

CAYMAN ISLANDS



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THE ADOPTION OF CHILDREN LAW, 2013

(LAW 7 OF 2013)

THE ADOPTION OF CHILDREN LAW, 2013

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CAYMAN ISLANDS

Law 7 of 2013.

I Assent

Franz Manderson

Acting Governor.

16th May, 2013

A LAW TO REPEAL AND REPLACE THE ADOPTION OF CHILDREN LAW (2003 REVISION); REVISE THE LAW RELATING TO THE ADOPTION OF CHILDREN; TO MAKE PROVISIONS ENSURING THAT, IN ANY ADOPTION, THE INTERESTS OF THE CHILD ARE PARAMOUNT; AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

PART 1-PRELIMINARY

1. (1) This Law may be cited as the Adoption of Children Law, 2013.

Short title and commencement

(2) This Law shall come into force on such date as may be appointed by Order made by the Governor in Cabinet and different dates may be appointed for different provisions of this Law and in relation to different matters.

2. In this Law -

Interpretation

“adopter” means a person who has adopted a child pursuant to an adoption order;

“adoption order” means an order made under section 13;

“Board” means the Adoption Board established by section 5;

“Caymanian” has the meaning assigned to that expression in section 2 of the Immigration Law (2012 Revision);

(2012 Revision)

“child” means a person under the age of eighteen years;

“Department” means the department of Government responsible for the welfare of children;

“father” means the natural father;

“guardian”, in relation to a child, means a person appointed by -

- (a) deed or will; or
- (b) a court of competent jurisdiction,

to be his guardian;

“Judge” means a Judge of the Grand Court;

“legal and ordinary residence” means a person’s uninterrupted voluntary physical presence in the Islands for a period of time without legal impediment (other than as a tourist visitor or transit passenger) during which period the Islands are regarded as his normal place of abode for the time being, but -

- (a) absences abroad of six consecutive months or less for purposes such as education, health, vacation or business during such period shall count as residence in the Islands;
- (b) absences abroad of more than six consecutive months but less than one year shall raise the presumption that there has been a break in residence; and
- (c) absences abroad for twelve consecutive months or more constitute a break in residence;

“marriage” means a marriage between a man and a woman, and for this purpose a person’s sex is that established at birth;

“member” means a member of the Board;

“mother” means the natural mother;

“parent” includes a step-parent and an adopter;

“prospective adopter” means a person who wishes to adopt a child;

“Registrar” means the Registrar referred to in section 34; and

“relative”, in relation to a child, means a grandparent, brother, sister, aunt or uncle, 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 child or any other person, a person who would be a relative of the child within the meaning of this definition if the adopted person were the child of the adopter born in lawful wedlock; or
- (b) where the child was born out of wedlock, the father of the child and any person who would be a relative of the child within the meaning of this definition if the child were the legitimate child of his father and mother;

“repealed Law” means the Adoption Law (2003 Revision); and

(2003 Revision)

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

3. For purposes of this Law, the word “spouse” means a spouse in the context of a marriage as defined in section 2 and related words such as husband and wife shall be construed accordingly and, for the avoidance of doubt, persons living together as husband and wife shall not, unless married formally under the Marriage Law (2010 Revision), be considered to be spouses for purposes of this Law.

Definition of “spouse”, etc.

(2010 Revision)

PART 2 - ADOPTION BOARD

4. (1) A person who, otherwise than in accordance with this Law, takes part -
- (a) in arranging an adoption of a child whether for reward or not; or
 - (b) in the management or control of a body of persons which exists wholly or in part, temporarily or permanently, for the purpose of making arrangements for the adoption of children,

Restriction on making arrangements for the adoption of children

commits an offence and is liable on summary conviction to a fine of thirty thousand dollars or to imprisonment for a term of five years, or to both.

(2) For the purposes of subsection (1), a person makes an arrangement for the adoption of a child -

- (a) if he enters into or makes any agreement or arrangement for, or to facilitate, the adoption of the child by any other person, whether the adoption is effected, or is intended to be effected, in the Islands or elsewhere; or

- (b) if he initiates or takes part in any negotiations intended to lead to the making or conclusion of any agreement to that effect.

Adoption Board

5. (1) There shall be a Board, called the Adoption Board, which shall consist of a Chairman and not more than seven members to be appointed by the Governor in Cabinet.

(2) The Chairman of the Board shall be an attorney-at-law with at least five years' post qualification experience.

(3) An appointment shall be for a period of three years unless revoked by the Governor in Cabinet.

(4) At a meeting of the Board from which the Chairman is absent the members present shall appoint one of their number to chair.

(5) The quorum of the Board is five.

(6) The Governor in Cabinet may appoint any person to act in the place of any member who is absent from three consecutive meetings or unable to act.

(7) The Board has power to regulate its own procedure.

(2011 Revision)

(8) In exercise of the general powers contained in the Public Service Management Law (2011 Revision), the Chief Officer of the Ministry responsible for adoption matters may, after consultation with the Board and the Department, employ -

- (a) a qualified social worker as secretary; and
- (b) such administrative support staff as he considers necessary or expedient for the Board to perform its functions.

(9) The reasonable expenses of the Board shall be defrayed out of sums provided to the Department for that purpose by the Legislative Assembly.

(10) The Board may appear and be represented at any stage of the proceedings in the Grand Court by one of its officers or by any person it authorizes in that regard.

Duties of Board

6. The Board -

- (a) shall make arrangements for the adoption of children and for that purpose receive applications from parents, guardians and prospective adopters; and

- (b) shall, in conjunction with the Department, carry out investigations and do such other things as may be necessary or expedient for the adoption of children for the consideration of the Grand Court.

7. (1) Where arrangements are made by the Board for the adoption of a child, an application to the Grand Court for an adoption order in respect of the child shall not be made by the prospective adopter until the expiration of a period of six months from the date on which the child is delivered into the care and possession of the prospective adopter pursuant to the arrangements made by the Board and, at any time during that period -

Arrangements made by
Board

- (a) the prospective adopter may give notice in writing to the Board of his intention not to adopt the child; or
- (b) the Board may cause notice in writing to be given to the prospective adopter of its intention not to allow the child to remain in the care and possession of the prospective adopter,

and where a notice is given either by the prospective adopter or the Board, the prospective adopter shall, within seven working days of the date on which the notice was given, cause the child to be returned to the Department or to such other person as the Board may direct for the purpose of restoring the child to the parents, guardian or such other persons as the Department thinks fit.

(2) The Board shall, in conjunction with the Department, appoint one or more persons who shall keep the child under close supervision during the period of six months referred to in subsection (1).

(3) If, at the expiration of the period of six months, no notice has been given under subsection (1) by either the prospective adopter or the Board, the prospective adopter shall, within a period of six months from the date on which the period of six months expired, apply to the Grand Court for an adoption order in respect of the child or shall give notice in writing to the Board of his intention not to apply for such an order.

(4) Where a prospective adopter gives notice under subsection (1)(a) that he does not intend to apply for an order to adopt the child or where an application for an adoption order in respect of the child is refused by the Grand Court, the prospective adopter shall, within seven working days of the date on which the notice was given or of the date upon which the application is refused, cause the child to be returned to -

- (a) the Department; or
- (b) such other person as the Board may direct,

for the purpose of restoring the child to the parents, guardian or such other person as the Department thinks fit.

(5) A person who fails or neglects to return a child pursuant to a notice given under subsection (1) commits an offence and is liable on summary conviction to a fine of two thousand dollars or to imprisonment for one year, or to both, and the Grand Court may order a child in respect of whom the offence is committed to be returned to his parents, his guardians, the Department or to such other person as the Department thinks fit.

Prohibition on payment for child

8. A person who offers or receives payment for an adoption commits an offence and is liable upon summary conviction to a fine of thirty thousand dollars or imprisonment for a term of five years, or to both.

Orders to Caymanians and residents living in the Islands

9. (1) Except in the circumstances specified in subsection (2), an adoption order granted outside the Islands to a person who is Caymanian or who is legally and ordinarily resident in the Islands at a time when that person is living in the Islands is not valid.

(2) An order granted by a court of competent jurisdiction outside the Islands to a person who is Caymanian or who is legally and ordinarily resident in the Islands at a time when that person is living in the Islands is not valid unless it is granted with the prior approval of the Board upon completion of a satisfactory home study by a social worker.

Placing by Department

10. Where a child is not placed for adoption by the Department an adoption order shall not be made unless -

- (a) the Board has approved the adoption application; and
- (b) the Department reports on the matter.

Appeals by persons desirous of adopting children

11. (1) A person who has applied to the Board to adopt a child shall, if he so requests, be afforded an opportunity to make representations to the Board.

(2) Where the Board thinks that it would not be in the best interest of the child to be adopted by the prospective adopter it shall notify the prospective adopter accordingly.

(3) A prospective adopter who is dissatisfied with a decision of the Board may appeal to the Grand Court within twenty working days from the date of notification of the decision.

Provision of adoption service

12. (1) The Department shall establish and maintain a service in the Islands designed to meet the needs of any or all of the following -

- (a) children who have been or may be adopted;
- (b) the adopters; and
- (c) parents and guardians of children who have been or may be adopted.

(2) The Department shall ensure that no child is delivered into the care and possession of a prospective adopter, for either domestic or overseas adoption, by or on behalf of the Department, until a social worker -

- (a) undertakes a home study of the prospective adoptive family; and
- (b) prepares a report following the home study,

and the report considered by the Board.

(3) The Department shall make its best efforts to provide appropriate accommodation for children placed for adoption.

(4) The Department shall -

- (a) make arrangements for assessing children and prospective adopters, and placing children for adoption; and
- (b) make its best efforts to provide counseling for persons involved in the adoption process.

PART 3 - MAKING OF ADOPTION ORDERS

13. The Grand Court has jurisdiction to make an adoption order if -

Power of court to make adoption orders

- (a) the child to be adopted is a legal and ordinary resident of the Islands or was born in the Islands;
- (b) the person having parental responsibility for the child is a Caymanian or is legally and ordinarily resident in the Islands;
- (c) the applicant is a Caymanian or legally and ordinarily resident in the Islands; or
- (d) where the child has been freed for adoption under section 33(2).

14. (1) The Grand Court shall inquire into a 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 Grand Court shall give the child the opportunity to be heard.

Child's views

(2) Before applying to the Grand Court for an adoption order relating to a child who is at least seven years of age, an applicant shall arrange for a person authorized by 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 to the nature of adoption;

- (b) understands what adoption means; and
- (c) has any views on the proposed adoption and on any proposed change of the child's name.

Eligibility to adopt:
couples, etc.

15. (1) 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 couple -

- (a) who have been married and have been living together for at least two years immediately preceding the making of the application; or
- (b) who have lived together for a continuous period of not less than two years, the last of which has been as a married couple immediately preceding the making of the application.

(2) Notwithstanding section 7(1), the Grand Court may, in special circumstances, make an adoption order if a child has been in the care of the applicant for at least three months prior to the application or such shorter period as the Grand Court may authorize.

Eligibility to adopt: step-
parents

16. The step-parent of a child may, jointly with a natural parent of that child, apply to adopt the child without having to comply with the requirements regarding placement in, or referred to in, section 7.

Eligibility to adopt:
general

17. (1) An adoption order shall not be made in respect of a child unless the applicant, or in the case of a joint application, one of the applicants -

- (a) has attained the age of twenty-five years but is not over the age of sixty-five years, but the court may, in its discretion, having regard to the views of the Board and the findings of the Department, make an order in favour of an applicant who has attained the age of eighteen years but has not attained the age of twenty-five years or who is over sixty-five years of age; or
- (b) is the mother or father of the child.

(2) An adoption order shall not be made -

- (a) in respect of a child who is a female in favour of a sole applicant who is a male; or
- (b) in respect of a child who is a male in favour of a sole applicant who is a female,

unless the Grand Court is satisfied that there are special circumstances which justify making such an order but in no circumstances shall an adoption order be made where a sole applicant is known or reasonably suspected to have a sexual attraction to children.

(3) Except as provided in section 15 (1) and (2), an adoption order shall not be made authorising more than one person to adopt a child.

(4) Subject to section 18, an adoption order shall not be made -

- (a) without the consent of every person who is a parent or guardian of the child;
- (b) without the consent of the other spouse, where the application is made by a spouse;
- (c) on the application of the mother or father of the child unless the Grand Court is satisfied that -
 - (i) the other natural parent is dead or cannot be found; or
 - (ii) there is some other reason justifying the exclusion of the other parent, such as that that person is an unfit parent, and where such order is made the reason justifying the exclusion of the other parent shall be recorded by the Grand Court; or
- (d) unless -
 - (i) the child is free for adoption by virtue of an order made under section 33(3);
 - (ii) in the case of each parent or guardian of the child whose consent has been given the Grand Court is satisfied that he freely, and with understanding of what is involved, agrees unconditionally to the making of an adoption order whether or not he knows the identity of the applicant; or
 - (iii) his agreement to the making of the adoption order should be dispensed with on the ground specified in section 18.

(5) Subject to subsection (6), an adoption order shall not be made unless the applicant and the child reside in the Islands.

(6) An adoption order may be made on the application of a person who is Caymanian and domiciled in the Islands but is not ordinarily resident in the Islands, but in relation to such an application this Law shall be modified by the substitution in section 7(1), (2) and (3) of the words “period of six months” for the words “period of three months.”

18. (1) The Grand Court may dispense with consent required by section 17(4)(a) if it is satisfied -

Consent to adoption:
general

- (a) in the case of a parent or guardian of the child, that he has abandoned, neglected or abused the child or has persistently failed without reasonable cause to -
 - (i) discharge the obligations of a parent or guardian of the child; or

- (ii) demonstrate interest in the child;
 - (b) in the case of a person liable by virtue of an order or agreement to contribute to the maintenance of the child, that he has persistently neglected or refused to so contribute; or
 - (c) in any case, that the person whose consent is required cannot be found or is incapable of giving his consent or that his consent is unreasonably withheld or for any other reason such consent should be dispensed with.
- (2) The Grand Court may dispense with the consent of the spouse of an applicant for an adoption order if it is satisfied that -
- (a) the person whose consent is required cannot be found or is incapable of giving consent; or
 - (b) the spouses have separated and are living apart and that the separation is likely to be permanent.
- (3) The consent of any person to the making of an adoption order pursuant to an application, other than the consent of the child, may be given -
- (a) unconditionally or subject to conditions with respect to the religious persuasion in which the child is to be brought up;
 - (b) without knowing the identity of the applicant for the order, and where consent so given is subsequently withdrawn on the ground only that the person who gave the consent does not know the identity of the applicant, his consent shall be taken, for the purposes of this section, to be unreasonably withheld.
- (4) While an application for an adoption order in respect of a child is pending in the Grand Court, a parent or guardian of the child who has signified his consent to the making of an adoption order in pursuance of the application shall not be entitled, except with leave of the Grand Court, to remove the child from the care and possession of the applicant, and in considering whether to grant or refuse such leave the Grand Court shall have regard to the welfare of the child.
- (5) For the purposes of an application for an adoption order or an order freeing a child for adoption, the Grand Court may appoint -
- (a) a person to act as guardian ad litem of the child upon notice of the application, with the duty of safeguarding the interests of the child; and
 - (b) a person to act as reporting officer for the purpose of witnessing agreements to the adoption and performing such other duties as may be prescribed.

19. Where a parent consenting to an adoption is under eighteen years of age, consent is insufficient for that purpose unless it is supported by the consent of at least one grandparent of the child or guardian, but where there is an objection by one or more grandparents to consent given under this section, a parent may apply to the Grand Court which may dispense with the need for such consent.

Consent to adoption:
parents under 18 years

20. (1) The Grand Court may, upon an application for an adoption order, postpone the determination of the application and make an interim order giving the custody of the child 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, education and supervision of the child and otherwise as the Grand Court may think fit.

Interim orders

(2) All consents required to an adoption order shall be necessary for an interim order but subject to a like power on the part of the Grand Court to dispense with any consent.

(3) An interim order is not an adoption order.

21. (1) Where a person whose consent to the making of an adoption order is required by section 17(4)(a) does not attend in the proceedings for the purpose of giving it, then, subject to subsection (3), a document signifying his consent to the making of such an order shall, if the person in whose favour the order is to be made is named in the document or (where the identity of that person is not known to the consenting party) is distinguished therein in the prescribed manner, be admissible as evidence of that consent, whether the document is executed before or after the commencement of the proceedings.

Evidence of consent of
parent or guardian

(2) Where the document referred to in subsection (1) is attested by a Justice of the Peace or a person of equivalent or higher standing in another jurisdiction, the document shall be admissible under subsection (1) without further proof of the signature of the person by whom it is executed, and for the purposes of this subsection, a document purporting to be attested as provided in subsection (1) shall be deemed to be so attested, and to be executed and attested on the date and at the place specified therein, unless the contrary is proved.

(3) A document signifying the consent of the mother of a child shall not be admissible under this section unless -

(a) the child is at least six weeks old on the date of the execution of the document;

- (b) the document is attested on that date by a Justice of the Peace or a person of equivalent or higher standing in another jurisdiction; and
- (c) where applicable, the necessary consent, prescribed by section 19, of a parent under the age of eighteen has been obtained.

Adoption principles

22. (1) In making a decision about the placement or adoption of a child under this Law, the Grand Court, the Board, or any person in the adoption process, 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 the Islands; and
- (c) there should be an opportunity for openness in adoption, but choice of anonymity of a birth parent, adoptive parent and child 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 or religious background;
- (i) the relationship that the child has with relatives; and
- (j) the effect on the child if there is delay in making a decision.

(3) For the purpose of this section -

- (a) references to relationships are not confined to legal relationships; and
- (b) references to a relative, in relation to a child, includes the child's mother and father.

(4) The Grand Court shall always consider all options available to it under -

- (a) this Law; or
- (b) any other law.

23. (1) The Grand Court, before making an adoption order, shall satisfy itself -

Functions of Grand Court as to adoption orders

- (a) that every person whose consent is necessary, having not been dispensed with, has consented to, and understands the nature and effect of, the 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 to deprive him of his parental rights permanently;
- (b) that the order if made will be for the welfare of the child, due consideration being for this purpose given to the wishes of the child, having regard to age and understanding; and
- (c) that the applicant has not received or agreed to receive, and that no person has made or given or agreed to make or give to the applicant, any payment or other reward in consideration of the adoption except such as the Grand Court may sanction.

(2) The Grand Court, in an adoption order, may impose such terms and conditions as the Grand Court thinks fit, and in particular may require the applicant or any other person by bond or otherwise to make for the child such provision, if any, as in the opinion of the Grand Court is just and expedient.

(3) An adoption order or interim order may be made in respect of a child who has already been the subject of an adoption order.

24. Where the Grand Court refuses to make an adoption order then, if it appears to the Grand Court that there are exceptional circumstances making it desirable that the child should be under the supervision of an independent person, the Grand Court may order that the child be under the supervision of the Department or another person.

Supervision in exceptional circumstances

25. The Rules Committee referred to in section 20 of the Grand Court Law (2008 Revision) shall exercise the powers set out in that section for the making of rules for purposes of this Law.

Rules of court (2008 Revision)

PART 4 - EFFECT OF ADOPTION ORDERS

26. (1) Upon an adoption order being made, all rights, duties, obligations and liabilities of the parents or guardians of the child in relation to its future custody, maintenance and education, including all rights to appoint a guardian and to

Rights and duties of parents and capacity to marry

consent or give notice of dissent to marriage, shall be extinguished, and all such rights, duties, obligations and liabilities shall vest in, and be exercisable by, and enforceable against the adopter as if the child were a child born to the adopter in wedlock, and in respect of the matters referred to in this subsection the child shall stand to the adopter exclusively in the position of a child born to the adopter in wedlock.

(2) In any case where two spouses are the adopters, the spouses shall, in respect of the matters referred to in subsection (1), and for the purpose of the jurisdiction of the Grand Court to make orders as to the custody and maintenance of and right of access to children, stand to each other and to the child in the same relation as they would have stood if they had been the natural father and mother of the child and the child shall stand to them respectively in the same relation as to a natural father and mother respectively.

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

Affiliation orders, etc.

27. (1) Where an adoption order is made in respect of a child who is born out of wedlock, then, subject to subsection (2), an affiliation order or decree of affiliation in force with respect to the child, and any agreement whereby the father of the child has undertaken to make payments specifically for the benefit of the child, shall cease to have effect, but without prejudice to recovery of any arrears which are due under the order, decree or agreement at the date of the adoption order.

(2) Where a child to whom any order, decree or agreement referred to under subsection (1) relates is adopted by his mother, and the mother is a single woman, the order shall not cease to have effect by virtue of subsection (1) upon the making of the adoption order, but shall cease to have effect if she subsequently marries.

Intestacies, wills and settlements

28. (1) 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 born in wedlock and were not the child of any other person.

(2) In any disposition of real or personal property made, whether by instrument *inter vivos* or by will, including codicil, after the date of an adoption order, any reference whether express or implied -

- (a) to a child of the adopter shall, unless the contrary intention appears, be construed as, or as including, a reference to an adopted child;
- (b) to a child 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) 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 if he were the child of the adopter born in lawful wedlock and were not the child of any other person.

29. (1) For the purposes of the devolution of any property in accordance with section 28, and for the purposes of the construction of any disposition mentioned in that section, an adopted person shall be taken to be related to any other person being the child or adopted child of the adopter or, in the case of a joint adoption, of either of the adopters -

Provisions
supplementary to section
28

- (a) where he was adopted by two spouses jointly, and that other person is the child or adopted child of both of them, as brother or sister of the whole blood; and
- (b) in any other case, as brother or sister of the half-blood.

(2) For the purposes of section 28(2) and of subsection (4) a disposition made by will or codicil shall be treated as made on the date of the death of the testator.

(3) Notwithstanding anything in section 28, trustees or personal representatives may convey or distribute any real or personal property to or among the persons entitled to it without having ascertained that no adoption order has been made by virtue of which any person is or may be entitled to any interest therein, and shall not be liable to any such person of whose claim they have not had notice at the time of the conveyance or distribution, but nothing in this subsection prejudices the right of any such person to follow the property, or any property representing it, into the hands of any person, other than a purchaser, who may have received it.

(4) Where an adoption is made in respect of a person who has been previously adopted, the previous adoption shall be disregarded for the purposes of section 28, in relation to the devolution of any property on the death of a person

dying intestate after the date of the subsequent adoption order and in relation to any disposition of property made or taking effect on the death of a person dying after that date.

Effect of further adoption orders

30. Upon any application for a further adoption order or interim order following an order made under section 23(3), the adopter or adopters under the adoption order last previously made shall be deemed to be the parent or parents of the child for all purposes of this Law.

PART 5 - MISCELLANEOUS

Restriction on advertisements

31. (1) It is unlawful for any advertisement to be published indicating that -

- (a) the parent or guardian of a child is desirous of causing the child to be adopted; or
- (b) a person is desirous of adopting a child, or any person (other than the Board) is willing to make arrangements for the adoption of a child.

(2) A person who knowingly publishes or causes to be published an advertisement in contravention of section (1) commits an offence and is liable on summary conviction to a fine of thirty thousand dollars.

Restrictions on sending children abroad for adoption

32. (1) It is not lawful for a person, in connection with any arrangements made for the adoption of a child who is a British subject or British Overseas Territory Citizen, to permit, or to cause or procure, the care and possession of the child to be transferred to a person who is not a citizen of a country prescribed in regulations made under subsection (5) or the guardian or a relative of the child and who is resident outside the Islands.

(2) It is not lawful for a person, in connection with any such arrangements, to permit, or to cause or procure, the care and possession of such a child to be transferred to a person who is a citizen of a country prescribed for purposes of section 33(1) of this Law resident outside the Islands and who is not the guardian or relative of the child, unless a licence has been granted in respect of the child under section 33.

(3) A person who contravenes subsection (1) or (2) commits an offence and is liable on summary conviction to a fine of thirty thousand dollars or imprisonment for one year, or to both.

(4) In proceedings under this section, a report by a British consular officer or a deposition made before a British consular officer and authenticated under the signature of that officer is admissible in evidence, and it is not necessary to prove

the signature or official status of the person who appears to have signed such report or deposition.

(5) The Governor in Cabinet may make regulations prescribing countries to which children may be transferred for the purpose of section 33.

33. (1) The Grand Court may grant a licence in such form as may be prescribed and, subject to such conditions and restrictions as it thinks fit, authorising the care and possession of a child for whose adoption arrangements have been made to be transferred to a citizen of a country prescribed in regulations made under section 32(5) resident outside the Islands, but subject to this section no such licence shall be granted unless the Court is satisfied -

Licence to send child
abroad for adoption

- (a) that the application is made by, or with the consent of, every person 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; and
- (b) by a report of a British consular officer or any other person who appears to the Grand Court to be trustworthy, that the person to whom the care and possession of the child is transferred 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 given to the wishes of the child, having regard to his age and understanding.

(2) Where the Grand Court grants a licence under subsection (1), it may authorize the making or receipt by any person of any payments in consideration of the transfer of the care and possession of the child in respect of whom the licence is granted.

(3) Where a parent who has a child in care of the Department does not come forward with a plan for that child within eighteen months, the Grand Court may make an order freeing the child for adoption but the Grand Court may extend the period if -

- (a) there is reasonable likelihood of re-unification with the parent; or
- (b) the parent has, within that period of eighteen months of the child being placed in care of the Department, made reasonable efforts towards re-unification,

and the Court may in that respect make such other orders as it thinks fit.

(4) The Rules Committee referred to in section 19 of the Grand Court Law (2008 Revision) may make rules with respect to the application for and grant of licences.

(2008 Revision)

(5) In proceedings under this section, a report by a British consular officer or a deposition made before a British consular officer and authenticated under the signature of that officer is admissible in evidence, and it is not necessary to prove the signature or official status of the person who appears to have signed such report or deposition.

Adopted Children
Register
(2007 Revision)

34. (1) The Registrar appointed under the Births and Deaths Registration Law (2007 Revision) shall continue to maintain at his office a register called the Adopted Children Register, in which shall be made such entries as may be directed to be made pursuant to subsection (2), but no other entries.

(2) Adoption orders shall contain a direction to the Registrar to make in the Adopted Children Register any entry recording the adoption in such form as may be prescribed.

(3) For the purposes of compliance with subsection (2) -

- (a) where the precise date of the child's birth is not proved to the satisfaction of the Grand Court, the Grand Court shall determine the probable date of his birth and the date so determined shall be specified in the order as the date of birth;
- (b) where the name or surname which the child is to bear after the adoption differs from his original name or surname the new name or surname shall be specified in the order instead of the original name; and
- (c) where the country of birth of the child is not proved to the satisfaction of the Grand Court, the particulars of that country may be omitted from the order and from the entry in the Adopted Children Register.

(4) The Grand Court shall cause every adoption order to be communicated to the Registrar, and upon receipt of such communication the Registrar shall cause compliance to be made with the directions contained in such order in regard both to marking an entry in the 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 purportedly signed by the Registrar, shall, without any further or other proof of such entry where the entry is made in accordance with subsection (4), be received not only as evidence of the adoption to which it relates but also as evidence of the date of the birth of the child to which it relates in all respects as though the same were a certified copy of an entry in the Register of Births.

(6) The Registrar shall cause an index of the Adopted Children Register to be made and kept in his office, and every person who applies in prescribed form shall be entitled to obtain from the Registrar a certificate in prescribed form evidencing the birth of any person, compiled from the Adopted Children Register subject to the same terms, conditions and regulations as to payment of fees and otherwise as are applicable under the Births and Deaths Registration Law (2007 Revision) in respect of the supply from that office of certified copies of entries in the Registers of Births and Deaths. (2007 Revision)

(7) The Registrar 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 an entry in the Register of Births which has been marked “adopted” pursuant to this Law and any corresponding entry in the Adopted Children Register, but such last-mentioned registers and books shall not be nor shall any index thereof be open to public inspection or search, except under an order of the Grand Court.

35. (1) Subject to subsection (2), the Registrar shall, on an application made in the prescribed manner by an adopted person who has reached the age of eighteen years and whose birth record has been kept by the Registrar, on the payment of the prescribed fee, supply to that person such information as is necessary to enable that person to obtain a certified copy of the record of his birth. Record of birth

(2) On an application made under this section, in the prescribed manner, by an adopted person, a record of whose birth is kept by the Registrar and who is intending to be married, and on payment of the prescribed fee, the Registrar shall inform the applicant whether or not it appears from information contained in the application that the person whom he intends to marry may be within the prohibited degrees of consanguinity or affinity for the purposes of the Marriage Law (2010 Revision). (2010 Revision)

36. (1) Subject to section 9(2), an adoption made under the law of an overseas jurisdiction in favour of a person who is legally and ordinarily resident in the Islands at the time the order is made shall, where that order has substantially the same effect under the law of that jurisdiction as an adoption under this Law, have the same effect in the Islands as an adoption under this Law. Effect of overseas adoption

(2) For the purposes of subsection (1), “overseas jurisdiction” means a jurisdiction other than the Islands that is a party to the Hague Convention on Protection of Children and Co-operation in respect of Inter-Country Adoption which entered into force on 1st May, 1995.

Approval to bring child
into the Islands for
adoption

37. (1) Before a child who is not a resident of the Islands is brought into the Islands for purposes of consideration for adoption or anticipated adoption, the prospective adoptive parents shall obtain the approval of the Grand Court.

(2) At the time of making the application referred to in subsection (1), the party applying shall send a copy of the application to the Chief Immigration Officer.

(3) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding thirty thousand dollars or to imprisonment for a term not exceeding five years, or to both.

Confidentiality

38. (1) The fact and any particulars of, or relating to, any matters falling for consideration by, or the decision of, the Board shall be treated as confidential by each member of the Board and he shall not disclose any such fact or particular otherwise than in the proper performance of his duties under this Law or in compliance with the order of a court of competent jurisdiction.

(2) The failure of any member to comply with subsection (1) -

- (a) is an offence; and
- (b) constitutes a sufficient ground for the termination of his appointment.

(3) An allegation of a breach of subsection (1) shall be fully investigated by a constable of the rank of Inspector or above.

Regulations

39. (1) The Governor in Cabinet may make regulations prescribing all matters that are required or permitted by this Law to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Law.

(2) Without limiting the generality of the power contained in subsection (1), the Governor in Cabinet may make regulations with respect to -

- (a) regulating the conduct of negotiations entered into by or on behalf of the Board with persons having the care and possession of children who are desirous of causing children to be adopted;
- (b) transitional arrangements relating to the transfer of a child to an prospective adopter;
- (c) the care and supervision of children who have been placed by their parents or guardians under the responsibility of the Board;
- (d) the creation, functions and powers of administrative bodies that may be involved in the adoption process; and
- (e) reports that may be required in relation to adoption matters.

40. (1) The Adoption Law (2003 Revision) is repealed.

Repeal of the Adoption Law (2003 Revision) and transitional

(2) Where immediately before the coming into operation of this Law -

- (a) an application has been made under the repealed Law for an order of adoption and the application has not been finally determined; or
- (b) a child has been placed in the custody of a person for the purpose of adoption, the consents to adoption required under the repealed Law have been given and any necessary consent has been given,

the application for an order of adoption in respect of that child shall continue to be dealt with and completed or otherwise determined in all respects as if this Law had not been passed.

(3) Before the commencement of this Law, the Governor in Cabinet shall, in exercise of the powers contained in section 31 of the Interpretation Law (1995 Revision) -

- (a) as read with section 5 of this Law, appoint the Chairman and other members of the Board; and
- (b) as read with section 39 of this Law, make regulations.

Passed by the Legislative Assembly the 25th day of March, 2013.

Mary J. Lawrence

Speaker.

Zena Merren-Chin

Clerk of the Legislative Assembly.