professional” includes a medical practitioner and any person licensed, certified or registered in Bermuda to provide health care;

“lawyer” means a barrister and attorney who has been admitted to practise law under section 51 of the Supreme Court Act 1905;

“Minister” means the Minister responsible for Child and Family Services;

“place” means to transfer the custody of a child from one person to another for the purpose of adoption;

“prescribed” means prescribed by Rules or Regulations, as the case may be, made under this Act;

“professional counsellor” means a person with knowledge of this Act, who has a professional certification or designation in the field of psychiatry, psychology, social work or counselling;

“Regulations” means regulations made under this Act;

“relative” means a parent, grandparent, aunt, uncle or sibling of a child by birth or adoption;

“Rules” means the Rules made under this Act;

“step-parent” means the spouse of the custodial parent of a child where the spouse has been cohabiting with that parent for a continuous period of not less than one year immediately preceding an application to adopt the child.

(2) For the purposes of exercising jurisdiction under this Act, the “court” shall be a Special Court established under the Magistrates Act 1948.

(3) For the purposes of this Act, a resident of Bermuda is a person who, under the Bermuda Immigration and Protection Act 1956—

- (a) possesses Bermudian status;
- (b) is deemed to possess Bermudian status or is the spouse of a person who possesses Bermudian status; or
- (c) holds a permanent resident’s certificate.

[Section 2 subsection (1) “prescribed” and “Rules” repealed and replaced and subsection (3) inserted by 2011 : 17 s. 2 effective 4 November 2013]

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Adoption principles

3 (1) In making a decision about the placement or adoption of a child under this Act, the Director, the court or any other person involved in the adoption process (“the decision-maker”) shall act in accordance with the following principles—

- (a) the best interests of the child shall be the paramount consideration;
- (b) priority shall, where it is reasonable to do so, be given to the placement and adoption of children who are resident in Bermuda; and
- (c) there should be the opportunity for openness in adoption, but every person’s choice of anonymity shall be respected.

(2) In determining the best interests of a child under subsection (1), the decision-maker shall have regard to the following matters—

- (a) the child’s safety;
- (b) the child’s maturity, level of understanding, gender or other characteristics which the decision-maker considers relevant;
- (c) the child’s physical and emotional needs including any special need for care and treatment and the child’s level of development;
- (d) the child’s need for continuing parental care and guidance, the importance of continuity in the child’s care and the possible effect on the child of disruption of that continuity;
- (e) any views or preferences expressed by the child;
- (f) the relationship that exists between the child and each person to whom the custody of the child is or might be entrusted;
- (g) the capacity of the parties involved to properly discharge parental obligations;
- (h) continuity of the child’s cultural, racial and religious background or heritage;
- (i) the relationship that the child has with their relatives; and
- (j) the effect on the child if there is delay in making a decision.

PART 2

ADMINISTRATION

Adoption Coordinator

4 (1) Subject to this Act, the Director is responsible for the administration of adoptions in Bermuda.

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(2) The Director may, with the approval of the Public Service Commission, designate a public officer to be the Adoption Coordinator to exercise such functions as the Director may delegate under section 5.

(3) The Director may give the Adoption Coordinator such directions as the Director sees fit and the Adoption Coordinator shall comply with any such directions.

Director's power to delegate functions

5 (1) Subject to subsection (2) and the Rules and the Regulations, the Director may delegate to the Adoption Coordinator any of the Director's powers, duties or functions under this Act or the Regulations.

(2) The delegation of the powers, duties or functions of the Director shall be in writing and may include any terms or conditions the Director considers advisable.

Adopter's Register

6 (1) The Minister shall continue to maintain the Adopter's Register that was established pursuant to section 4 of the former Adoption Act in which shall be recorded the name and address of any person who intends to apply for an adoption order, and such other particulars as the Minister may consider expedient.

(2) Every person who intends to apply for an adoption order in relation to any child shall, before assuming the care and custody of that child, apply to register his name and address in the Adopter's Register in accordance with this section.

(3) The Minister may instruct the Director to undertake investigations respecting any person who is registered in the Adopter's Register, and such investigations may include medical examination of the person concerned.

(4) On receipt of an application for an adoption order, the court shall notify the Director of the particulars of the application and the Director shall forthwith submit to the court a report setting out the result of any home study the Director may have carried out in respect of the applicant.

(5) No adoption order shall be made in favour of an applicant unless the applicant has been registered in the Adopter's Register as provided in subsection (1) for a period of at least three months immediately preceding the application.

(6) Subsection (5) shall not apply where at least one of the parents of the child is the applicant for the adoption order.

(7) The provisions of section 55 of the Children Act 1998 apply, with the necessary changes, in respect of an application made to the Director under subsection (2) of this section.

[Section 6 subsection (7) inserted by 2011 : 17 s. 3 effective 4 November 2013]

Adopted Children Register

7 (1) The Registrar-General shall continue to maintain the Adopted Children Register that was established by section 17 of the former Adoption Act, in which shall be

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made such entries as may be directed to be made therein by adoption orders, but no other entries.

(2) Every adoption order shall contain a direction to the Registrar-General to make an entry in the Adopted Children Register recording the adoption in such form as may be prescribed.

(3) If, on an application for an adoption order, there is proved to the satisfaction of the Court the birth date of the child to be adopted and the identity of that child with a child to which an entry in the general register of births relates, the adoption order shall contain a direction to the Registrar-General—

- (a) to cause such entry in the general register of births to be marked with the word “Adopted”; and
- (b) to include in the entry in the Adopted Children Register that records the adoption date, as stated in the order, particulars of the adopted child’s birth in such manner as may be prescribed.

(4) In making entries in the Adopted Children Register, the Registrar-General, shall make a notation as to whether the adoption order makes the previous identity or parentage of the child open or indicates if it is intended to be kept secret.

(5) The court shall cause every adoption order to be communicated to the Registrar-General who shall comply with the directions contained in such order.

(6) A certified copy of an entry in the Adopted Children Register if purporting to be sealed or stamped with the seal of the Registrar-General shall, without any further or other proof of such entry,—

- (a) where the entry does not contain any record of the date of the birth of the adopted child, be received only as evidence of the adoption to which the entry relates; and
- (b) where the entry contains a record of the date of the birth of the adopted child, be received not only as evidence of the adoption to which the entry relates but also as evidence of the date of the birth of the adopted child to which the entry relates, in all respects as though the entry were a certified copy of an entry in the general register of births.

(7) The Registrar-General shall make and keep an index of the Adopted Children Register.

(8) Any person shall be entitled to search the index of the Adopted Children Register and to have a certified copy of any entry in the index, subject to the same terms and conditions—

- (a) as to payment of fees as under the Registration (Births and Deaths) Act 1949 in respect of searches in other indexes kept in the office of the Registrar-General; and
- (b) in respect of the supply from the office of the Registrar-General of certified copies of entries in the general register for births and deaths.

(9) The Registrar-General shall, in addition to the Adopted Children Register and the index of that Register, keep such other registers and books and make such entries in those registers and books as may be necessary to record and make traceable the connection between any entry in the general register of births that has been marked with the word "Adopted" pursuant to this Act and any corresponding entry in the Adopted Children Register. Other registers and books, and any index of those registers and books, shall not be open to public inspection or search.

PART 3

PROCESS LEADING TO ADOPTION

Division 1: Placement for Adoption

Persons who may place children

8 The following persons may, in accordance with this Part, place a child for adoption—

- (a) the Director;
- (b) the parent of the child; or
- (c) the guardian of the child.

Director's duties

9 (1) Before placing a child for adoption, the Director shall—

- (a) provide information about adoption and alternatives to adoption to the parent or guardian who requests placement of the child;
- (b) if the parent or guardian requesting placement wishes to select the child's prospective adoptive parents, provide the parent or guardian with non-identifying information about prospective adoptive parents registered in the Adopter's Register who have been approved on the basis of a home study completed in accordance with section 10;
- (c) obtain such information as is reasonably ascertainable from the parent or guardian who requests placement about the medical and social history of the child's biological family and preserve the information for the child;
- (d) give the prospective adoptive parent information about the medical and social history of the child's family;
- (e) where no person is named or registered as the father of the child, make reasonable efforts to determine whether a presumption of paternity arises under section 18I of the Children Act 1998;
- (f) ensure that the child—
 - (i) if sufficiently mature, has been counselled by a professional counsellor about the effects of adoption; and

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- (ii) if 12 years of age or over, has been informed about their right to consent to the adoption;
 - (g) make reasonable efforts to obtain any consents required under section 15;
 - (h) make reasonable efforts to give notice of the proposed adoption to anyone who is named by the mother of the child as the child's father if the consent of the father is not already required under section 15; and
 - (i) ensure that consent in the prescribed form signed by the person placing the child has been entered in the adoption record unless the court has dispensed with such consent.
- (2) The Director may only place a child for adoption with prospective adoptive parents who have been approved by the Director on the basis of a home study conducted under section 10 and whose names are entered in the Adopter's Register.
- (3) The Director shall do all things necessary to obtain the documentation required under section 31.

Home study report

- 10 (1) The Director shall complete a home study report of a prospective adoptive parent.
- (2) Where a home study report has been completed under subsection (1), the Director may, based on that report, give approval for a prospective adoptive parent to have a child placed in their home for the purpose of adopting that child.

Placement overseas

- 11 (1) No person shall place a child for adoption overseas without the permission of the Director (in accordance with such criteria and conditions as the Director may require) and the authority of an order made by the court under section 48.
- (2) A person who contravenes subsection (1) is liable to conviction under section 48(3).

[Section 11 repealed and replaced by 2011 : 17 s. 4 effective 4 November 2013]

Notice to Director

- 12 A person, other than the Director, who places a child for adoption shall—
- (a) notify the Director of the intention to place the child or, if it is not immediately known that the purpose is adoption, notify the Director of the placement as soon as practicable after it becomes evident that the child is in fact being placed for adoption; and
 - (b) provide the Director with such information in respect of the identity and circumstances of the parties to the placement as may be specified by the Regulations.

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Information with placement

13 (1) A person, other than the Director, who places a child for adoption shall provide in writing to the person receiving the child a summary of non-identifying information concerning the background and circumstances of the child including cultural heritage, medical history, family history that might affect the child's rearing, the reasons for the placement, and such other information as may be prescribed.

(2) The person placing the child shall not provide to any person information that identifies the parentage of the child except when—

- (a) it is agreed to by the person who gives up the child for placement; or
- (b) the release of the information is authorized by the Director.

(3) The person placing the child shall provide to the Director a copy of information given pursuant to subsections (1) and (2).

Agreement for continuing contact

14 (1) A parent or guardian and prospective adoptive parents who wish for continuing contact, after an adoption, between the parent or guardian and the child, shall enter into an agreement for continuing contact.

(2) An agreement under subsection (1) shall be legally binding where—

- (a) the parties to the agreement have obtained independent legal advice prior to entering into the agreement;
- (b) the agreement is made in writing and duly executed by the parties; and
- (c) a copy of the agreement is deposited with the Director and included with the documents submitted to the court under section 31 when an application is made for an adoption order.

(3) An agreement for continuing contact made under this section may be amended or terminated—

- (a) by agreement of the parties as evidenced in writing; or
- (b) in accordance with any provision in the agreement for amendment or termination.

(4) An amendment or termination of an agreement for continuing contact shall be deposited with the Director and the court.

Division 2: Consents

Required consents

15 (1) Except as otherwise provided in this Act or ordered by the court, the consent of each of the following persons shall be required for the adoption of a child—

- (a) the child, if the child is 12 years of age or over;
- (b) each parent of the child; and

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- (c) any guardian of the child.
- (2) The consent of the Director shall be required if—
 - (a) there is no other person entitled to give or withhold consent; or
 - (b) the applicant resides outside of Bermuda.
- (3) A parent's consent to the adoption of his child is valid only if the child is at least six weeks old when the consent is given.
- (4) For the purpose of giving consent to an adoption, the child's father is anyone who—
 - (a) is or was the child's guardian or joint guardian with the mother of the child;
 - (b) has acknowledged paternity and has custody or access rights to the child by court order or by agreement;
 - (c) has acknowledged paternity and has supported, maintained or cared for the child, voluntarily or under a court order;
 - (d) has acknowledged paternity and is named by the mother of the child as the child's father;
 - (e) is acknowledged by the mother of the child as the child's father;
 - (f) is recognised in law as the child's father pursuant to section 18I of the Children Act 1998; or
 - (g) maintains and has proved to the satisfaction of the Director that he is the father of the child and is willing and able to exercise care and custody of the child.
- (5) If the child is in the continuing custody of the Director, the only consents required are—
 - (a) the Director's consent; and
 - (b) the child's consent, if the child is 12 years of age or over.
- (6) For the purposes of subsection (5), a child is deemed to be in the continuing custody of the Director if the child is in the care of the Director pursuant to a care order made under Part 4 of the Children Act 1998, in which case the Director may, for the purpose of adoption—
 - (a) place the child with a relative or guardian of the child, where the child has been in the care of the Director for at least 6 consecutive months without parental contact;
 - (b) place the child with a relative or guardian of the child, where the child has been in the care of the Director for at least 3 consecutive months without parental contact and where the parent or guardian of the child has previously had another child removed from their care pursuant to a care

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order as a result of their being unable or as unwilling to care for that other child;

- (c) place the child with a suitable person, where the child has been in the care of the Director for at least 12 consecutive months without parental contact; or
- (d) place the child with a suitable person as soon as practicable, where the parent or guardian of the child is deceased, or otherwise unable or unwilling, within a reasonable period, to care for the child and there is no other relative of the child willing or able to assume the care of the child within a reasonable period.

Parent under 18

16 A parent who is under 18 years of age may give valid consent to the adoption of their child.

Child or other person consenting must be counselled

17 (1) Prior to giving consent to the adoption of a child, a child or other person whose consent is required shall be counselled in accordance with this section.

(2) A person is counselled in accordance with this section if—

- (a) a lawyer explains to the person the legal effect of giving his consent to the adoption and the period for revoking the consent; and
- (b) a professional counsellor counsels the person on the alternatives to adoption including, in the case of the parent of the child, the feasibility of keeping the child.

Form of consent

18 (1) A consent to adoption shall be given in writing in the prescribed form supported by the prescribed documents.

(2) The consent document shall state that consent is freely and voluntarily given to the proposed adoption, and that the effects of the consent and of the proposed adoption have been explained to and understood by the person consenting.

(3) When a consent to the adoption of a child in Bermuda is required from a person resident outside of Bermuda, the consent is sufficient for the purposes of this Act if it is in a form that meets the requirements for consent to adoption in the jurisdiction in which the person is resident.

Dispensing with consent

19 (1) On application, the court may by order dispense with a consent required under this Part if the court is satisfied that it is in the best interests of the child to do so or that—

- (a) the person whose consent is to be dispensed with is not capable of giving an informed consent;

- (b) reasonable but unsuccessful efforts have been made to locate the person whose consent is to be dispensed with;
 - (c) the person whose consent is to be dispensed with—
 - (i) has abandoned or deserted the child;
 - (ii) has not made reasonable efforts to meet their parental obligations to the child; or
 - (iii) is not capable of caring for the child; or
 - (d) other circumstances justify dispensing with the consent.
- (2) Notwithstanding subsection (1), the court may dispense with the consent of a child only if the child is not capable of giving an informed consent.
- (3) Before making an order under this section, the court may consider any recommendation in a report filed by the Director.
- (4) An application under this section may be made without notice to any other person and may be joined with any other application that may be made under this Act.
- (5) Where an order is made under subsection (1) notice of the order shall be given to a person whose consent has been dispensed with under this section.

Revocation of consent

- 20 (1) A person may revoke their consent to a child's adoption by notice in writing given to the Director before the expiration of 90 days commencing on the day when the consent form was signed.
- (2) The Director shall give notice to every person who has given a valid consent to an adoption that, upon the expiration of the period of 90 days, consent cannot be revoked and an adoption order may be made.
- (3) Notice under subsection (2) shall be given not less than 7 days before the expiration of the period of 90 days.

Division 3: Care, Custody and Guardianship

Transfer of care and custody to Director

- 21 (1) A parent who has care and custody of a child may, in writing, transfer care and custody to the Director before—
- (a) the child is placed for adoption by the Director; and
 - (b) the parent consents to the child's adoption.
- (2) When consent to the adoption of a child is given by the parent or guardian who requested that the Director place the child for adoption, the Director becomes guardian of the child until an adoption order is made or the consent is revoked.

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(3) The Director shall comply with any request in writing, made by a person referred to in subsection (2), to be notified when an adoption order is made.

Transfer of care and custody by Director

22 If the Director has care and custody of a child or is guardian of a child under section 21, the Director may—

- (a) transfer care and custody of the child to a prospective adoptive parent; or
- (b) put the child in the care of a caregiver.

Custody during placement

23 During the period between the commencement of the placement and the making of the adoption order or other termination of the placement, custody of the child lies with the person with whom the placement is made.

What care and custody includes

24 (1) A person who has care and custody of a child under this Act may—

- (a) authorize a health care professional to examine the child; and
- (b) consent to necessary health care for the child if, in the opinion of the health care professional, the health care should be provided.

(2) A person who has care and custody of a child under this Act may consent to the child's participation in school, social or recreational activities.

PART 4 COURT PROCEEDINGS

Jurisdiction

25 The court has jurisdiction to make an adoption order if—

- (a) the child to be adopted is a resident of Bermuda or was born in Bermuda;
- (b) the person having parental responsibility for the child is a resident of Bermuda, or is the Director; or
- (c) the applicant is a resident of Bermuda.

Child's views

26 (1) The court shall inquire into the child's capacity to understand and appreciate the nature of the application, consider the child's views if they can be reasonably ascertained, and where it is practical to do so, the court shall give the child the opportunity to be heard.

(2) Before applying to the court for an adoption order relating to a child who is at least 7 years of age and less than 12 years of age, the applicant shall arrange for a person

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authorized by the Regulations to meet the child privately so that the person can make a written report which shall indicate whether the child—

- (a) has been counselled as required by section 9(1)(f)(i);
- (b) understands what adoption means; and
- (c) has any views on the proposed adoption and on any proposed change of the child's name.

Application to adopt

27 (1) A person seeking to adopt a child shall apply to the court for an adoption order in accordance with prescribed requirements.

(2) Where an application for an adoption order is made and it appears that the requirements prescribed for an application have been met, the court shall set a date for the hearing of the application.

(3) The court shall serve the notice of the hearing as prescribed by rules 11 and 12 of the Rules.

(4) A notice served on the Director under subsection (3) shall be accompanied by the materials or documents that are required to be filed with the court under section 31.

Who may apply to adopt a child

28 (1) Subject to subsection (2), no application shall be made for the adoption of a child by more than one person except in the case of a joint application by a married couple.

(2) A relative of the child may apply to the court to jointly become a parent of a child with a parent of the child so that the child has a mother and a father.

(3) A married couple may apply to the court to adopt a child if they have been living together for a continuous period of not less than one year immediately before their application.

(4) Subject to section 29, a person may apply to adopt a child if the child has been placed with that person for at least three months prior to the application, or such shorter period as may be authorized by the court.

Step-parent exemption

29 The step-parent of a child may apply to adopt the child without having to comply with the requirements regarding placement in section 28(4).

Age of applicant

30 No person shall apply to adopt a child unless he or she has attained the age of 18 years.

Application documents

31 Before an adoption order is made, the following documents shall be filed with the court—

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- (a) all the required consents to the adoption, or orders dispensing with consent or an application to dispense with consent;
- (b) the child's birth certificate or, if it cannot be obtained, satisfactory evidence of the facts relating to the child's birth;
- (c) if the child is at least 7 years of age and less than 12 years of age, a copy of the report of the child's views prepared in accordance with section 26 or a satisfactory explanation of why the report has not been prepared;
- (d) any agreement for continuing contact concluded under section 14;
- (e) the post-placement report, if required under section 32; and
- (f) any additional information that may be prescribed.

Post-placement report

32 (1) If the Director has placed a child for adoption or has been given notice under section 27 of an application for the adoption of a child, the Director shall file with the court a post-placement report that contains—

- (a) the results of a home study report that has been completed or updated within the six-month period preceding the date for the hearing of the application;
- (b) either a recommendation that the adoption order should or should not be made or a statement that there is insufficient information to make the recommendation; and
- (c) the information prescribed.

(2) The Director may file with the court any other evidence or information the Director considers necessary to enable the court to determine whether the proposed adoption is in the best interests of the child.

(3) The post-placement report shall provide information and a professional assessment concerning the suitability of the placement and the likelihood that the welfare of the child will be satisfactorily provided for in the long term, including—

- (a) relevant circumstances of the placement;
- (b) the relations between the child and the applicant and members of the household of the applicant;
- (c) the care the child is receiving;
- (d) the present and likely future capacity of the applicant to provide for the welfare of the child; and
- (e) such further information and professional opinion as may seem helpful for the consideration of the court or as the court may require for the purposes of considering the application.

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Court ordered reports

33 The court may require the Director to inquire into and report to it on any matter respecting an application for an adoption order that the court considers to be necessary.

Right of access to reports

34 An applicant is entitled to have access to the reports provided under this Act unless the court otherwise directs or imposes conditions relating to access.

Dispensing with notice of hearing

35 The court may dispense with the requirement that notice of the hearing of an application for an adoption order be given to any person other than the Director or the child if the court is satisfied that—

- (a) the person does not have clear entitlement to consent or to withhold consent;
- (b) the person is not legally competent to make a decision;
- (c) the person does not wish to be involved;
- (d) the person cannot be contacted, despite reasonable efforts to do so; or
- (e) the welfare of the child should override any entitlement of the person to be involved.

Hearings to be in private

36 An application under this Act for an order relating to a child placed for adoption, or an appeal from that order, shall be heard and dealt with in private.

Persons entitled to be heard

37 The applicant and any person entitled to notice under rules 11 and 12 of the Rules shall be entitled to be heard at the hearing, personally or through a lawyer.

Adoption order

38 (1) Before the court decides whether to make an adoption order, the court shall consider the documents filed under section 31.

(2) The court may make an adoption order if the court is satisfied that—

- (a) the child has resided with the applicant for at least 3 months immediately before the date of the adoption hearing; and
- (b) it is in the child's best interests to be adopted by the applicant.

(3) If the post-placement report was completed more than 3 months before the date of hearing the application, no adoption order shall be made until the applicant files with the court a written certificate of the Director confirming or modifying the report.

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Secrecy of previous identity

39 (1) Where the child's previous identity or parentage has not been provided to any person prior to the adoption order, the adoption order shall not show the previous surname, but shall identify the child by the given name prior to the adoption and a number or other code referring to the registration of the child's birth.

(2) Subsection (1) does not apply if the court is satisfied that the person or persons who gave the child up for placement subsequently agreed to the revealing of the child's previous identity and parentage, and the applicant agrees.

Child's name

40 (1) The court shall in an adoption order specify the surname the child is to have.

(2) The surname shall be the surname requested by the applicant in accordance with the requirements for registering a child's birth under the Registration (Births and Deaths) Act 1949.

(3) On the request of the applicant the court may also in the order change the child's given name.

[Section 40 subsection (2) amended by 2011 : 17 s. 10 effective 4 November 2013]

Effect of adoption order

41 (1) When an adoption order is made—

- (a) the child becomes the child of the adoptive parent;
- (b) the adoptive parent becomes the parent of the child; and
- (c) the previous relationships to other relatives prior to the adoption cease, and new relationships have effect on the date of the adoption order, in accordance with the relationships of the adoptive parent.

(2) For the purposes of laws related to incest and the prohibited degrees of marriage, subsection (1) does not remove a person from a relationship in consanguinity which, but for this section, would have existed between that person and another person.

(3) Where an adoption order is made in respect of a child, then any maintenance order in force in respect of the child, and any other agreement to make payments specifically for the benefit of the child, shall cease to have effect, but without prejudice to the recovery of any arrears which are due under the order or agreement at the date of the adoption order.

(4) Notwithstanding any provision of law to the contrary, after an adoption order has been made in respect of a child, no maintenance order shall be made with respect to that child which would impose an obligation to make payments on a person who was the child's parent or guardian before an adoption order was made.

(5) When an adoption order is made, any order or agreement for access to the child terminates unless the court orders otherwise.

(6) In any disposition of real or personal property made, whether by instrument inter vivos or by will (including codicil) after the date of the adoption order—

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- (a) any reference (whether express or implied) to the child or children of the adoptive parent shall, unless the contrary intention appears, be construed as, or as including, a reference to the adopted person;
- (b) any reference (whether express or implied) to the child or children of the adopted person's natural parents or either of them shall, unless the contrary intention appears, be construed as not being, or as not including, a reference to the adopted person; and
- (c) any reference (whether express or implied) to a person related to the adopted person in any degree shall, unless the contrary intention appears, be construed as a reference to the person who would be related to him in that degree as if they were the child of the adopter and were not the child of any other person.

(7) Where, at any time after the making of an adoption order, the adopter or the adopted person or any other person dies intestate in respect of any real or personal property (other than property subject to an entailed interest under a disposition made before the date of the adoption order), that property shall devolve in all respects as if the adopted person were the natural child of the adopter.

Notice of adoption order

42 (1) When an adoption order is made, the Director shall make reasonable efforts to notify the parent or guardian of the child or other guardian who requested the Director to place the child for adoption that the child has been adopted.

(2) Subsection (1) does not apply if the parent or guardian of the child expressly states that they do not wish to be notified.

When an adoption order may be revoked

43 (1) No adoption order may be revoked except—

- (a) as a result of an appeal of a decision of the court; or
- (b) if the order was obtained as a result of fraud, but only if the court considers it to be in the child's best interests to revoke the order.

(2) Where an adoption order is revoked under this section, the court shall cause the revocation to be communicated to the Registrar-General who shall cause to be cancelled—

- (a) the entry in the Adopted Children Register relating to the adopted person; and
- (b) the marking with the word "Adopted" of any entry relating to the adopted person in the general register of births.

(3) A copy or extract of any entry in any register, being an entry the marking of which is cancelled under this section, shall be deemed to be an accurate copy if the marking is omitted therefrom.

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Care and custody of child in the event of refusal of application

44 (1) If the court refuses an application for an adoption order, the court may make such orders for the care and custody of the child concerned as it thinks fit including an order declaring the child to be in the care and custody of the Director.

(2) Where an order has been made under subsection (1) declaring the child to be in the care and custody of the Director, the Director may—

- (a) transfer care and custody of the child to another prospective adoptive parent; or
- (b) place the child in the care of a caregiver.

[Section 44 section renumbered as subsection (1) and subsection (2) inserted by 2011 : 17 s. 5 effective 4 November 2013]

Confidentiality of court files

45 (1) An application for an order under this Act or any document filed in court in connection with the application may be searched only—

- (a) by order of the court; or
- (b) at the request of the Director.

(2) After an adoption order is made, an officer of the court shall send a certified copy of the order to—

- (a) the applicant;
- (b) the Registrar-General; and
- (c) the Director.

PART 5

OVERSEAS ADOPTIONS

Effect of overseas adoption

46 (1) An adoption made under the law of an approved jurisdiction that has substantially the same effect under the law of that jurisdiction as an adoption under this Act shall have the same effect in Bermuda as an adoption under this Act.

(2) For the purposes of this Part, “approved jurisdiction” means—

- (a) an overseas jurisdiction which is a party to the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption (The Hague, 29 May 1993); but does not include a country or territory, whether a party to the Convention or not, which is for the time being a “restricted country” pursuant to subsections (4) to (9) of section 9 of the Children and Adoption Act 2006 (UK); and

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- (b) any other jurisdiction designated by the Minister, by order published in the Gazette, as an approved jurisdiction; except that where a designated jurisdiction becomes a “restricted country” that jurisdiction ceases to be an approved jurisdiction.

(3) An order made under subsection (2)(b) is subject to the negative resolution procedure.

[Section 46 subsection (1) amended, subsection (2) repealed and replaced and subsection (3) inserted by 2011 : 17 s. 6 effective 4 November 2013]

Approval to bring child into Bermuda for adoption

47 (1) Before a child who is not a resident of Bermuda is brought into Bermuda for adoption, the prospective adoptive parents shall obtain the approval of the court.

(2) The court shall grant approval if the court is satisfied that—

- (a) the parent or guardian of the child who places the child for adoption has been provided with information about adoption and the alternatives to adoption;
- (b) the prospective adoptive parents have been provided with information about the medical and social history of the child's biological family;
- (c) a home study report of the prospective adoptive parents has been completed in accordance with the Regulations and the prospective adoptive parents are approved on the basis of the home study report;
- (d) the consents to the adoption have been obtained as required under the law of the jurisdiction in which the child is resident;
- (e) approval has been granted by a court under the law of the jurisdiction in which the child resides for the child to be transferred to Bermuda for the purpose of adoption; and
- (f) the specific permission has been granted under the Bermuda Immigration and Protection Act 1956 for the child to enter Bermuda for the purpose of adoption.

(3) The Director shall preserve for the child any information obtained about the medical and social history of the child's biological family.

(4) Approval may only be granted by a court in respect of a child who is to be brought into Bermuda from an approved jurisdiction.

(5) Subsection (2)(a) and (b) and subsections (3) and (4) do not apply in the case of a child who is to be brought into Bermuda for the purpose of adoption by a relative of the child or by a person who will become an adoptive parent jointly with the child's parent.

[Section 47 subsection (2) amended, subsection (4) repealed and replaced and subsection (5) inserted by 2011 : 17 s. 7 effective 4 November 2013]

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Approval of overseas adoption of Bermudian child

48 (1) Except under the authority of an order made by the court, no person shall place a child, or permit, or cause or procure the care and custody of a child to be transferred from Bermuda to a person resident outside of Bermuda ("proposed adopter overseas") for the purpose of the adoption of the child.

(2) The court may make an order, subject to such conditions and restrictions as the court thinks fit, authorizing the child to be placed with or transferred to a proposed adopter overseas for the purpose of the adoption of the child by such proposed adopter overseas, but no such order shall be made unless the court is satisfied—

- (a) that the consents required by section 15 have been given or the court has dispensed with such consents;
- (b) that the proposed adopter overseas is a suitable person; and
- (c) that the transfer is likely to be in the best interests of the child, due consideration being for this purpose given to the wishes of the child, having regard to the age and understanding of the child.

(2A) An order under subsection (2) may only be made in respect of a child who is to be transferred from Bermuda to an approved jurisdiction.

(2B) Subsection (2A) does not apply in the case of a child who is to be transferred from Bermuda for the purpose of adoption by a relative of the child or by a person who will become an adoptive parent jointly with the child's parent.

(3) Any person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$20,000 or to imprisonment not exceeding one year or to both.

[Section 48 subsections (1) and (2) amended and subsections (2A) and (2B) inserted by 2011 : 17 s. 8 effective 4 November 2013]

PART 6

OPENNESS AND DISCLOSURE

Disclosure of information

49 (1) A person who places a child, or the Director, or the court may at any time, if the circumstances so warrant, provide information concerning the background of the child at the request of a party to a placement or an adoption.

(2) Notwithstanding subsection (1), in a case where secrecy as to pre-adoption parentage is kept on making an adoption order, any information which would establish the child's previous identity or parentage shall not be provided to a party to a placement or an adoption.

(3) The Director or person who placed a child or the court may at any time provide to a medical practitioner or other health care professional such health-related information concerning the child as the practitioner may require for purposes of the child's care.

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(4) Where the adoption was effected in Bermuda before the coming into operation of this Act, the court, the Director or the person who placed the child may provide the information referred to in this section to—

- (a) a parent who adopted a child; or
- (b) an adopted child.

Requirement for counselling

50 A person to whom information may be provided under subsection 49(1) or (4) must receive counselling from a professional counsellor before the information referred to may be released.

Request for identifying information

51 (1) An adult adopted person seeking the identity of, or identifying information concerning, or seeking to make contact with, a relative of the adopted person shall make a request in the prescribed form to the Director.

(2) In considering such a request, the Director shall where feasible attempt to ensure that the adoptive parents are consulted concerning the request.

(3) The Director shall, subject to subsection (7)—

- (a) search the records pertaining to the placement and adoption and, if possible, ascertain the requested information; and
- (b) make contact with the person about whom the request was made.

(4) If a person contacted in accordance with subsection (3)(b) gives permission, the Director shall—

- (a) release to the person making the request the identity or information requested; and
- (b) if the person making the request wishes to make contact, arrange the contact between the two parties.

(5) If the Director cannot contact the person about whom the request is made, or if the person is found to be incompetent to give the required permission, the Director may, considering both the wishes of the person making the request and the wishes or interests of the person sought, determine whether to provide the requested information.

(6) If it is found that the person about whom the request is made is no longer alive, the Director shall provide the person making the request with the requested information, unless there is reason to believe that significant harm would result.

(7) The Director may refuse to disclose identifying information or to facilitate a reunion if the Director determines that it is not feasible to do so or that it would be likely to have harmful results for the persons involved in the placement and adoption.

(8) A person to whom information may be provided under this section must receive counselling from a professional counsellor before the information referred to may be released.

Request by minor for information

52 An adopted person who is a minor may, with the written consent of their parent or guardian, make a request for information under section 51. The Director shall provide the adopted person with the information if the Director reasonably believes that the information could be significant to the health or well-being of the adopted person.

PART 7
GENERAL PROVISIONS

Appeal to Supreme Court

53 The following persons may appeal to the Supreme Court in the manner and subject to the conditions provided for an appeal in a civil cause or matter —

- (a) the applicant, where the court has refused to make an adoption order; or
- (b) any person whose consent has been dispensed with by the court under section 19, where the court has subsequently made an adoption order.

Security of adoption records

54 (1) All records and documents kept by the court, by the Director and by the Registrar-General relating to the placement and adoption of a child are confidential and shall be kept indefinitely in a secure place until they are archived in accordance with the Regulations.

(2) The information in records and documents kept under subsection (1) shall not be disclosed, except as provided in this Act or ordered by the court.

(3) Records and documents may be microfilmed or kept electronically or otherwise preserved and the copies in this other form shall be kept confidential as required by subsection (1).

(4) The Registrar-General may disclose information from, or provide a copy of, an original birth registration in respect of an adopted person—

- (a) where the notation referred to in section 7(4) indicates that the identity or parentage is open; or
- (b) where the notation indicates that the identity or parentage is to be kept secret but—
 - (i) the information is not of a confidential nature or is known to or available to the adopted person from another source;
 - (ii) disclosure is authorized or required by the Registration (Births and Deaths) Act 1949; or

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- (iii) the information is communicated only to an adoption agency or an agency of a jurisdiction outside Bermuda for purposes of performing functions authorized by law.

Protection from liability

55 No person is personally liable for anything done, or omitted to be done, in good faith in the exercise or performance or intended exercise or performance of—

- (a) a power, duty or function conferred by or under this Act; or
- (b) a power, duty or function on behalf of or under the direction of a person on whom the power, duty or function is conferred by or under this Act.

Payment prohibited

56 (1) No person shall give, receive or agree to give or receive any payment or reward, whether directly or indirectly—

- (a) to procure or assist in procuring a child for the purposes of adoption in or outside Bermuda; or
 - (b) to place or arrange the placement of a child for the purposes of adoption in or outside Bermuda.
- (2) Subsection (1) does not apply to any of the following—
- (a) a lawyer receiving reasonable fees and expenses for legal services provided in connection with an adoption;
 - (b) a health care professional receiving reasonable fees and expenses for medical services provided to a child who is the subject of an adoption or to the mother of the child in connection with her pregnancy with the child or the birth of the child;
 - (c) the Director charging a fee for services provided in the course of a placement or an adoption; and
 - (d) any other person prescribed by the Regulations.

(3) A person who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding \$10,000 or to imprisonment for a period not exceeding 6 months, or to both.

Advertising prohibited

57 (1) No person shall publish or have published in any form or manner an advertisement dealing with the placement or adoption of a child.

- (2) Subsection (1) does not apply to—
- (a) the publication of a notice under a court order; or
 - (b) the publication of a notice authorized by the Director.

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(3) A person who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding \$5,000.

Making a false statement

58 (1) No person shall make a statement that the person knows to be false in an application or in connection with an application under this Act.

(2) A person who contravenes this section commits an offence and is liable on summary conviction to a fine not exceeding \$5,000.

Limitation

59 No proceedings for an offence under this Act may be commenced more than two years after the facts on which the proceedings are based first came to the Director's knowledge.

Regulations

60 (1) The Minister may make regulations necessary or expedient to give effect to the provisions of this Act, including regulations—

- (a) respecting registration under this Act;
- (b) respecting adoption consents and the witnessing of consents;
- (c) respecting home study and post-placement reports;
- (d) respecting the persons who are authorized to meet with a child for the purposes of making a report under section 26(2);
- (e) giving effect to the Hague Convention on Intercountry Adoption to Bermuda;
- (f) respecting eligibility for financial assistance or other assistance in respect of placements or adoptions, the forms of assistance and the terms to be included in assistance agreements;
- (g) governing the payment of fees for applications, registrations or other things done under this Act;
- (h) prescribing forms, documents and reports for the purposes of this Act; and
- (i) respecting any matters necessary for more effectively bringing into operation the provisions of this Act and for obviating any transitional difficulties encountered in doing so.

(2) Regulations made under this section shall be subject to the negative resolution procedure.

Rules

61 (1) The Chief Justice may make rules in respect of any matter to be prescribed under this Act—

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- (a) directing the manner in which applications to the court are to be made;
- (b) dealing generally with all matters of procedure and incidental matters arising out of this Act; and
- (c) for carrying this Act into effect.

(2) For the purpose of any application under this Act and pursuant to rule 8 of the Rules and any other rule made under this section, the court shall appoint the Minister to act as guardian ad litem of a child upon the hearing of the application, with the duty of safeguarding the welfare of the child before the court.

(3) On the determination of an application, the court may order the applicant to pay the costs of the application or such part thereof as the court thinks proper and may enforce any such order in the manner provided for the enforcement of a judgment or order of a court of summary jurisdiction under the Criminal Jurisdiction and Procedure Act 2015.

(4) For the purposes of this section, the costs of an application shall (in addition to any costs that may be awarded by the court under the Magistrates Act 1948) be taken to include such sum as the court may fix in respect of expenses incurred by the Minister or the guardian ad litem appointed under subsection (2).

(5) Section 6 of the Statutory Instruments Act 1977 shall not apply to rules made under this section.

[Section 61 subsection (3) amended by 2015 : 38 s. 91 effective 6 November 2015]

Repeal of Adoption of Children Act 1963

62 The Adoption of Children Act 1963 is repealed.

Transitional provision

62A Notwithstanding section 62, where an application together with the required documents is filed with the court before the coming into operation of this Act, the court may proceed under the former Act if it determines that it would be in the best interest of the child to do so.

[Section 62A inserted by 2011 : 17 s. 9 effective 4 November 2013]

Savings

63 (1) Any consents given before the repeal of the former Adoption Act that were valid for the purposes of that Act are valid for the purposes of this Act.

(2) Any order dispensing with an adoption consent that was made before the repeal of the former Adoption Act is valid for the purposes of this Act.

(3) Rules made under the former Adoption Act and in force immediately before the commencement of this Act are, until revoked, replaced or amended by rules made under section 61 of this Act, to continue in force and are deemed to have been made under this Act provided that such rules are not inconsistent with the provisions of this Act.

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(4) For the purposes of this Act all adoption orders made before the commencement of this Act shall be treated as if the previous identity or parentage of the child was intended to be kept secret.

Commencement

64 (1) This Act shall come into operation on such day as the Minister may appoint by notice published in the Gazette.

(2) Different days may be appointed under subsection (1) for different provisions of this Act.

[Assent Date: 29 December 2006]

[Operative Date: 04 November 2013]

[Amended by:

2011 : 17

2015 : 38]