

ADOPTION OF CHILDREN

No. 15 of 1965

An Ordinance relating to the Adoption of Children.

PART I.—PRELIMINARY.

Short title.

1. This Ordinance may be cited as the *Adoption of Children Ordinance 1965*.*

Commencement.

2. This Ordinance shall come into operation on a date to be fixed by the Minister by notice in the *Gazette*.†

Parts.

3. This Ordinance is divided into Parts, as follows:—

Part I.—Preliminary (Sections 1–6).

Part II.—Jurisdiction (Sections 7–9).

Part III.—Private Adoption Agencies (Sections 10–14).

Part IV.—Adoptions under this Ordinance.

Division 1.—General (Sections 15–23).

Division 2.—Consents to Adoptions (Sections 24–32).

Division 3.—Effect of Adoption Orders (Sections 33–37).

Division 4.—Interim Orders (Sections 38–40).

Part V.—Recognition of Adoptions (Sections 41–44).

Part VI.—Offences (Sections 45–55).

Part VII.—Miscellaneous (Sections 56–65).

Repeal.

4. The *Adoption of Children Ordinance 1938*, the *Adoption of Children Ordinance 1940* and the *Adoption of Children Ordinance 1949* are repealed.

Transitional provision.

5.—(1.) Notwithstanding the repeal effected by the last preceding section—

(a) an adoption order or interim order made under the repealed Ordinances and in force at the commencement of this Ordinance continues in force; and

* Made on 18 September, 1965; and notified in the *Commonwealth Gazette* on 30 September, 1965.
† As at 31 December, 1965 no date had been fixed.

(b) an application to the Court of Petty Sessions for an order under the repealed Ordinances that was pending immediately before the commencement of this Ordinance may be continued and dealt with, and proceedings incidental to such an application may be instituted, continued and dealt with, under the provisions of the repealed Ordinances as if this Ordinance had not been made, but an adoption order made in pursuance of this paragraph shall have effect as if made by the Supreme Court under this Ordinance.

(2.) A consent in writing to the adoption of a child by a person or persons given by a person before the commencement of this Ordinance in accordance with the repealed Ordinances and duly attested and verified shall, for the purposes of proceedings under this Ordinance for the adoption of the child by the person or persons specified in the consent, be deemed to be a sufficient consent of the person giving the consent.

(3.) Subject to the next succeeding sub-section, the provisions of sections 33 and 34 (other than sub-section (4.)) of this Ordinance apply in relation to an adoption order made under the repealed Ordinances as if this Ordinance had been in force when the order was made and the order had been made under this Ordinance.

(4.) In relation to a disposition of property by will or otherwise by a person who, or by persons any of whom, died before the commencement of this Ordinance, an adoption order referred to in the last preceding sub-section has the same effect as if the repealed Ordinances had continued in operation.

6.—(1.) In this Ordinance, unless the contrary intention appears— Interpretation.

“adoption order” means an order for the adoption of a child under this Ordinance;

“charitable organization” means an organization, corporate or unincorporate, formed or carried on primarily or principally for religious, charitable, benevolent or philanthropic purposes, but does not include an organization formed or carried on for the purpose of trading or securing a pecuniary profit to its members;

“child” means a person who has not attained the age of twenty-one years, or a person who has attained that age in respect of whom an adoption order is sought or has been made;

- “ disposition of property ” includes the grant or exercise of a power of appointment in respect of property;
- “ father ”, in relation to a child who is illegitimate, means the putative father;
- “ general consent ” means a consent to the adoption of a child other than the consent referred to in sub-section (2.) of section 25 of this Ordinance;
- “ guardian ”, in relation to a child, includes—
- (a) a person having the custody of the child under a court order; and
 - (b) a person who is or is deemed to be the guardian of the child, to the exclusion of, or in addition to, any parent or other guardian, under a law of the Commonwealth or of a State or Territory of the Commonwealth;
- “ interim order ” means an interim order under Division 4 of Part IV.;
- “ principal officer ”, in relation to a private adoption agency, means the person specified as the principal officer in the application by virtue of which the private adoption agency was approved under this Ordinance, or the person specified as the principal officer in the latest notice given to the Director by the private adoption agency under sub-section (1.) of section 12 of this Ordinance;
- “ private adoption agency ” means a charitable organization approved as a private adoption agency under Part III.;
- “ relative ”, in relation to a child, means a grandparent, brother, sister, uncle or aunt of the child, whether the relationship is of the whole blood or half-blood or by affinity, and notwithstanding that the relationship is traced through, or to, an illegitimate person or depends upon the adoption of any person;
- “ the Court ” means the Supreme Court;
- “ the Director ” means the Director of Child Welfare;
- “ the repealed Ordinances ” means all or any of the Ordinances repealed by section 4 of this Ordinance.

(2.) Where the holder of an office that is established by another Ordinance is referred to in this Ordinance and the holder of that office has power to delegate to another person all or any of his powers and functions under that other Ordinance—

- (a) the powers and functions that may be so delegated shall be deemed to include the powers and functions of the holder of that office under this Ordinance, and any of

those powers and functions under this Ordinance may be delegated in the manner provided by that other Ordinance; and

- (b) in relation to a power or function so delegated, a reference in this Ordinance to the holder of that office shall be read as including a reference to the delegate.

PART II.—JURISDICTION.

7. Jurisdiction is conferred on the Supreme Court in proceedings instituted in the Court in accordance with this Ordinance.

Jurisdiction of Supreme Court.

8.—(1.) The Court shall not make an order for the adoption of a child unless, at the time of the filing in the Court of the application for the order—

Cases in which jurisdiction may be exercised.

- (a) the applicant, or (in the case of joint applicants) each of the applicants, was resident or domiciled in the Territory; and

- (b) the child was present in the Territory.

(2.) For the purposes of the last preceding sub-section, where the Court is satisfied that an applicant was resident or domiciled in the Territory, or that the child was present in the Territory, on a date within twenty-one days before the date on which an application was filed in the Court, the Court may, in the absence of evidence to the contrary, presume that the applicant was resident or domiciled in the Territory, or that the child was present in the Territory, as the case may be, at the time of the filing in the Court of the application.

9. The jurisdiction of the Supreme Court to make an adoption order is not dependent on any fact or circumstance not expressly specified in this Ordinance.

Rules of private international law not to apply.

PART III.—PRIVATE ADOPTION AGENCIES.

10. A charitable organization carrying on, or desiring to carry on, the activity of conducting negotiations and making arrangements with a view to the adoption of children may apply in writing to the Minister for approval as a private adoption agency.

Application for approval of adoption agency.

11.—(1.) The Minister may, in his discretion, grant or refuse an application under the last preceding section.

Minister may grant or refuse application.

(2.) Without limiting the generality of the last preceding sub-section, the Minister shall refuse an application if it appears to him that the applicant is not a charitable organization or is not suited to carrying on the activity of conducting negotiations and making arrangements with a view to the adoption of children, having regard to all relevant considerations, including the qualifications, experience, character and number of the persons taking part, or proposing to take part, in the management or control of the organization, or engaged or proposed to be engaged, on behalf of the organization, in the conducting of such negotiations or the making of such arrangements.

Principal
officer of
private
adoption
agency.

12.—(1.) Before making an application under section ten of this Ordinance, an organization shall appoint a person resident in the Territory to be its principal officer in the Territory for the purposes of this Ordinance in the event of the granting of the application and, if the application is granted, the private adoption agency shall, within seven days after the occurrence of a vacancy in the office of principal officer, appoint a person resident in the Territory to fill the vacancy and give notice in writing to the Director of the appointment.

(2.) For the purposes of the last preceding sub-section, the office of principal officer shall be deemed to become vacant if the person holding the office ceases to be resident in the Territory.

(3.) Anything done by the principal officer of a private adoption agency shall, for the purposes of this Ordinance but without prejudice to any personal liability of the principal officer, be deemed to be done by the private adoption agency.

Revocation or
suspension of
approval.

13. The Minister may, at any time, by notice in writing served personally or by registered post on the principal officer of a private adoption agency, revoke or suspend the approval of the private adoption agency under this Part—

- (a) at the request of the agency;
- (b) on the ground that the agency is no longer a suitable organization to carry on the activity of conducting negotiations and making arrangements with a view to the adoption of children, having regard to all relevant considerations, including the matters referred to in section 11 of this Ordinance; or
- (c) on the ground that the agency has contravened, or failed to comply with, a provision of this Ordinance or the regulations that is applicable to it.

14. The regulations may prescribe requirements to be observed and facilities to be provided by private adoption agencies, including requirements with respect to the qualifications and experience of persons acting for or on behalf of private adoption agencies.

Regulations relating to private adoption agencies.

PART IV.—ADOPTIONS UNDER THIS ORDINANCE.

Division 1.—General,

15. For all purposes of this Part, the welfare and interests of the child concerned shall be regarded as the paramount consideration.

Welfare and interests of child to be paramount.

16.—(1.) Subject to this Ordinance, the Court may, on application, make an order for the adoption of a person who—

Who may be adopted.

- (a) had not attained the age of twenty-one years before the date on which the application was filed in the Court; or
- (b) has been brought up, maintained and educated by the applicant or applicants, or by the applicant and a deceased spouse of the applicant, as his or their child under a *de facto* adoption.

(2.) The Court shall not make an order for the adoption of a person who is, or has been, married.

(3.) An order may be made under this Ordinance for the adoption of a child notwithstanding that the child has, whether before or after the commencement of this Ordinance, and whether in the Territory or elsewhere, previously been adopted.

17.—(1.) Except as provided by the next succeeding sub-section, an adoption order shall not be made otherwise than in favour of a husband and wife jointly.

Persons in whose favour adoption orders may be made.

(2.) Subject to the next succeeding sub-section, where the Court is satisfied that exceptional circumstances make it desirable so to do, the Court may make an adoption order in favour of one person.

(3.) The Court shall not make an adoption order in favour of one person if that person is married and is not living separately and apart from his or her spouse.

(4.) The Court may make an adoption order in favour of a husband and wife jointly notwithstanding that one of them is a natural parent of the child.

Age of
adopters.

18. The Court shall not make an order for the adoption of a child in favour of a person who or persons either of whom—

- (a) has not attained the age of twenty-one years; or
- (b) being a male person, is less than eighteen years older than the child, or, being a female person, is less than sixteen years older than the child,

unless the applicant, or at least one of the applicants, is a natural parent of the child or the Court considers that there are exceptional circumstances that justify making the adoption order.

Court to be
satisfied as
to certain
matters.

19.—(1.) The Court shall not make an order for the adoption of a child unless the Director, or the principal officer of a private adoption agency that has made the arrangements that have resulted in the application, has made a report in writing to the Court concerning the proposed adoption and, after considering the report and any other evidence before the Court, the Court is satisfied that—

- (a) the applicants are of good repute and are fit and proper persons to fulfil the responsibilities of parents of a child;
- (b) the applicants are suitable persons to adopt that child, having regard to all relevant considerations, including the age, state of health, education (if any) and religious upbringing or convictions (if any) of the child and of the applicants, and any wishes that have been expressed by a parent or guardian of the child, in an instrument of consent to the adoption of the child, with respect to the religious upbringing of the child; and
- (c) the welfare and interests of the child will be promoted by the adoption.

(2.) The last preceding sub-section does not apply in relation to an order, in accordance with sub-section (1.) of section 16 of this Ordinance, for the adoption of a child who has attained the age of twenty-one years before the date of the making of the order, but the Court shall not make an adoption order in such a case unless it is satisfied—

- (a) that the applicants are of good repute; and
- (b) that exceptional circumstances make it desirable that the child should be adopted.

20.—(1.) The Court shall not make an order for the adoption of a child unless the applicants for the adoption order have given not less than fourteen days' notice of the application—

Notice of application for adoption orders.

(a) to any person whose consent to the adoption of the child is required under section 24 of this Ordinance but whose consent has not been given; and

(b) to any person (not being a person whose consent is so required) with whom the child resides or who has the care or custody of the child.

(2.) The Court may, upon application in writing, dispense with the giving of a notice under the last preceding sub-section.

(3.) Where it appears to the Court to be necessary in the interests of justice so to do, the Court may direct that notice of an application for an adoption order be given to any person.

21. Where an application is made to the Court for an order for the adoption of a child, the Court may permit such persons as the Court thinks fit to be joined as parties to the proceedings for the purpose of opposing the application or for the purpose of opposing an application to dispense with the consent of a person.

Parties.

22. Where the Court refuses an application for an order for the adoption of a child, the Court may make such order for the care and control of the child as it thinks fit.

Care of child after refusal of an application.

23.—(1.) The Director or the Attorney-General may apply to the Court for an order discharging an order for the adoption of a child made under this Ordinance or under the repealed Ordinances, and the Court may make such an order if it is satisfied that—

Discharge of adoption orders.

(a) the adoption order, or any consent for the purposes of the adoption order, was obtained by fraud, duress or other improper means; or

(b) that there is some other exceptional reason why, subject to the welfare and interests of the child, the adoption order should be discharged.

(2.) The Court shall not make an order under this section if it appears to the Court that the making of the order would be prejudicial to the welfare and interests of the child.

(3.) Where the Court makes an order discharging an adoption order that was made in reliance on a general consent, then, unless the Court otherwise orders, the general consent remains in operation for the purposes of a further application for the adoption of the child.

(4.) Where the Court makes an order under this section, it may, at the same time or subsequently, make such consequential or ancillary orders as it thinks necessary in the interests of justice or the welfare and interests of the child, including orders relating to—

- (a) the name of the child;
- (b) the ownership of property;
- (c) the custody or guardianship of the child; or
- (d) the domicile (including the domicile of origin) of the child.

(5.) Upon the making of an order under this section discharging an order for the adoption of a child, but subject to any order made under the last preceding sub-section and to sub-section (2.) of section 33 of this Ordinance, the rights, privileges, duties, liabilities and relationships under the law of the Territory of the child and of all other persons shall be the same as if the adoption order had not been made, but without prejudice to—

- (a) anything lawfully done;
- (b) the consequences of anything unlawfully done; or
- (c) any proprietary right or interest that became vested in any person,

whilst the adoption order was in force.

Division 2.—Consents to Adoptions.

Consents of
parents and
guardians
required to
adoptions.

24.—(1.) Subject to this Division, the Court shall not make an order for the adoption of a child unless consent (not being a consent that has been revoked in accordance with this Ordinance) to the adoption has been given by the appropriate person or persons ascertained in accordance with the succeeding provisions of this section or the Court is satisfied that there is no such appropriate person.

(2.) In the case of a legitimate child who has not previously been adopted, the appropriate persons are every person who is a parent or guardian of the child.

(3.) In the case of an illegitimate child who has not previously been adopted, the appropriate person is every person who is the mother or guardian of the child.

(4.) In the case of a child who has previously been adopted, the appropriate persons are every person who is an adoptive parent or guardian of the child.

(5.) The consent of a person under this section is not required if that person is the applicant, or one of the applicants, for the adoption order.

(6.) This section does not apply in the case of a child who has attained the age of twenty-one years before the making of the adoption order.

25.—(1.) For the purposes of the last preceding section but subject to the next succeeding sub-section, every consent to the adoption of a child shall be a consent to the adoption of the child by any person or persons in accordance with the law of the Territory, and shall have effect accordingly in relation to an application for adoption made by any person or persons in accordance with this Ordinance.

Consents to be general, except where in favour of relative.

(2.) The last preceding sub-section does not apply in relation to a consent expressed to be a consent to the adoption of a child by a relative of the child, or by two persons one of whom is a parent or relative of the child.

26.—(1.) A consent to the adoption of a child given for the purposes of this Ordinance by a person other than the child may be revoked by notice in writing served on the Registrar of the Supreme Court before—

Revocation of consents.

- (a) the expiration of thirty days from the date on which the instrument of consent was signed; or
- (b) the day on which an order for the adoption of the child is made,

whichever is the earlier, but may not otherwise be revoked.

(2.) Service of a notice on the Registrar of the Supreme Court under the last preceding sub-section shall be effected by delivering it to him personally or by sending it to him by post at the address of the Registry of the Supreme Court.

(3.) Upon receipt of a notice under this section, the Registrar of the Supreme Court shall forthwith notify the Director of the receipt of the notice.

27. A consent for the purposes of the preceding provisions of this Division shall be evidenced by an instrument of consent substantially in accordance with the prescribed form signed by the person giving the consent and attested as prescribed.

Form of consents.

28. For the purposes of an application by a person under this Ordinance for an adoption order in respect of a child, a consent to the adoption of the child given by a person in accordance with the law of a State or of another Territory of the Commonwealth that would be an effective consent under that law if the application had been made in that State or Territory under that law is an effective consent for the purposes of the application under this Ordinance.

Consents given under law of a State or another Territory.

Defective
consents.

29.—(1.) The Court may refuse to make an adoption order in reliance on a consent given or purporting to have been given by a person (other than the child) if it appears to the Court that—

- (a) the consent was not given in accordance with this Ordinance;
- (b) the consent was obtained by fraud, duress or other improper means;
- (c) the instrument of consent has been altered in a material particular without authority; or
- (d) the person giving or purporting to give the consent was not, on the date of the instrument of consent, in a fit condition to give the consent or did not understand the nature of the consent.

(2.) The Court shall not make an adoption order in reliance on an instrument of consent signed by the mother of the child before the birth of the child.

(3.) The Court shall not make an adoption order in reliance on an instrument of consent signed by the mother of the child on, or within seven days after, the day on which the child was born unless it is proved that, at the time the instrument was signed, the mother was in a fit condition to give the consent.

(4.) For the purposes of the last preceding sub-section, a certificate of a legally qualified medical practitioner or of a person registered as a nurse under the *Nurses Registration Ordinance 1933–1960* certifying that, at the time when the instrument of consent was signed by the mother of a child, the mother was in a fit condition to give the consent is evidence of the matter so certified.

Court may
dispense with
consents.

30.—(1.) The Court may, by order, dispense with the consent of a person (other than the child) to the adoption of a child where the Court is satisfied that—

- (a) after reasonable inquiry, that person cannot be found or identified;
- (b) that person is in such a physical or mental condition as not to be capable of properly considering the question whether he should give his consent;
- (c) that person has abandoned, deserted or persistently neglected or ill-treated the child;
- (d) that person has, for a period of not less than one year, failed, without reasonable cause, to discharge the obligations of a parent or guardian, as the case may be, of the child; or
- (e) there are any other special circumstances by reason of which the consent may properly be dispensed with.

(2.) In order to facilitate the making of arrangements with a view to the adoption of a child, the Court may, on the application of the Director or the principal officer of a private adoption agency, make an order under this section in relation to the child before an application for an adoption order has been made in respect of the child, and any such order under this section has effect for the purposes of any application for an adoption order that may subsequently be made in respect of the child.

(3.) An order made by virtue of the last preceding sub-section may, on the application of the Director or of the person whose consent was dispensed with, be revoked by the Court at any time before the making of an adoption order in respect of the child.

31. Subject to this Division, an order for the adoption of a child who has attained the age of twelve years shall not be made unless the child has consented to the adoption or the Court is satisfied that there are special reasons, related to the welfare and interests of the child, why the order should be made notwithstanding that the child has refused to consent to the adoption or his consent has not been sought. Consent of child.

32.—(1.) Subject to the next succeeding sub-section, where, in the case of every person whose consent to the adoption of a child is required under section 24 of this Ordinance— Guardianship of child awaiting adoption.

- (a) the consent (being a general consent) of that person to the adoption of the child has been given; or
- (b) the consent of that person to the adoption of the child has been dispensed with by an order made by virtue of sub-section (2.) of section 30 of this Ordinance,

the Director is the guardian of the child for all purposes (other than the purposes of section 24 of this Ordinance) to the exclusion of all other persons until—

- (c) an adoption order is made in respect of the child;
- (d) in the case of any consent so given, the instrument of consent is lawfully revoked; or
- (e) the Court, by order, makes other provision for the guardianship of the child.

(2.) Where—

- (a) a person or persons whose consent to the adoption of a child is required under section 24 of this Ordinance has or have given that consent and a written authority to a private adoption agency to make arrangements with a view to the adoption of the child, and there is no other person whose consent to the adoption of the child is required and has not been dispensed with; and