



BERMUDA

ADOPTION OF CHILDREN ACT 1963

1963 : 151

TABLE OF CONTENTS

1	Interpretation
2	Special Court may make adoption orders
3	Age and sex of applicant
4	Minister to maintain Adopter's Register
5	Care and possession for 3 months before adoption
6	Consents
7	Dispensing with consent
8	Function of Special Court
9	Interim orders
10	Applicant not domiciled in Bermuda
11	Jurisdiction of Special Court; procedure; rules
12	Appeals
13	Further adoption order or interim order
14	Effect of adoption orders
15	Payments under affiliation orders
16	Restriction on sending children for adoption abroad
17	Adopted Children Register
18	Restriction on payment or reward for adoption
19	Restriction on advertisements
20	Subsequent marriage of father and mother
21	Commencement and repeal <i>[omitted]</i>

*[preamble and words of enactment omitted]*

Interpretation

- 1 In this Act, unless the context otherwise requires—

ADOPTION OF CHILDREN ACT 1963

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“Adopted Children Register” has the meaning given in section 17;

“Adopter’s Register” has the meaning given in section 4(1);

“adoption order” means an order authorizing the adoption of an infant pursuant to section 2, except for the purposes of section 14, in which section an adoption order means an adoption order which is valid in accordance with the laws of the country in which it was made;

“court” means a Special Court established under the Magistrates Act 1948 [*title 8 item 15*];

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

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

“Minister”, where used without any further description, means the Minister responsible for Child and Family Services;

“prescribed” means prescribed by Adoption Rules made under section 11 ;

“relative”, in relation to an infant means a grandparent brother, sister, uncle or aunt, whether of the full blood or half blood or by affinity, and includes—

- (a) where an adoption order has been made in respect of the infant or any other person, any person who would be a relative of the infant within the meaning of this definition if the adopted person were the child of the adopter.

*[Section 1 “infant” amended by 2001:20 s.7(1) & Sch 2 effective 1 November 2001; “relative” amended by 2002:36 Sch para 1(a) effective 19 January 2004; “Minister” amended by BR 11/2009 reg. 2 effective 6 February 2009]*

Special Court may make adoption orders

2 (1) Subject to this Act, the court may, upon an application made in the prescribed manner by a person domiciled in Bermuda, make an order (in this Act referred to as an adoption order) authorizing the applicant to adopt an infant.

(2) An adoption order may be made on the application of two spouses authorizing them jointly to adopt an infant; but an adoption order shall not in any other case be made authorizing more than one person to adopt an infant.

(3) An adoption order may be made authorizing the adoption of an infant by the mother or father of the infant, either alone or jointly with her or his spouse.

(4) Subject to this Act, an adoption order, may only be made in respect of an infant who—

- (i) was born in Bermuda; or
- (ii) is the child of a person possessing Bermudian status under the Bermuda Immigration and Protection Act 1936 ; or

## ADOPTION OF CHILDREN ACT 1963

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- (iii) is resident in Bermuda with the specific permission of the Minister responsible for immigration.

*[Section 2 subsection (4)(iii) amended by BR 5/2011 para.5 effective 25 February 2011]*

### Age and sex of applicant

3 (1) Subject to subsection (2), an adoption order shall not be made in respect of an infant unless the applicant—

- (i) is the mother or father of the infant;
- (ii) is a relative of the infant, and has attained the age of eighteen years; or
- (iii) has attained the age of twenty-five years.

(2) An adoption order may be made in respect of an infant on the joint application of two spouses—

- (i) if either of the applicants is the mother or father of the infant; or
- (ii) if the condition set out in paragraph (ii) or paragraph (iii) of subsection (1) is satisfied in the case of one of the applicants, and the other of them has attained the age of eighteen years.

(3) An adoption order shall not be made in respect of an infant 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.

*[Section 3 subsection (1)(ii) and (2)(ii) amended by 2001:20 s.7(1) & Sch 2 effective 1 November 2001]*

### Minister to maintain Adopter's Register

4 (1) The Minister shall maintain a register to be called the Adopter's Register 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, register his name and address in the Adopter's Register pursuant to this section.

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

(4) Upon receipt of an application for an adoption order, the court shall notify the Minister of the particulars of the application and the Minister shall forthwith submit to the court a report setting out the result of any investigations he may have undertaken 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 Adopters' Register as provided in subsection (1) for a period of not less than three months immediately preceding the application:

ADOPTION OF CHILDREN ACT 1963

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Provided that this subsection shall not apply where at least one of the parents of the infant is the applicant for the adoption order.

Care and possession for 3 months before adoption

5 An adoption order shall not be made in respect of an infant unless he has been continuously in the care and possession 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 infant attained the age of six weeks:

Provided that this subsection shall not apply where at least one of the parents of the infant is the applicant for the adoption order.

Consents

6 (1) Subject to section 7, an adoption order shall not be made—

- (i) in any case, except with the consent of every person who is a parent or guardian of the infant;
- (ii) on the application of one of two spouses, except with the consent of the other spouse:

Provided that any consent required by this subsection and given by the mother of the infant before the infant is six weeks old shall be null and void.

(2) The consent of any person to the making of an adoption order in pursuance of an application may be given (either unconditionally or subject to conditions with respect to the religious persuasion in which the infant is proposed to be brought up) without knowing the identity of the applicant for the order.

(3) Any consent required under this section shall be in writing and signed by the person giving the consent, unless it is given orally before the court hearing the application for an adoption order.

Dispensing with consent

7 (1) The court may dispense with any consent required by section 6(1)(i) if it is satisfied that the person whose consent is to be dispensed with—

- (i) has abandoned, neglected, or persistently ill-treated the infant; or
- (ii) cannot be found or is incapable of giving his consent or is withholding his consent unreasonably.

(2) If the court is satisfied that any person whose consent is required by section 6(1)(i) has persistently failed without reasonable cause to discharge the obligations of a parent or guardian of the infant, the court may dispense with his consent whether or not it is satisfied of the matters mentioned in subsection (1).

(3) Where a person who has given his consent to the making of an adoption order without knowing the identity of the applicant therefor subsequently withdraws his consent on the ground only that he does not know the identity of the applicant, his consent shall be deemed for the purposes of this section to be unreasonably withheld.

## ADOPTION OF CHILDREN ACT 1963

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(4) 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 that the separation is likely to be permanent.

### Function of Special Court

- 8 (1) Before making an adoption order, the court shall be satisfied—
- (i) that every person whose consent is necessary under this Act, and whose consent is not 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;
  - (ii) that the order if made will be for the welfare of the infant;
  - (iii) that the applicant has not received or agreed to receive, and that no person has made or agreed to make or give to the applicant, any payment or other reward in consideration of the adoption except such as the court may sanction.

(2) In determining whether an adoption order if made will be for the welfare of the infant, the court shall have regard (among other things) to the health of the applicant, as evidenced by the certificate of a registered medical practitioner, and shall give due consideration to the wishes of the infant, having regard to his age and understanding.

(3) In an adoption order, the court may impose such terms and conditions as the court may think fit, and in particular may require the adopter by bond or otherwise to make for the infant such provision (if any) as in the opinion of the court is just and expedient.

### Interim orders

9 (1) Subject to this section, the court may, upon any application for an adoption order, postpone the determination of any application and make an interim order giving the custody of the infant to the applicant for a period not exceeding two years by way of a probationary period upon such terms as regards provision for the maintenance and education and supervision of the welfare of the infant and otherwise as the court may think fit.

(2) All such consents as are required to an adoption order shall be necessary to an interim order, but subject to a like power on the part of the court to dispense with any such consent.

(3) An interim order shall not be made where the making of an adoption order would be unlawful by virtue of section 5.

(4) Where an interim order has been made giving the custody of an infant to the applicant for a period of less than two years, the court may, by order, extend that period, but the total period for which the custody of the infant is given to the applicant under the order as varied under this subsection shall not exceed two years.

## ADOPTION OF CHILDREN ACT 1963

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(5) An interim order shall not be deemed to be an adoption order within the meaning of this Act.

### Applicant not domiciled in Bermuda

10 (1) Notwithstanding section 2(1), where an applicant to adopt an infant is not domiciled in Bermuda and it is shown to the satisfaction of the court that the infant, if adopted, would be permitted to enter the country of the domicile of the applicant, then the court may make an order authorizing the applicant to adopt the infant.

(2) Nothing in this section shall preclude the making of an interim order on such terms and conditions as the court may specify pending the taking of steps to satisfy the court in terms of subsection (1).

(3) For the purposes of this section, a certificate or other document purporting to be signed by an officer of the country concerned who appears to the court to be competent to issue such certificate or other document, and which declares whether or not the infant concerned will be permitted to enter the relevant country and, if so, when and on what conditions, shall be admissible in evidence of the facts therein stated.

### Jurisdiction of Special Court; procedure; rules

11 (1) The court having jurisdiction to make adoption orders under this Act shall be a Special Court established under the Magistrates Act 1948 [*title 8 item 15*].

(2) Rules in regard to any matter to be prescribed under this Act and directing the manner in which applications to the court are to be made and dealing generally with all matters of procedure and incidental matters arising out of this Act and for carrying this Act into effect may be made by the Chief Justice; and such rules may provide for the hearing and determination of applications otherwise than in open court.

(3) For the purpose of any application under this Act and subject to any rules made under this section, the court shall appoint some person or body to act as guardian ad litem of the infant upon the hearing of the application, with the duty of safeguarding the interests of the infant before the court.

(4) On the determination of an application, or on the making of an interim order, 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 Magistrates' Civil jurisdiction Act 1922 [*title 8 item 72*].

(5) For the purposes of the preceding subsection, the costs of an application shall (in addition to any costs that may be awarded by the court under the Magistrates Act 1948 [*title 8 item 15*]) be taken to include such sum as the court may fix in respect of the out of pocket expenses incurred by the Minister or the guardian ad litem appointed under subsection (3).

(6) Section 6 of the Statutory Instruments Act 1977 [*title 1 item 3*] shall not apply to rules made under subsection (2).

## ADOPTION OF CHILDREN ACT 1963

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### Appeals

12 Where—

- (i) the court has refused to make an adoption order; or
- (ii) the court, under section 7, has dispensed with any consent required by section 6 and has made an adoption order,

the applicant for the adoption order, or the person whose consent has been dispensed with, as the case may be, may appeal to the Supreme Court in the manner and subject to the conditions provided for an appeal in a civil cause or matter.

### Further adoption order or interim order

13 An adoption order or an interim order may be made in respect of an infant who has already been the subject of an adoption order, and, upon any application for such further adoption order, the adopter or adopters under the adoption order last previously made shall be deemed to be the parent or parents of the infant for all the purposes of this Act.

### Effect of adoption orders

14 (1) Upon an adoption order being made, all rights, duties, obligations and liabilities of the parent or parents or guardian or guardians of the adopted child, in relation to the future custody, maintenance and education of the adopted child, including all rights to appoint a guardian or to consent or give notice of dissent to marriage shall be extinguished, and all such rights, duties, obligations and liabilities shall vest in and be exercised by and enforceable against the adopter as though the adopted child was a child born to the adopter, and in respect of the same matters and in respect of the liability of a child to maintain its parents the adopted child shall stand to the adopter exclusively in the position of a child born to the adopter:

Provided that, where two spouses are the adopters, such spouses shall in respect of the matters aforesaid and for the purposes of the jurisdiction of any court to make orders as to the custody or maintenance of and right of access to children stand to each other and to the adopted child in the same relation as they would have stood if they had been father and mother of the adopted child and the adopted child shall stand to them respectively in the same relation as a child would have stood to a father and mother respectively.

(2) 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 child of the adopter.

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

- (i) any reference (whether express or implied) to the child or children of the adopter shall, unless the contrary intention appears, be construed as, or as including, a reference to the adopted person;

## ADOPTION OF CHILDREN ACT 1963

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- (ii) 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
- (iii) 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 he were the child of the adopter, and were not the child of any other person.

(4) Without prejudice to subsection (2), where the natural parent of a child dies intestate without leaving any other issue him or her surviving, then notwithstanding that such child has been adopted, such child shall be entitled to inherit the real or personal estate of the natural parent who has died as if such child had not been adopted.

(5) For the purpose of the law relating to marriage, an adopter and the person whom he has been authorized to adopt under an adoption order shall be deemed to be within the prohibited degrees of consanguinity; and this subsection shall continue to have effect notwithstanding that some person other than the adopter is authorized by a subsequent order to adopt the same infant.

*[Section 14 amended 2002:36 Sch para 1(b) effective 19 January 2004]*

### Payments under affiliation orders

15 (1) Where an adoption order is made in respect of an infant, then, unless the adopter is his mother and the mother is a single woman, any affiliation order or decree of affiliation and aliment in force in respect of the infant, and any agreement whereby the father of the infant has undertaken to make payments specifically for the benefit of the infant, shall cease to have effect, but without prejudice to the recovery of any arrears which are due under the order, decree or agreement at the date of the adoption order.

(2) Notwithstanding any other provision of law, after an adoption order has been made in respect of an infant, no affiliation order or decree of affiliation and aliment shall be made with respect to the infant unless the adoption order was made on the application of the mother of the infant alone.

*[Section 15 amended 2002:36 Sch para 1(c) effective 19 January 2004]*

### Restriction on sending children for adoption abroad

16 (1) Except under the authority of a licence granted by the court (as hereinafter in this section provided), no person shall permit, or cause or procure the care and possession of a child (being a child in respect of whom an adoption order may be made under this Act) to be transferred from Bermuda to a person resident outside Bermuda (hereinafter in this section called a proposed adopter abroad) for the purpose of the adoption of the child by the latter person.

(2) The court may grant a licence in the prescribed form, and subject to such conditions and restrictions as the court thinks fit, authorizing the care and possession of

## ADOPTION OF CHILDREN ACT 1963

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a child to be transferred to a proposed adopter abroad for the purpose of the adoption of the child by such proposed adopter abroad, but no such licence shall be granted—

- (i) unless the court is satisfied that the application is made by or with the consent of every person or body who is a parent or guardian of the child in question, or who has the actual custody of the child, or who is liable to contribute to the support of the child;
- (ii) unless the court is satisfied by a report of a British consular officer or any other person who appears to the court to be trustworthy, that the proposed adopter abroad is a suitable person to be entrusted therewith, and that the transfer is likely to be for the welfare 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:

Provided that the court may dispense with the consent required by the paragraph (i) of this subsection upon any of the grounds specified in section 7(1) or (2), or on the ground that the person whose consent is to be dispensed with is a person whose consent ought, in the opinion of the court and in all the circumstances of the case, to be dispensed with.

(3) Any person who contravenes this section commits an offence against this Act:

Punishment on summary conviction: imprisonment for 6 months or a fine of \$360 or both such imprisonment and fine.

### Adopted Children Register

17 (1) The Registrar-General shall establish and maintain in his office a register to be called the Adopted Children Register, in which shall be 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 in the Adopted Children Register an entry recording the adoption in such form as may be prescribed.

(3) If upon any application for an adoption order there is proved to the satisfaction of the court—

- (i) the date of the birth of the infant; and
- (ii) the identity of the infant with a child to which any entry in the general register of births relates, the adoption order shall contain a further direction to the Registrar-general to cause such entry in the general register of births to be marked with the word "Adopted", and to include in the entry in the Adopted Children Register recording the adoption the date, as stated in the order, of the adopted child's birth in such manner as may be prescribed.

(4) The court shall cause every adoption order to be communicated to the Registrar-General, and upon such receipt of such communication the Registrar-General shall cause compliance to be made with the directions contained in such order both in

## ADOPTION OF CHILDREN ACT 1963

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regard to marking any entry in the general register of births with the word “Adopted”, and in regard to making the appropriate entry in the Adopted Children Register.

(5) 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—

- (i) where the entry does not contain any record of the date of the birth of the adopted child, be received as evidence of the adoption to which the entry relates; and
- (ii) 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.

(6) The Registrar-General shall cause an index of the Adopted Children Register to be made and kept in his office, and every person shall be entitled to search in the index and to have a certified copy of any entry in the Adopted Children Register in all respects upon, and subject to, the same terms and conditions as to payment of fees or otherwise as are applicable under the Registration (Births and Deaths) Act 1949 [*title 28 item 1*], in respect of searches in other indexes kept in the office of the Registrar-General, and in respect of the supply from such office of certified copies of entries in the general registers of births and deaths.

(7) The Registrar-General shall, in addition to the Adopted Children Register and the index thereof, keep such other registers and books and make such entries therein as may be necessary to record and make traceable the connection between any entry in the general register of births which has been marked “Adopted” pursuant to this Act and any corresponding entry in the Adopted Children Register, but such other registers and books shall not be open, nor shall any index thereof be open, to public inspection or search.

### Restriction on payment or reward for adoption

18 (1) Except with the sanction of the court, no adopter or parent or guardian, shall receive any payment or other reward in consideration of the adoption of any infant under this Act and no person shall make or give or agree to make or give to any adopter or to any parent or guardian any such payment or reward.

(2) Any person who contravenes this section commits an offence against this Act:

Punishment on summary conviction: imprisonment for 6 months or a fine of \$720 or both such imprisonment and fine.

### Restriction on advertisements

19 (1) No advertisement shall be published indicating—

- (i) that the parent or guardian of a child is desirous of causing the child to be adopted; or
- (ii) that a person is desirous of adopting a child;

## ADOPTION OF CHILDREN ACT 1963

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(iii) that any person is willing to make arrangements for the adoption of an infant.

(2) Any person who publishes any advertisement in contravention of this section commits an offence against this Act:

Punishment on summary conviction: a fine of \$720.

### Subsequent marriage of father and mother

20 (1) Where, subsequent to the adoption of any person by his father or mother alone, his father and mother marry each other, the court by which the adoption order was made may, upon the application of any of the parties concerned, revoke that 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—

- (i) the entry in the Adopted Children Register relating to the adopted person; and
- (ii) the marking with the word “Adopted” of any entry relating to him in the general register of births, and 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 and only if the marking and the cancellation are omitted therefrom.

*[Section 20 heading and subsection (1) amended by 2002:36 Sch para 1(d),(e) effective 19 January 2004]*

### Commencement and repeal

21 *[omitted]*

*[This Act was brought into operation on 1 January 1964]*

*[Assent Date: 2 July 1963]*

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### *[Amended by:*

1964 : 212  
1968 : 140  
1971 : 22  
1977 : 35  
2001 : 20  
2002 : 36  
BR 11 / 2009  
BR 5 / 2011]