

BILL No. 6 of 2009

Tuesday 27th January, 2009

PARLIAMENT OFFICE
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Guyana.

27th January, 2009.

The following Bill which will be introduced in the National Assembly is published for general information.

S.E. Isaacs,
Clerk of the National Assembly.



GUYANA

BILL No. 6 of 2009

ADOPTION OF CHILDREN BILL 2009

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**A BILL
Intituled**

AN ACT to provide for the reform of laws for the adoption of children and for related matters.

A.D. 2009.

Enacted by the Parliament of Guyana:-

**PART I
PRELIMINARY**

Short title and
commencement.

1. This Act may be cited as the Adoption of Children Act 2009, and shall come into operation on the day as the Minister may by order appoint.

Interpretation

2. (1) In this Act –

"adopter" means a person who is proposing to adopt or who has adopted a child whether in pursuance of an adoption order or otherwise;

"adoption order" means an order vesting parental rights and responsibilities relating to a child who is adopted, on the application by the adopter pursuant to this Act, by a Court and includes an order made under section 9 of the repealed Adoption of Children Act;

Cap.46:04.

"agency" means the childcare and protection agency established under section 3 of the Childcare and Protection Agency Act;

"child", except where used to express a relationship, means a person who has not attained the age of eighteen years but does not include a person who is or has been married;

"common law union" means the cohabitation for a continuous period of five years by a single man and a single woman;

"Court" means the High Court;

"father" in relation to a child born out of wedlock, means –

- (i) the man who has signed the birth register as father or who has been adjudged to be the father of the child by a court of competent jurisdiction; or
- (ii) if there is no such man, the man who has treated the child as his and has been, in the opinion of the court, making reasonable financial provision towards the maintenance of the child before he exercises or seeks to exercise in respect of that child any rights or functions of a father, and the expression "parent", in so far as it relates to the father of the child, shall be construed accordingly;

"guardian" in relation to a child means a person appointed by deed or will in accordance with any law including the Infancy Act or by a court of competent jurisdiction to be the guardian of the child;

"interim order" means an order that is made, by either the Adoption Board or the court, temporarily or until the hearing and determination of the matter;

"Minister" under this Act means the Minister who has responsibility for matters related to welfare of children;

"relative" in relation to a child means a grandparent, brother, sister, uncle or aunt, or cousin whether of the full blood, half-blood or by affinity and includes instances where an adoption order has been made in respect of any other person under this Act, and any person who would be a relative of the child in any of the aforesaid relationships if the adopted person were the natural child of the adopter;

"spouse" includes a single man and a single woman living together in a common law union for at least five years.

(2) In making a decision about the adoption of a child, a decision maker is to have regard to the following principles -

- (a) that the best interests of the child, both in childhood and in later life, shall be of paramount consideration;
- (b) that adoption is to be regarded as a service for the child, not for adults wishing to acquire the care of the child;
- (c) that no adult has a right to adopt the child;
- (d) that if the child is able to form his own views on a matter concerning his adoption, he shall be given an opportunity to express those views freely and those views are to be given due weight in the circumstances; and
- (e) that the child's given name or names, identity, language and cultural and religious ties should, as far as possible, be identified and preserved.

(3) In determining the best interests of the child, the decision maker is to have regard to the following -

- (a) any wishes expressed by the child;
- (b) the child's age, gender, maturity, level of understanding, background and family relationships and any other characteristics of the child that the decision maker thinks are relevant;
- (c) the child's physical, emotional and educational needs, including the child's sense of personal, family and cultural identity;

- (d) any disability that the child has;
- (e) any wishes expressed by either or both of the parents of the child;
- (f) the relationship that the child has with his parents and siblings (if any) and any other persons (including relatives) in relation to whom the decision maker considers the issue of adoption to be relevant;
- (g) the attitude of each adopter to the child and to the responsibilities of parenthood;
- (h) the nature of the relationship of the child with each adopter;
- (i) the suitability and capacity of each adopter, or any other person, to provide for the needs of the child, including the emotional and intellectual needs of the child;
- (j) the need to protect the child from physical or psychological harm caused, or that may be caused, by being subjected or exposed to abuse, ill-treatment, violence or other behaviour, or being present while a third person is subjected or exposed to abuse, ill-treatment, violence or other behaviour;
- (k) the alternatives to the making of an adoption order, including residence and guardianship orders, and the likely effect on the child in both the short and longer term of changes in the child's circumstances caused by an adoption, so that adoption is determined among all alternative forms of care to best meet the needs of the child.

PART II CONSTITUTION AND ADMINISTRATION OF THE ADOPTION BOARD

Establishment of
Adoption Board
and Secretariat.

- 3. (1) (a) For the purposes of this Act there shall be constituted a Board to be called the Adoption Board (hereinafter in this Act referred to as "the Board") which shall consist of a Chairperson, a Deputy Chairperson and five other persons;
- (b) The members of the Board shall include an attorney-at-law, a retired social worker who served in a senior capacity, and the five other members who shall have skills, training or experience in child development, sociology, social work or psychology.
- (2) The Minister shall appoint all members of the Board.
- (3) Except for the Chairperson and Deputy Chairperson who shall hold office for four years, a member of the Board shall hold office for three years from the date of his appointment, but shall be eligible for re-appointment once only.
- (4) Where a vacancy occurs in the office of a member, whether by reason of death, resignation or other cause, the vacancy shall be filled by a person appointed by the Minister and the person so appointed shall hold office for the unexpired portion of the term of office of that person's predecessor and may be eligible for re-appointment to a subsequent Board.

(5) Where a member of the Board is unable to perform the functions of his office by reason of absence, illness or other cause which affects the functioning of the Board the Minister may appoint a person to be a member of the Board, to act temporarily or permanently in the place of the member who is unable to discharge the functions of that office.

(6) At a meeting of the Board, three members including the Chairperson or Deputy Chairperson shall form a quorum.

(7) The Board shall have a secretariat that shall provide services for the carrying out of the functions of the Board.

(8) The Board may from time to time co-opt technical personnel to provide advice to the Board.

(9) The Board shall regulate its procedure in accordance with rules set out in the Adoption of Children Rules.

(10) The Minister shall appoint a person who has knowledge and training in matters related to children's welfare to be Secretary and this person shall be an ex-officio member of the Board.

(11) The Board may appear and be represented at any stage of proceedings in a Court by the Agency or by a person generally or specially authorised by the Agency.

(12) The life of the Board in existence at the commencement of this Act shall continue to the expiration of its term.

Subsidiary
Legislation.
Cap. 46:04

Application of the
Board.

4. A person desirous of adopting a child shall first make an application to the Agency in the manner prescribed by the rules made pursuant to this Act.

Duties on to the
Board.

5. (1) It shall be the duty of the Agency –

- (a) to receive applications from parents, guardians and adopters in respect of adoption of children;
- (b) to make investigations concerning the adoption of child for consideration of the Court;
- (c) to act as guardian *ad litem* of a child in respect of whom an adoption order is sought under this Act;

(2) Notwithstanding subsection (1), a child who is the subject of the application may be separately represented.

(3) Notwithstanding any thing under this Act, the policy and decisions of the Board and matters not covered by this Act shall be in accordance with section 4 of the Child Care and Protection Agency Act under the general supervision and control of the Agency.

Making
arrangements for
the adoption of
children.

6. (1) The Board shall make recommendations to the agency and the agency shall make arrangements where necessary for the adoption of a child.

(2) A person shall not make or give to another person a payment or reward for or in consideration of -

- (a) the adoption by that person of a child;
- (b) the grant by that other person of any agreement or consent required in connection with the adoption of a child;
- (b) the transfer by that other person of the actual custody of a child with a view to the adoption of the child; or
- (c) the making by that other person of any arrangement for the adoption of a child.

(4) A person who makes or gives, or agrees or offers to make or give, a payment or reward prohibited by this section, or who receives or agrees to receive or attempts to obtain such a payment or reward, commits an offence and is liable on summary conviction to a fine of two hundred and fifty thousand dollars and to imprisonment for a period of one year and the Court may order a child in respect of whom the offence was committed to be removed to a place of safety, having regard to the best interest of the child.

Appointment of
Board as guardian
ad litem.

7. (1) The Agency shall receive an application for adoption and shall give its consent in writing if it deems it to be desirable to act as Guardian *ad litem*, and shall be guided in its decision by considering the best interest of the child.

(2) The Agency shall in particular investigate the matter and submit a report on the investigation to the Board and to Court where necessary.

Subsidiary
Legislation
Cap. 46:04.

(3) The investigation shall determine suitability of applicant and other considerations as the Board may be required to take into account in accordance with the Adoption of Children Rules under the repealed Adoption of Children Act.

Delivery of
child
to adopter.

8. (1) Where the Board is satisfied that the adopter may be entrusted with the care and possession of the child the Board shall so recommend that to the Agency and the Agency may recommend to the Court that the child be placed in the custody and care of the adopter where the child is not already residing with the adopter.

(2) The Board shall not recommend to the agency that a child be placed in the custody and care of the adopter if the Board is satisfied -

- (a) that the adoption of the child by that person would not be in the best interest of the child; or
- (b) that the adopter being -
 - (i) a Guyanese resident outside Guyana;
 - (ii) a former Guyanese national who has acquired, by registration or other voluntary and formal act (including marriage) the citizenship of another country; or
 - (iii) a non-Guyanese, has not furnished the Board with requisite documentation as referred to in section 13(2).

(3) The Agency shall appoint one or more licensed social workers whose duty shall be to keep the child under close supervision in accordance with regulations made

under this Act.

Notice to be served on adopter if custody and care is refused.

Provisions relating to Temporary care and custody of a child.

9. Where the Board for any reason decides that the child should not be placed in the custody and care of the adopter, the Board shall so indicate to the Agency and the Agency shall give notice in writing to the adopter of the board's recommendations.

10. (1) Subject to subsection (3) where arrangements are made by the Agency for the adoption of a child, an adoption order in respect of the child shall not be made by the Court until the expiration of a period of three months from the date upon which the child is delivered into the custody and care of the adopter pursuant to the arrangements.

(2) At any time during the period mentioned in subsection (1) -

(i) the adopter may give notice in writing to the Agency of his intention not to adopt the child; or

(ii) if the Board has reason to withdraw its recommendation made under section 8(1), the Board may so indicate to the agency and the Agency shall give notice in writing to the adopter of the Agency's intention not to allow the child to remain in the care and possession of the adopter,

and where notice is so given, the adopter shall, within seven days of the date on which the notice was given, cause the child to be returned to the Agency.

(3) The Court may dispense with the period required for custody and care under section 10(1) for good and sufficient reason.

(4) In considering good and sufficient reason the Court shall be satisfied that sufficient opportunities have been given to observe the child with the applicant, or, in the case of a joint application both applicants together in the home environment.

(5) If, at the expiration of the said period of three months a notice pursuant to subsection (2) has not been given, the adopter shall within three months from the date upon which that period so expired -

(i) apply to the Court for an adoption order in respect of the child; or

(ii) give notice in writing to the Agency of his intention not to apply for such an adoption order.

(6) Where the notice in subsection (5)(ii) is given or where an application for an adoption order in respect of the child is refused by the Court, the adopter shall within seven days of the date on which the notice was given or the date upon which the application is so refused, as the case may be, cause the child to be returned to the Agency.

(7) A person who contravenes subsection (2) by failing to return a child to the Agency commits an offence and is liable on summary conviction to a fine of two hundred and fifty thousand dollars and to imprisonment for one year, and the Court by which the offender is convicted shall order the child in respect of whom the offence is committed to be returned to the Agency.

11. (1) Where an adopter receives notice pursuant to section 9 or section 10(2) (ii) the adopter may appeal from the decision of the Board to a Judge in Chambers.

(2) A decision of a Judge in Chambers may be appealed as provided in section 46.

Appeals by persons desirous of adopting a child.

Release of inmate
of certain schools
for purposes of
adoption.

Cap. 10:03

Cap 11:06

12. Where the child in respect of whom an adoption order is sought is an inmate of a correctional training school or of an institution named by the court under the Juvenile Offenders Act, the manager of the correctional training institution or the manager of the institution so named by the Court may, notwithstanding anything contained in section 23 of the Training Schools Act, or in section 18 of the Juvenile Offenders Act, as the case may be, sanction the conditional release of the child from the school or institution for the purpose of the adoption process.

MAKING OF ADOPTION ORDER

Power to grant
adoption orders.

13. (1) Subject to section 10, the Court may, upon an application made in the prescribed manner by -

- (a) a Guyanese national resident in Guyana;
- (b) a Guyanese national resident outside Guyana;
- (c) a former Guyanese national who has acquired by registration or other voluntary and formal act (including marriage) the citizenship of another country; or
- (d) a non-Guyanese, make an adoption order authorising the applicant to adopt a child.

(2) Where the applicant is not domiciled in Guyana, the applicant shall, in addition to any other prescribed requirements, furnish the Agency with sufficient evidence, from an agency or body as may be prescribed, attesting to the suitability of the applicant to be entrusted with the care of a child.

(3) (a) The evidence referred to in subsection (2) shall be in the form of a report.

(b) The report shall provide detailed information on -

- (i) the applicant's suitability and eligibility to adopt;
- (ii) the applicant's background, family and medical history and social environment;
- (iii) the applicant's ability to undertake an inter-country adoption; and
- (iv) the applicant's ability to provide suitable accommodation for the child.

(4) The registration of the Adoption Agency or body shall be confirmed by -

- (a) an authorised officer of the Guyanese diplomatic mission or Consulate or a Notary Public in the country or state, as the case may be, in which the applicant is a resident;
- (b) such person, authority or agency as may be prescribed.

Adoption by
parents and
spouse.

14. An adoption order may be made authorising the adoption of a child by a parent of the child, either alone or jointly with the spouse of that parent where the spouse is not the natural parent of the child.

Joint application.

15. (1) An adoption order may be made on the application of two spouses authorising

them jointly to adopt a child.

(2) An adoption order shall not be made on the application of one of two spouses, except with the consent of the other spouse in accordance with section 21 unless the Court is satisfied that -

- (a) the other spouse cannot be found;
- (b) the other spouse is incapable of giving consent; or
- (c) the spouses have separated and are living apart, and the separation is likely to be permanent.

Who may be adopted.

16. Subject to the provisions of this Act a person may adopt a child who -

- (a) is under the age of eighteen years;
- (b) has never been married; and
- (c) resides in Guyana.

Who may adopt.

17. (1) An adoption order shall not be made in respect of a child unless the applicant has attained the age of eighteen years and is not older than sixty-five years and the age difference between the applicant and child is not more than forty years or less than eighteen years.

(2) Subsection (1) shall not apply where an applicant is the mother or father of the child.

(3) 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 is at least eighteen years older than the child.

(4) The Court may dispense with age requirement in cases where the adoption formalises an existing relationship by a step parent, a relative or under other special circumstances

Restrictions on making adoption orders.

18. (1) Except as provided by sections 14 and 15, an adoption order shall not be made authorising more than one person to adopt a child.

(2) An adoption order shall not be made in respect of a child who is female in favour of a sole applicant, who is a male, not being the father or guardian of the child, unless the Court is satisfied that there are special circumstances which justify as an exceptional measure the making of an adoption order.

(3) An adoption order shall not be made in relation to a child of or over the age of twelve years unless with the child's consent; except that, where the Court is satisfied that the child is incapable of giving his consent to the making of the order it may dispense with that consent.

(4) A child twelve years of age or older shall be presumed to be of sufficient age and maturity to form a view as to whether or not the Court should make an order authorising his adoption.

(5) Notwithstanding the provisions of subsection (3), the Court shall not make an

adoption order save in exceptional circumstances, in the case of a child who is below the age of twelve years, but who the Court considers to be of sufficient degree of maturity to form a view and who, after being counselled and duly informed of the effects of the adoption order and the effects of his consent to the adoption withholds his consent.

(6) Consent may be withdrawn at any time before an adoption order is made.

Consent to
adoption.

19. (1) Subject to section 20, an adoption order shall not be made, except with the consent of -

- (a) the parents of the child;
- (b) the man, if any, who is or has been married to the mother of the child if such child was born during the marriage or within three hundred days after the termination of the marriage or a decree of judicial separation;
- (c) the father of a child born out of wedlock;
- (d) the guardian of the child if expressly authorised by a Court of competent jurisdiction to so consent;
- (e) every person who is liable by virtue of an order or agreement to maintain the child.

(2) The fact that a parent is under the age of eighteen does not affect competency to execute consent, but the parent must have had the advice of an attorney-at-law who is not representing the adopter, the agency or the Board.

(3) The Minister shall provide facilities for a parent under the age of eighteen to obtain counselling and independent legal advice as required in subsection (2).

Court may
dispense with
consent.

20. (1) The Court may dispense with the consent of a person required by section 19 if it is satisfied that -

- (a) in the case of a parent or guardian of the child, that the parent or guardian -
 - (i) cannot be found or is incapable of giving consent;
 - (ii) is withholding consent unreasonably;
 - (iii) has persistently failed without reasonable cause to discharge the parental duties in relation to the child; or
 - (iv) has abandoned, neglected or persistently ill-treated the child;
 - (v) has exposed the child to unnecessary risks.

(b) in the case of a person liable by virtue of an order of Court or agreement to contribute to the maintenance of the child, that person has persistently neglected or refused to so contribute.

(2) In these instances the Court may request that a social worker make all relevant enquiries and report to the Court on findings in this respect and an appropriate advertisement may be ordered by the Court.

(3) The consent of any person to the making of an adoption order in pursuance of an application (not being the consent of the child) may be given, either unconditionally or subject to conditions such as religious persuasion in which the child is to be brought up, without knowing the identity of the applicant for the order; and where consent so given by any person is subsequently withdrawn 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.

Evidence of consent.

21. (1) Where a person whose consent to the making of an adoption order is required by section 19 (1) does not attend the Court for the purpose of giving consent, then, subject to subsection (3), a document signifying that person's consent to the making of such an order shall -

- (a) if the adopter is named in the document; or
- (b) where the identity of the adopter is not known to the consenting party, be admissible as evidence of that consent, whether the document is executed before or after the application to the Agency.

(2) A document referred to in subsection (1) shall be attested by a Justice of the Peace, Notary Public or Commissioner of Oaths to Affidavits.

(3) The document shall be admissible 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 shall be deemed so attested, and to be executed and attested on the date and at the place specified therein, unless the contrary is proved.

(4) A document signifying the consent of a mother is ineffective for the purposes of section 19(1) unless -

- (a) executed at least six weeks after the child's birth; and
- (b) the document is attested on that date by a Notary Public or Commissioner of Oaths to Affidavits.

Child not to be removed under certain circumstances.

22. (1) While an application for an adoption order in respect of the child is pending in any Court, a person whose consent is required under section 19, who has signified consent to the making of an adoption order in pursuance of an application is not entitled, except with the leave of the Court to remove the child from the care and possession of the applicant.

(2) Where an adopter applies to the Agency to adopt a child who for the preceding five years has had his home with the adopter, no person is entitled, against the will of the adopter, to remove the child from the adopter's care and possession, except with the leave of the Court.

(3) In considering whether to grant or refuse leave, the Court shall have regard to the best interest of the child.

(4) A person who had custody and care of the child may apply to the Court for an order for the return of the child to his care.

(5) A person who contravenes a provision of this section commits an offence and is liable on summary conviction to a fine of two hundred and fifty thousand dollars and to imprisonment for a period of one year.

Functions of
Court as to
matters to be
satisfied prior to
making final
adoption order.

23. The Court before making an adoption order shall be satisfied that -

- (a) every person whose consent is necessary under this Act and whose consent is not dispensed with, in accordance with section 20, fully understands the nature and effect of an adoption order;
- (b) a consenting parent understands that an adoption order will permanently deprive him of parental rights in relation to the child concerned;
- (c) a child understands that he shall be permanently deprived of his biological parents;
- (d) the religious denomination of the adopter and the child has been considered;
- (e) an adopter has not received or agreed to receive, and that no person has made or given, or agreed to make or give to the adopter, any payment or other reward in consideration of the adoption except such as the Court may sanction.

Interim order for
custody.

24. (1) An interim order shall not be made where the making of an adoption order would be unlawful by virtue of section 18(2) or (3).

- (2) (a) The Court may, upon an application for an adoption order, postpone the determination of the application and make an interim order giving custody of the child to the applicant for a period not exceeding two years by way of a probationary period upon the terms and conditions for the maintenance, education, supervision and welfare of the child and otherwise as the Court thinks fit.
- (b) Where the probationary period specified in an order under paragraph (a) is less than two years, the Court may by a further order extend the period to a duration not exceeding two years in all.
- (c) The Court may in this case dispense with the consent as is required for an adoption order.

Adoption order in
respect of
previously
adopted children.

25. (1) An adoption order may be made in respect of a child who has already been the subject of an adoption order and, upon an application for the further order, the adopter under the adoption order last made shall be considered to be the parent of the child for the purposes of this Act.

(2) In the case of a child previously adopted, legal consequences of the former adoption order shall, on the making of the later adoption order, determine.

Jurisdiction and
procedure.

26. (1) An application for an adoption order may be made by Originating Summons to a Judge in Chambers.

(2) For the purposes of an application for an adoption order, the Board shall act as guardian *ad litem* of the child at the hearing of the application with the duty of safeguarding the interests of the child before the Court.

EFFECTS OF ADOPTION ORDERS

Rights and duties
of adopters.

27. (1) An adoption order-

- (a) extinguishes the legal rights of the parent, guardian, or person in whose custody the adopted child has been and relieves that person from legal obligations and duties in respect of the child;
- (b) imposes upon the adopter, legal obligations and duties as if the adopter were the natural parent of the child from the date of the adoption order.

(2) Subject to section 29, a child who is the subject of an adoption order shall be treated in law -

- (a) where the adopters are married or live together in a common law union, as if that child -
 - (i) had been born as a natural child of the marriage or of the common law union, before or after the marriage was formalized or after the commencement of the common law union; and
- (b) where the adoption order is made in favour of the spouse of the child's natural parent, as if that child-
 - (i) had been born as a natural child of the union between the adopter and the natural parent to whom the adopter is married or living together in a common law union, where the child was in fact born before or after the marriage was formalized or after the commencement of the common law union; and
 - (ii) were not the child of any person other than the adopter and that natural parent; and
- (c) in any other case, as if that child -
 - (i) had been born as a natural child of the adopter; and
 - (ii) were not the child of any person other than the adopter.

(3) Upon an adoption order being made, all rights, duties, obligations and liabilities of the parent or parents, 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 of 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 though the adopted child were 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 in any case where two spouses are the adopters, such spouses shall in respect of the matters aforesaid and for the purpose of the jurisdiction of any Court to make orders as to the custody and maintenance of and right of access to children stand

make orders as to the custody and 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 the natural 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 natural father and mother respectively.

Adoption order by
person married to
natural parent.

28. Where an adoption order is made in favour of a person who is married to a natural parent of the child who is the subject of the order, its making shall not operate to extinguish the parental responsibilities and parental rights which immediately before the making of the order were vested in the natural parent to whom the adopter is married.

Name of adopted
child.

29. (1) An adopted child may, unless otherwise ordered by the Court, use the surname of the adopter.

(2) Where an adopter is the spouse of a natural parent of the child, the child shall use such surname as the Court orders.

(3) In determining the surname an adopted child shall use, the Court shall consider the view of the child where he is of sufficient age and maturity and wishes to express a view on the matter and in the course of this determination regard shall be had for the right of the child to preserve his identity.

Application of
laws of
consanguinity.

30. (1) For the purposes of the law relating to marriage or common law union, an adopter and the adopted child shall be deemed to be within the prohibited degrees of consanguinity and the provisions of this section shall continue to have effect notwithstanding that a person other than the adopter is authorised by a subsequent order to adopt the same child.

(2) The laws of consanguinity shall continue to apply in relation to an adopted child and his natural parents.

Industrial
Insurance, etc.
Cap. 36:04

31. (1) For the purposes of the Friendly Societies Act or any other Act which provides for money to be paid for funeral expenses and which restrict the persons to whom money may be paid on the death of a child under the age of ten years, an adopter shall be deemed to be the parent of the child who is authorised to receive the money.

(2) Where before the making of an adoption order in respect of a child, an insurance policy has been effected by the natural parent of the child, the rights and liabilities under the policy shall by virtue of the adoption order be transferred to the adopter and the adopter shall, for the purposes of the said enactment, be treated as the person who took out the policy.

Cap. 27:08
Cap. 36:01

(3) A child adopted under this Act shall, upon the death of the adopter, be deemed for the purposes of the Dependents Pension Act and National Insurance and Social Security Act, to be the lawful child of the deceased adopter.

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

Cap. 10:03

(5) Where an adoption order is made in respect of a child committed to the care of a fit person or institution by an order in force under the Juvenile Offenders Act, the last mentioned order shall cease to have effect.

Intestacies and wills.

32. (1) Where, at anytime after the making of an adoption order -

- (a) the adopter;
- (b) the adopted person; or
- (c) any other person, dies intestate in respect of movable or immovable property, that property shall devolve in all respects as if the adopted person were the biological child of the adopter and were not the biological child of any other person.

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

- (a) 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;
- (b) the child or children of the adopted person's natural parents or either of them, shall, unless the contrary intention appears, be construed as not being, or as not including, a reference to the adopted person; and
- (c) 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 the adopted person in that degree if the adopted person were the biological child of the adopter born in lawful wedlock and were not the biological child of any other person.

Special provisions as to adopted persons under wills and intestacies Cap. 12:01

33.(1) For the purposes of the application of the Deceased Persons Estates' Administration Act, to the devolution of any property in accordance with section 20 (1) and (2) of that Act, and for the purposes of the construction of any such disposition as is mentioned in that section, an adopted person being the child or adopted child or the adopter or (in the case of a joint adoption) of either of the adopters -

- (a) where he or she 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;
- (b) in any other case, as brother or sister of the half-blood.

(2)(a) Notwithstanding anything in section 20 (1) and (2) of the Deceased Persons Estates' Administration Act --

- (i) trustees or personal representatives may convey or distribute any movable or immovable property to or among the persons entitled

thereto after ascertaining that an adoption order has been made by virtue of which a person is or may be entitled to an interest therein;

- (ii) a trustee or personal representative shall not be liable to such a person of whose claims he has not had notice at the time of the conveyance or distribution.

(b) Nothing in this subsection shall prejudice the right of such a person to follow the property, or a property representing it, into the hands of a person, other than a *bona fide* purchaser for value without notice, who may have received it.

(3) Where an adoption order is made in respect of a person who has been previously adopted, the previous adoption shall be disregarded for the purposes of section 20 (1) and (2) in relation to the devolution of 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 after that date.

Provision to existing de facto adoptions.

34. Where at the commencement of this Act, a child is in the custody of, and being brought up, maintained and educated by a person as his own child under a *defacto* adoption, and has for a period of not less than two years been in such custody, and been so brought up, maintained and educated, the Court may, upon an application of that person, and notwithstanding the provisions of section 19 make an adoption order authorising that person to adopt the child without requiring the consent of any parent or guardian of the child to be obtained, upon being satisfied after inquiry by the Board that in all the circumstances of the case it is just and equitable and in the best interest of the child that no such consent should be required and that an adoption order should be made.

Confidentiality of adoption.

35.(1) The adoption order, the application, the documents filed and the record of proceedings in relation to the application shall be kept by the Court in a sealed packet, and papers in the custody of the Agency relating to the adopted child shall be kept in a sealed packet, and neither shall be opened except upon the direction of the Court.

(2) The adoption order, the application, the documents filed and the record of proceedings in relation to the application shall not be made public or disclosed except upon the direction of a Court.

REGISTRATION OF ADOPTIONS

Adopted Children Register.

36. (1) The Registrar General of Births and Deaths shall establish and maintain at his office a register to be called the Adopted Children Register the contents of which shall be confidential.

(2) Where, upon an application for an adoption order, there is proved to the satisfaction of the Court -

(a) the date of birth of the child; and

(b) the identity of the child to which an entry in the Register of Births relates, an adoption order shall contain a direction to the Registrar General of Births and Deaths to mark the entry in the Register of Births with the word "Adopted", and to include in the entry in the adoption register recording the adoption the date stated in the order

(3) Subject to subsection 4 (a) a person may not have the Adopted Children Register or an entry in it searched or obtain a certified extract from it except with the permission of the Court.

(4)(a) The Registrar General of Births and Deaths shall refer to the Adopted Children Register for the purpose of preparing a birth certificate requested by an adopted child or an adopter and the birth certificate shall be in the name given to the adopted child by the adoption order and shall not be distinguishable from any other birth certificate issued.

(b) the Registrar General of Births and Deaths shall make and keep an index of the Adopted Children Register and a person having permission pursuant to subsection (3) may have a certified copy of an entry in the Adopted Children Register subject to payment of the fees prescribed by regulations.

(5) A certified copy of an entry in the Adopted Children Register, sealed or stamped with the seal of the Registrar General of Births and Deaths, shall, without further or other proof of the entry, be sufficient proof of the contents therein.

Registration of
adoption.

Schedule

37. (1) An adoption order shall contain a direction to the Registrar General of Births and Deaths to make in the Adopted Children Register an entry in the form set out in the Schedule and shall specify the particulars to be entered under the headings in columns (3) to (7) (inclusive) of the Schedule.

(2) For the purposes of compliance with the requirements of subsection (1) -

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

(3) Where an adoption order is made by a Court in respect of a child who has previously been the subject of an adoption order made by such a Court under this Act, the order shall contain a direction to the Registrar General of Births and Deaths to cause the previous entry in the Adopted Children Register to be marked with the word "Readopted".

(4) Where an adoption order is made, the Registrar of the Supreme Court shall cause the order to be served in the prescribed manner, on the Registrar General of Births and Deaths, and upon receipt of the order the Registrar General of Births and Deaths shall comply with the directions contained in the order both in regard to marking any entry in the Register of Births with the word "Adopted" or "Re-adopted", and in regard to making the appropriate entry in the Adopted Children Register, as the

Cap. 46:04

(5) This section applies to "adoption orders" made under the repealed Adoption of Children Act.

Amendment
rescission of
orders and
rectification of
Register.

38. (1) The Court by which an adoption order has been made may, on an application of the adopter or an adopted person, amend an adoption order by the correction of an error in the particulars named therein, and where an adoption order is so amended, the Registrar of the Supreme Court shall cause the amendment to be served in accordance with regulations on the Registrar General of Births and Deaths who shall amend the entry in the Adopted Children Register accordingly.

(2) A copy or extract of an entry from an Adopted Children Register shall not reproduce a note or marking related to an amendment made to that entry.

(3) Where an adoption order is quashed on appeal or rescinded, the Court shall give directions to the Registrar General of Births and Deaths to cancel any marking of any entry in the Register of Births and any entry in the Adopted Children Register which was effected in pursuance of the order.

(4) A copy or extract of an entry from the Adopted Children Register shall reproduce a note or marking related to cancellations made to that entry.

(5) This section applies to "adoption orders" made under the repealed Adoption of Children Act.

Restrictions upon
advertisements.

39. (1) A person other than the Agency shall not publish an advertisement indicating -

- (a) that the parent or guardian of a child desires to cause the child to be adopted;
- (b) that a person desires to adopt a child; or
- (c) that any person (not being the Agency) is willing to make arrangements for the adoption of a child.

(2) A person who causes to be published or knowingly publishes an advertisement in contravention of the provisions of this section shall be liable on summary conviction to a fine of fifty thousand dollars or to imprisonment for six months.

Revocation of
adoption order.

40. (1) Where an adoption order is made otherwise than by an order made subsequent to an appeal, a Court may revoke the adoption order if unequivocal proof has been provided that the adoption was obtained on the basis of fraud.

(2) The Court may revoke an adoption order where it is in the best interests of the child to so do and with due consideration being given to the views of the child, where the adoptive parents -

- (a) evade the fulfilment of their parental duties;
- (b) abuse their parental rights;
- (c) treat the adopted child with cruelty;
- (d) are satisfactorily proved to be chronic alcohol or drug addicts;

- (e) have been proven, by their conduct, to have acted in a manner that is seriously detrimental to the child; or
- (f) for any other serious cause that the Court may think justifies the making of such an order.

(3) An order revoking an adoption order pursuant to the provisions of subsections (1) and (2) above shall have the consequences of -

- (a) terminating the legal relationship between the child and the adoptive parents;
- (b) restoring the legal relationship with the child and his/her natural parents, should this be considered as being in the best interest of the child and should it also accord with the opinion of the child.

Rights of child to know natural parents.

(4) An order revoking an adoption shall also state the name the child shall use subsequent to such revocation, give directions on the birth certificate to be used by the child in the circumstances, and deal with any other matter that the Court considers just and necessary.

41. An adopted child may request to know his or her natural parents, and an adoptive parent shall take any action to encourage an encounter or relationship between the adopted child and the natural parent or parents.

Retrospectively of adoption order.

42. An adoption order shall only be given retrospective effect in cases where there has been substantial administrative delay in processing the adoption application.

PART III MISCELLANEOUS

Vested rights prior to adoption.

43. Where property was vested in an adopted child prior to his adoption that property shall not be affected by the adoption.

Offences.

44. Proceedings for an offence under this Act shall be taken by the Board.

Serving of notices.

45. A notice under this Act shall be served by prepaid registered post.

Appeals.

46. Appeals of orders of court made under this Act shall lie to the Court of Appeal.

Rules and regulations.

47.(1) Rules in regard to a matter to be prescribed under this Act and dealing generally with all matters of procedure and incidental matters arising out of this Act or for carrying this Act in effect shall be made by the Minister.

(2) The Minister may make regulations subject to the negative resolution of the national assembly -

- (a) for regulating the conduct of negotiations entered into, by or on behalf of the agency with persons having the care and possession of children who are desirous of causing children to be adopted, and in particular for securing -

- (i) that, where the parent or guardian of a child places the child at the disposition of the Agency with a view to the child being adopted, the

Agency shall furnish the parent or guardian with a memorandum in ordinary language explaining the making of an adoption order, the effect, in relation to his or her rights as a parent or guardian, of the child, and calling attention to this Act and of any rules made hereunder relating to the consent of a parent or guardian to the making of an order; and

- (ii) that, before so placing the child at the disposition of the Agency, the parent or guardian shall sign a document in the prescribed form verifying that he or she has read and understood the said memorandum or has had the contents of the memorandum read to him or her and he or she has likewise understood the contents;
- (b) for requiring that the case of every child proposed to be delivered by or on behalf of the Agency into the care and possession of an adopter shall be considered by a committee (to be called a "case committee") comprised of not less than three members of the Agency;
- (c) for prescribing, in the case of every such child as aforesaid, the inquiries which must be made and the reports which must be obtained by the agency and Board in relation to the child and the adopter for the purpose of ensuring, so far as may be, the suitability of the child and the adopter respectively, and, in particular, for requiring that a report on the health of the child and prospective adopter signed by a duly qualified medical practitioner must be obtained by the Board;
- (d) for securing that no such child shall be delivered into the care and possession of an adopter by or on behalf of the board until the adopter has been interviewed by the case committee or by some person on their behalf, until a representative of the committee has inspected any premises in Guyana in which the adopter intends that the child should reside permanently, and until the committee has considered the prescribed reports;
- (e) for making provision for the care and supervision of children who have been placed by their parents or guardians at the disposition of the Board; and
- (f) generally for carrying out the purposes of this Act.

(3) In any regulation under this section, the Minister may prescribe for an offence a penalty not exceeding a fine of one hundred thousand dollars and imprisonment for six months.

PART IV REPEAL

48. The Adoption of Children Act is repealed.

49. Notwithstanding the repeal, referred to in section 48, the Adoption of Children Rules made under the repealed Adoption of Children Act, still continue in force and may be amended or revoked by this Act as if they were made under this Act.

Repeal of
Adoption of
Children Act Cap.
46:04.

Savings Cap
46:04

**SCHEDULE
FORM OF ENTRY**

S 37

No. of Entry	Date of Entry	Name of adopted child	Sex of adopted child	Name and surname address and occupation of adopter or adopters	Date and country of birth of child	Date of adoption order and description of Court by which made	Signature of officer deputed by Registrar General to attest the entry
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)

EXPLANATORY MEMORANDUM

This Bill seeks to provide for the reform of the law relating to the adoption of children. It repeals the Adoption of Children Act, Cap. 46:04, and introduces in its place the new Adoption of Children Act 2009.

Clause 3 of the Bill provides for the establishment and composition of the Adoption Board and for the establishment of a Secretariat providing services for the carrying out of the functions of the Board.

Clause 4 provides for a person desirous of adopting a child to begin the adoption process by making an application to the Board in the manner prescribed by the Adoption of Children Rules.

Clause 5 sets out the duties of the Board. The duties are to receive applications, make investigations for consideration of the Court and to act as guardian *ad litem* of a child in respect of whom an adoption order is sought.

Clause 6 prohibits persons from making or receiving payments in respect of adoptions and creates an offence for violation of the prohibition. It also provides for the making of interim custody orders pending the adoption hearing.

Clause 7 empowers the Board to apply to the Court to be appointed guardian *ad litem*.

Clause 8 provides that where the Board is satisfied that certain conditions are met, the Board may place a child in the custody and care of an adopter.

Clause 10 outlines the arrangements that the Board can make after it had been appointed guardian *ad litem* and any person who contravenes section 10 of the Act by failing to return a child to the Board commits an offence.

Clause 11 provides for an adopter to appeal a decision of the Board to a Judge in Chambers. A decision from a Judge in Chambers may be appealed to the Court of Appeal.

Clause 13 gives power to the Court to make an adoption order in favour of certain categories of persons.

Clause 19 stipulates the persons whose consents are necessary for the making of an adoption order.

Clause 20 outlines the circumstances where the Court may dispense with consent.

Clause 24 empowers the Court on an application for an adoption order to make an interim order for custody of a child.

Clause 25 empowers the Court on an application for an adoption order in respect of a child who had previously been adopted.

Clause 26 outlines the procedure to be followed when applying for an adoption order.

Clauses 27 to 35 provide for the effects of adoption order.

Clause 28 details the effect of an adoption order.

Clause 30 provides for the application of the law of consanguinity in relation to an adopted child and an adopter and for the laws to continue to apply even after the child has been re-adopted.

Clause 34 empowers the Court to make an adoption order without the consent of any person or guardian where the adopter has been treating the child as his for a period of not less than two years.

Clause 35 provides for the confidentiality of adoption orders.

Clause 36 to 42 provide for the registration of adoption orders.

Clause 36 provides for the establishment of the Adopted Children Register by the Registrar General of Births and Deaths.

Clause 37 provides for the registration of adoption orders in the Adopted Children Register.

Clause 38 empowers the Court to amend or rescind an adoption order and for consequential correction of the Adoption Children Register and Register of Births.

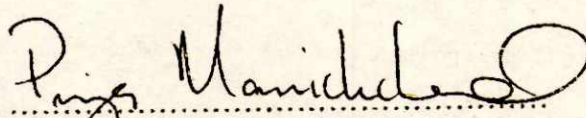
Clause 43 provides for the protection of rights vested in the child prior to adoption.

Clause 44 empowers the Adoption Board to institute charges for an offence under this Act.

Clause 46 empowers the Minister to make rules for dealing generally with all matters of procedure and empowers the Minister to make regulations for carrying out the purposes of this Act.

Clause 47 repeals the Adoption of Children Act, Cap. 46:04, whilst clause 48 saves the old Adoption of Children Rules.

Clause 50 provides for supervision and control of the Childcare and Protection Agency over all administrative authorities functioning under the proposed legislation.



**Minister of Human Services
and Social Security.**