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Adoption Act 1955

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Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this eprint.

A general outline of these changes is set out in the notes at the end of this eprint, together with other explanatory material about this eprint.

This Act is administered in the Ministry of Justice

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**An Act to consolidate and amend certain enactments of the
General Assembly relating to the adoption of children**

1 Short Title

This Act may be cited as the Adoption Act 1955.

2 Interpretation

In this Act, unless the context otherwise requires,—

Adopted child means any person concerning whom an adoption order is in force

Adoptive parent means any person who adopts a child in accordance with an adoption order; and, in the case of an order made in favour of a husband and wife on their joint application, means both the husband and wife; but does not include a spouse who merely consents to an adoption

Adoption order means an adoption order made under this Act; and does not include an interim order

Adoption order: this definition was amended, as from 1 April 1963, by section 2(a) Adoption Amendment Act 1962 (1962 No 134) by omitting the words “or the Maori Land Court”.

Adoption order: this definition was amended, as from 24 September 1965, by section 5(2) Adoption Amendment Act 1965 (1965 No 32) by omitting the words “by a Magistrate’s Court”.

Chief executive means the chief executive of the Department

Chief executive: this definition was inserted, as from 1 October 1999, by section 13 Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Child means a person who is under the age of 20 years; and includes any person in respect of whom an interim order is in force, notwithstanding that the person has attained that age

Child: this definition was amended by section 6 Age of Majority Act 1970 (1970 No 137) by substituting the expression “20” for the word “twenty-one”.

Child Welfare Officer *[Repealed]*

Child Welfare Officer: this definition was repealed, as from 1 April 1972, by section 23(1) Department of Social Welfare Act 1971 (1971 No 60). *See* SR 1972/37.

[Repealed]

Commonwealth country means a country that is a member of the British Commonwealth of Nations; and includes every territory for whose international relations the Government of that country is responsible; and also includes the Republic

of Ireland as if that country were a member of the British Commonwealth of Nations

Commonwealth representative means an Ambassador, High Commissioner, Minister, Chargé d’Affaires, Consular Officer, Trade Commissioner, or Tourist Commissioner of a Commonwealth country (including New Zealand); and includes any person lawfully acting for any such officer; and also includes any diplomatic secretary on the staff of any such Ambassador, High Commissioner, Minister, or Chargé d’Affaires

Court means a Family Court or a District Court of civil jurisdiction; and includes the High Court acting in its jurisdiction on appeal under this Act

Court: this definition was substituted, as from 1 April 1963, by section 2(c) Adoption Amendment Act 1962 (1962 No 134).

Court: this definition was substituted, as from 24 September 1965, by section 2(1) Adoption Amendment Act 1965 (1965 No 32).

Court: this definition was substituted, as from 1 October 1981, by section 17(1) Family Courts Act 1980 (1980 No 161).

Department means the department for the time being responsible for the administration of the Children, Young Persons, and Their Families Act 1989

Department: this definition was inserted, as from 1 October 1999, by section 13 Department of Child, Youth and Family Services Act 1999 (1999 No 82).

Director-General*[Repealed]*

Director-General: this definition was substituted, as from 1 April 1972, for a definition of the term Superintendent of Child Welfare by section 23(2) Department of Social Welfare Act 1971 (1971 No 60). *See* SR 1972/37.

Director-General: this definition was substituted, as from 1 April 1990, by section 36(1)(a) Social Welfare (Transitional Provisions) Act 1990 (1990 No 26).

Director-General: this definition was repealed, as from 1 October 1999, by section 13 Department of Child, Youth and Family Services Act 1999 (1999 No 82).

[Repealed]

Father*[Repealed]*

Father: this definition was repealed, as from 1 January 1970, by section 12(2) Status of Children Act 1969 (1969 No 18).

[Repealed]

Interim order means an interim order made under this Act

Maori means a person who is a Maori within the meaning of Te Ture Whenua Maori Act 1993

Maori: this definition was amended, as from 23 March 1995, by section 2(1) Adoption Amendment Act 1995 (1995 No 4) by substituting the words “Te Ture Whenua Maori Act 1993” for the words “The Maori Affairs Act 1953”. See section 3 of that Act as to the appointment of Community Officers under section 4 of the Maori Community Development Act 1962 not to be questioned on the grounds that the person was not validly appointed.

Publish, in relation to any advertisement, means—

- (a) Insert in any newspaper or other periodical publication printed and published in New Zealand; or
- (b) Bring to the notice of members of the public in New Zealand in any other manner whatsoever:

Registrar, in relation to any Court, means the Registrar of that Court and includes any Deputy Registrar

Registrar: this definition was amended, as from 24 September 1965, by section 2(2) Adoption Amendment Act 1965 (1965 No 32) by inserting the words “and includes any Deputy Registrar”.

Relative, in relation to any child, means a grandparent, brother, sister, uncle, or aunt, whether of the full blood, of the half blood, or by affinity

Relative: this definition was substituted, as from 1 January 1970, by section 12(2) Status of Children Act 1969 (1969 No 18).

Social Worker—

- (a) In relation to any application or proposed application by a Maori, whether jointly or singly, for an adoption order in respect of a Maori child, means—
 - (i) Any Maori person employed as a Social Worker under Part 5 of the State Sector Act 1988 in the Department; or
 - (ii) Any member of the Maori community nominated, after consultation with the Maori community, by the chief executive to carry out the duties of a Social Worker under this Act in respect of the adoption:
- (b) In relation to any other application or proposed application for an adoption order, means—
 - (i) Any person employed as a Social Worker under Part 5 of the State Sector Act 1988 in the Department; or

- (ii) If the Court so directs, any member of the Maori community nominated, after consultation with the Maori community, by the chief executive to carry out the duties of a Social Worker under this Act in respect of the adoption:

Social Worker: this definition was substituted, as from 1 April 1972, for the definition Child Welfare Officer by section 23(1) Department of Social Welfare Act 1971 (1971 No 60). *See* SR 1972/37.

Social Worker: this definition was amended by section 8(1) Maori Purposes Act 1974 (1974 No 144) by substituting the words “Community Officer” for the words “Welfare Officer”.

Social Worker: this definition was amended, as from 1 April 1990, by section 36(1) Social Welfare (Transitional Provisions) Act 1990 (1990 No 26) by substituting the words “employed as such under Part 5 of the State Sector Act 1988 in the Department of Social Welfare” for the words “under the Department of Social Welfare Act 1971”.

Social Worker: this definition was substituted, as from 23 March 1995, by section 2(2) Adoption Amendment Act 1995 (1995 No 4). *See* section 3 of that Act as to the appointment of Community Officers under section 4 of the Maori Community Development Act 1962 not to be questioned on the grounds that the person was not validly appointed.

Social Worker: this definition was amended, as from 1 October 1999, by section 13 Department of Child, Youth and Family Services Act 1999 (1999 No 82) by omitting the words “of Social Welfare”, and by substituting the words “chief executive” for the words “Director-General”.

Superintendent of Child Welfare*[Repealed]*

Superintendent of Child Welfare: this definition was repealed, as from 1 April 1972, by section 23(2) Department of Social Welfare Act 1971 (1971 No 60). *See* SR 1972/37.

[Repealed]

Compare: 1908 No 86 s 15; 1939 No 39 s 34

Making of adoption orders

3 Power to make adoption orders

- (1) Subject to the provisions of this Act, a Court may, upon an application made by any person whether domiciled in New Zealand or not, make an adoption order in respect of any child, whether domiciled in New Zealand or not.
- (2) An adoption order may be made on the application of 2 spouses jointly in respect of a child.

- (3) An adoption order may be made in respect of the adoption of a child by the mother or father of the child, either alone or jointly with his or her spouse.

Compare: 1908 No 86 ss 16, 17; Adoption Act 1950, s 1 (UK)

4 Restrictions on making adoption orders

- (1) Except in special circumstances, 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 25 years and is at least 20 years older than the child; or
- (b) Has attained the age of 20 years and is a relative of the child; or
- (c) Is the mother or father of the child.

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

- (3) Except as provided in subsection (2) of section 3 of this Act, an adoption order shall not be made providing for the adoption of a child by more than one person.

- (4) Any adoption order made in contravention of this section shall be valid, but may be discharged by the Court under section 20 of this Act.

- (5) Where any adoption order made in contravention of this section provides for the adoption of a child by more than one person, the High Court may, on the application of any such person made at any time while the adoption order remains in force, make such provision as appears just with respect to the role of providing day-to-day care for the child, and with respect to the maintenance and education of the child.

Compare: 1908 No 86 ss 16, 17, 19; Adoption Act 1950, s 2 (UK)

Subsection (1)(a) and (b) were amended by section 6 Age of Majority Act 1970 (1970 No 137) by substituting the expression “20” for the word “twenty-one”.

The words “High Court” in subsection (1) were substituted, as from 1 April 1980, for the words “Supreme Court” pursuant to section 12 Judicature Amendment Act 1979 (1979 No 124).

Subsection (5) was amended, as from 1 July 2005, by section 151 Care of Children Act 2004 (2004 No 90) by substituting the words “role of providing

day-to-day care for the child, and with respect to the maintenance and” for the words “custody, maintenance, and”.

5 Interim orders to be made in first instance

Upon any application for an adoption order, if the Court considers that the application should be granted, it shall in the first instance make an interim order in favour of the applicant or applicants:

Provided that the Court may in any case make an adoption order without first making an interim order, if—

- (a) All the conditions of this Act governing the making of an interim order have been complied with; and
- (b) Special circumstances render it desirable that an adoption order should be made in the first instance.

6 Restrictions on placing or keeping a child in a home for adoption

(1) It shall not be lawful for any person to place or receive or keep any child under the age of 15 years in the home of any person for the purpose of adoption, unless—

- (a) Prior approval has been given by a Social Worker, and that approval is for the time being in force; or
- (b) An interim order in respect of the proposed adoption is for the time being in force.

(2) Any approval granted by a Social Worker for the purposes of this section shall remain in force for one month after it is granted:

Provided that, where application to the Court for an adoption order is made before the expiration of one month from the date of the grant of the approval, the approval shall remain in force until the application is abandoned or dismissed or an order is made by the Court on the application.

(3) An interim order may be made by the Court in respect of a child notwithstanding that a Social Worker has refused to grant an approval under this section.

(4) This section shall not apply in any case where—

- (a) The child is in the home pursuant to any provision of the Children, Young Persons, and Their Families Act 1989 or to an order made pursuant to that Act; or

- (b) The child is in the home pursuant to an order made pursuant to the Care of Children Act 2004; or
- (c) The child is in the home of one of the child's parents and a step-parent of the child; or
- (d) The child is in the home of a relative of the child (not being a relative who, in the absence of special circumstances, is prohibited, by reason of age or sex, from adopting the child).

Subsections (1)(a), (2), and (3) were amended, as from 1 April 1972, by section 23(4)(b) Department of Social Welfare Act 1971 (1971 No 60), by substituting the words "a Social Worker" for the words "a Child Welfare Officer". *See* SR 1972/37.

Subsection (4) was substituted, as from 1 November 1989, by section 450(1) Children, Young Persons, and Their Families Act 1989 (1989 No 24).

Subsection (4)(b) was amended, as from 1 July 2005, by section 151 Care of Children Act 2004 (2004 No 90) by substituting the words "Care of Children Act 2004" for the words "Guardianship Act 1968".

7 Consents to adoptions

- (1) Before the Court makes any interim order, or makes any adoption order without first making an interim order, consents to the adoption by all persons (if any) whose consents are required in accordance with this section shall be filed in the Court.
- (2) The persons whose consents to any such order in respect of any child are required as aforesaid, unless they are dispensed with by the Court under section 8 of this Act, shall be—
 - (a) The parents and guardians of the child as provided in subsections (3) to (5) of this section; and
 - (b) The spouse of the applicant in any case where the application is made by either a husband or a wife alone.
- (3) The parents and guardians whose consents to any such order in respect of any child are required as aforesaid, unless they are dispensed with by the Court under section 8 of this Act, shall be,—
 - (a) If the parents of the child were married to each other either at the time of the child's birth or at or after the time of his conception or if the father as well as the mother is or was a guardian of the child and there is no adoption order in force in respect of the child, the surviving parents or parent and (if the guardianship concerned has

not been terminated, for example, by the child turning 18 years of age) the surviving guardians or guardian appointed by a deceased parent:

- (b) In any other case where there is no adoption order in force in respect of the child, the mother or (if she is dead, and the guardianship concerned has not been terminated, for example, by the child turning 18 years of age) the surviving guardians or guardian appointed by her:

Provided that the Court may in any such case require the consent of the father if in the opinion of the Court it is expedient to do so:

- (c) If there is an adoption order in force in respect of the child, the surviving adoptive parents or parent and (if the guardianship concerned has not been terminated, for example, by the child turning 18 years of age) the surviving guardians or guardian appointed by any deceased adoptive parent.

- (4) Subject to the prior consent of the chief executive, any parent who desires to have his or her child adopted may in writing appoint the chief executive as the guardian of the child until such time as the child is legally adopted, and may impose conditions with respect to the religious denomination and practice of the applicants or any applicant to adopt the child or as to the religious denomination in which the applicants or applicant intend to bring up the child; and the chief executive, when so appointed, may give such consent to the adoption of the child as is required from the person who appointed him as guardian of the child:

Provided that any such appointment by the mother of a child shall be void unless the child is at least 10 days old at the date of the appointment:

Provided also that nothing in this subsection shall relieve the parent from any liability for the maintenance of the child until the child is adopted.

- (5) In the case of a refugee child within the meaning of Part 1 of the Child Welfare Amendment Act 1948, a consent by the chief executive, or by any other person who has been granted the guardianship of the child under that Act, shall take the

place of every other consent by a parent or guardian of the child.

- (6) The consent by any parent or guardian of a child to an adoption may be given (either unconditionally or subject to conditions with respect to the religious denomination and practice of the applicants or any applicant or as to the religious denomination in which the applicants or applicant intend to bring up the child) without the parent or guardian knowing the identity of the applicant for the order.
- (7) A document signifying consent by a mother of a child to an adoption shall not be admissible unless the child is at least 10 days old at the date of the execution of the document.
- (8) Except where it is given by the chief executive, a document signifying consent to an adoption shall not be admissible unless,—
 - (a) If given in New Zealand, it is witnessed by a District Court Judge, a Registrar of the High Court or of a District Court, or a Solicitor, or a Judge or Commissioner or Registrar of the Maori Land Court:
 - (aa) If given in the Cook Islands or Niue, it is witnessed by—
 - (i) The New Zealand Representative; or
 - (ii) A Judge, Registrar, or Deputy Registrar, of the High Court of the Cook Islands or the High Court of Niue (as the case requires); or
 - (iii) A solicitor of the High Court of the Cook Islands or the High Court of Niue (as the case requires) or the High Court of New Zealand:
 - (b) If given in any other country, it is witnessed by and sealed with the seal of office of a Notary Public or Commonwealth representative who exercises his office or functions in that country.
- (9) Except where it is given by the chief executive, the form of the document signifying consent to an adoption shall contain an explanation of the effect of an adoption order, and shall have endorsed thereon a certificate by the witness that he has personally explained the effect of an adoption order to the person who is giving the consent.

- (10) Every person who is an applicant for an adoption order shall be deemed to consent to the adoption, and it shall not be necessary for him or her to file a formal consent under this section.

Compare: 1908 No 86 s 18; 1947 No 60 s 26; 1948 No 48 s 10; Adoption Act 1950, s 3(3) (UK)

Subsection (3)(a) and (b) was substituted by section 12(2) Status of Children Act 1969 (1969 No 18).

Subsection (3)(a) was amended, as from 1 July 2005, by section 151 Care of Children Act 2004 (2004 No 90) by inserting the words “(if the guardianship concerned has not been terminated, for example, by the child turning 18 years of age)” before the words “the surviving guardians”.

Subsection (3)(b) was amended, as from 1 July 2005, by section 151 Care of Children Act 2004 (2004 No 90) by inserting the words “, and the guardianship concerned has not been terminated, for example, by the child turning 18 years of age” after the word “dead”.

Subsection (3)(c) was amended, as from 1 July 2005, by section 151 Care of Children Act 2004 (2004 No 90) by inserting the words “(if the guardianship concerned has not been terminated, for example, by the child turning 18 years of age)” before the words “the surviving guardians”.

Subsections (4), (5), (8), and (9) were amended by section 23(4)(a) Department of Social Welfare Act 1971 (1971 No 60), as from 1 April 1972, by substituting the references to the “Director-General” for references to the “Superintendent of Child Welfare” and the “Superintendent”. *See* SR 1972/37.

Subsections (4), (5), (8), and (9) were amended, as from 1 October 1999, by section 13 Department of Child, Youth and Family Services Act 1999 (1999 No 82) by substituting the words “chief executive” for the words “Director-General”.

The Child Welfare Amendment Act 1948 was repealed by section 109 Children and Young Persons Act 1974 (1974 No 72). There was no reference to such children in the 1974 Act.

Subsection (8)(aa) was inserted, as from 25 March 1987, by section 3 Adoption Amendment Act 1962 (1962 No 134).

Subsection (8)(aa) was substituted by section 2(1) Adoption Amendment Act 1987 (1987 No 19). The definition of the term Resident Commissioner in the Cook Islands Act 1915 was repealed by section 2(1) Cook Islands Amendment Act 1966.

The words “High Court” were substituted for the words “Supreme Court” pursuant to section 12 Judicature Amendment Act 1979 (1979 No 124). The words “District Court” and “District Court Judge” were substituted for the words “Magistrate’s Court” and “Magistrate” pursuant to section 18 District Courts Amendment Act 1979 (1979 No 125).

8 Cases where consent may be dispensed with

- (1) The Court may dispense with the consent of any parent or guardian to the adoption of a child in any of the following circumstances:

- (a) If the Court is satisfied that the parent or guardian has abandoned, neglected, persistently failed to maintain, or persistently ill-treated the child, or failed to exercise the normal duty and care of parenthood in respect of the child; and that reasonable notice of the application for an adoption order has been given to the parent or guardian where the parent or guardian can be found:
 - (b) If the Court is satisfied that the parent or guardian is unfit, by reason of any physical or mental incapacity, to have the care and control of the child; that the unfitness is likely to continue indefinitely; and that reasonable notice of the application for an adoption order has been given to the parent or guardian:
 - (c) If a licence has been granted in respect of the child under section 40 of the Adoption Act 1950 of the Parliament of the United Kingdom, or under the corresponding provisions of any former or subsequent Act of that Parliament, or under the corresponding provisions of any Act of the Parliament of any Commonwealth country.
- (2) The Court may dispense with the consent of any parent or guardian as aforesaid notwithstanding that the parent or guardian may have made suitable initial arrangements for the child by placing the child under the care of the authorities of a children's home, the chief executive, or some other person.
- (3) On application by any person having the care of a child, the Court may dispense with the consent of a parent or guardian of a child under this section before any application is made for an adoption order in respect of the child; and any order so made shall lapse after the expiration of 6 months from the date on which it is made for all purposes except an application made to the Court within that period for an adoption order in respect of the child.
- (4) The Court may dispense with the consent of the spouse of an applicant for an adoption order if it is satisfied that the spouses are living apart and that their separation is likely to be permanent.
- (5) In any case where a mentally disordered person is a parent or guardian of a child in respect of whom an application for an adoption order has been made, service of notice of the ap-

plication on the manager or administrator of the estate of the parent or guardian, or on the person with whom the parent or guardian resides or under whose care he is, shall (unless the Court otherwise orders) be sufficient service thereof for the purposes of this section.

- (5A) In any case where a District Court has refused to make an order dispensing with the consent of any parent or guardian or spouse, the person or persons who sought the dispensation may, within one month after the date of the refusal, appeal to the High Court against the refusal; and the High Court may dispense with the consent if it thinks fit.
- (6) Any person whose consent is dispensed with under this section may, on notice to every applicant for an adoption order in respect of the child and within one month after the making of the order dispensing with consent, make application for the revocation of that order and of any consequential interim order to the High Court; and the Court to which the application is so made may in its discretion revoke any such order.
- (7) In any case where the Court has made an adoption order within one month after making the order dispensing with consent, any person whose consent is dispensed with under this section may, on notice to every adoptive parent and within one month after the making of the order dispensing with consent, make application for the revocation of that order and the discharge of the adoption order to the High Court; and the Court to which the application is so made may in its discretion discharge any such order. All the provisions of section 20 of this Act, so far as they are applicable and with the necessary modifications, shall apply in connection with any such discharge of an adoption order.
- (8) In any case where the High Court revokes any interim order or discharges any adoption order in accordance with this section, that Court may include in its order an order for the refund by some person specified in the order of money spent by any adopter or proposed adopter for the child's benefit. Any such order for the refund of money shall be enforceable as a judg-

ment of the Court which made the order in favour of the person to whom the money has to be repaid.

Compare: 1908 No 86 s 23; 1941 No 26 s 36; 1951 No 81 s 15; Adoption Act 1950, s 3 (UK).

Subsection (2) was amended by section 23(4)(a) Department of Social Welfare Act 1971 (1971 No 60), (as from 1 April 1972) by substituting the words “the Director-General” for the words “the Superintendent of Child Welfare”. *See* SR 1972/37.

Subsection (2) was amended, as from 1 October 1999, by section 13 Department of Child, Youth and Family Services Act 1999 (1999 No 82) by substituting the words “chief executive” for the words “Director-General”.

Subsection (5) was amended, as from 1 April 1970, by section 129(4) Mental Health Act 1969 (1969 No 16) by substituting the reference to a “mentally disordered person” for a reference to a “mentally defective person”.

Subsection (5) was amended, as from 1 April 1970, by section 129(7) Mental Health Act 1969 (1969 No 16) by substituting the reference to a “manager” for a reference to a “committee”.

Subsection (5A) was inserted, as from 24 September 1965, by section 3 Adoption Amendment Act 1965 (1965 No 32).

Subsection (6) was amended, as from 1 April 1963, by section 4(1) Adoption Amendment Act 1962 (1962 No 134) by omitting the words “if the order or orders were made by a Magistrate’s Court, or to the Maori Appellate Court if the orders were made by the Maori Land Court”.

Subsection (7) was amended, as from 1 April 1963, by section 4(2) Adoption Amendment Act 1962 (1962 No 134) by omitting the words “if the order or orders were made by a Magistrate’s Court, or to the Maori Appellate Court if the order or orders were made by the Maori Land Court”.

Subsection (8) was amended, as from 1 April 1963, by section 4(3) Adoption Amendment Act 1962 (1962 No 134) by omitting the words “or the Maori Appellate Court”.

The words “High Court” were substituted, as from 1 April 1980, for the words “Supreme Court” pursuant to section 12 Judicature Amendment Act 1979 (1979 No 124). The words “District Court” were substituted for the words “Magistrate’s Court” pursuant to section 18 District Courts Amendment Act 1979 (1979 No 125).

9 Withdrawal of consents

- (1) Where any consent to an adoption of a child by any specified person or persons is given by any parent or guardian of the child except the chief executive, the consent shall not be withdrawn at any time while an application by the said person or persons to adopt the child is pending, or until the said person or persons have had a reasonable opportunity to make an application to adopt the child.

- (2) Subject to the provisions of subsection (1) of this section, any consent to an adoption, and any appointment of the chief executive as the guardian of a child under subsection (4) of section 7 of this Act, may be withdrawn at any time while neither an interim order nor an adoption order has been made in connection with the adoption, but shall not be withdrawn after any such order has been made. Where any such appointment of the chief executive is so withdrawn, any consent given by him shall lapse.

Subsections (1) and (2) were amended, as from 1 April 1972, by section 23(4)(a) Department of Social Welfare Act 1971 (1971 No 60) by substituting the words “the Director-General” for the words “the Superintendent of Child Welfare”. See SR 1972/37.

Subsections (1) and (2) were amended, as from 1 October 1999, by section 13 Department of Child, Youth and Family Services Act 1999 (1999 No 82) by substituting the words “chief executive” for the words “Director-General”.

10 Social Worker to report

- (1) Before the Court makes any interim order, or makes any adoption order without first making an interim order,—
- (a) The Registrar of the Court shall require a Social Worker to furnish a report on the application;
 - (b) Reasonable time shall be allowed to enable the Social Worker to furnish a report, and the Court shall consider any report which the Social Worker may furnish; and
 - (c) The Registrar shall give the Social Worker reasonable notice of the hearing of the application:

Provided that this subsection shall not apply in any case where the applicant or one of the applicants is an existing parent of the child, whether his natural parent or his adoptive parent under any previous adoption.

- (2) The Social Worker shall be entitled to appear at the hearing of the application, and to cross-examine, call evidence, and address the Court.

Subsections (1)(a), (b), and (c) and (2) were amended by section 23(4)(b) Department of Social Welfare Act 1971 (1971 No 60), as from 1 April 1972 by substituting the words “The Social Worker” for the words “The Child Welfare Officer”. See SR 1972/37.

11 Restrictions on making of orders in respect of adoption

Before making any interim order or adoption order in respect of any child, the Court shall be satisfied—

- (a) That every person who is applying for the order is a fit and proper person to have the role of providing day-to-day care for the child and of sufficient ability to bring up, maintain, and educate the child; and
- (b) That the welfare and interests of the child will be promoted by the adoption, due consideration being for this purpose given to the wishes of the child, having regard to the age and understanding of the child; and
- (c) That any condition imposed by any parent or guardian of the child with respect to the religious denomination and practice of the applicants or any applicant or as to the religious denomination in which the applicants or applicant intend to bring up the child is being complied with.

Compare: 1908 No 86 s 18(1)(c); Adoption Act 1950, s 5 (UK)

Paragraph (a) was amended, as from 1 July 2005, by section 151 Care of Children Act 2004 (2004 No 90) by substituting the words “role of providing day-to-day care for” for the words “custody of”.

12 Revocation of interim order

- (1) On the application of any person, the Court may in its discretion revoke an interim order in respect of any child on such terms as the Court thinks fit, including an order for the refund by some person specified in the order of money spent by any proposed adopter for the child’s benefit.
- (1A) Where on the application of any person a District Court has refused to revoke an interim order in respect of any child, that person may, within one month after the date of the refusal, appeal to the High Court against the refusal; and the High Court may in its discretion make any order which the District Court could have made under subsection (1) of this section.
- (1B) Where any interim order has been revoked as aforesaid, the person or persons in whose favour the interim order was made may, within one month after the date of the revocation, appeal to the High Court against the revocation or against the terms of

the revocation; and the High Court may, if it thinks fit, cancel the revocation or vary the terms thereof.

- (2) Any such order for the refund of money shall be enforceable as a judgment of the Court in favour of the person to whom the money has to be repaid.

Subsections (1A) and (1B) were inserted by section 4 Adoption Amendment Act 1965 (1965 No 32).

The words “District Court” were substituted, as from 1 April 1980, for the words “Magistrate’s Court” pursuant to section 18(2) District Courts Amendment Act 1979 (1979 No 125). The words “High Court” were substituted, as from 1 April 1980, for the words “Supreme Court” pursuant to section 12 Judicature Amendment Act 1979 (1979 No 124).

13 Issue of adoption order where an interim order has been made

- (1) The person or persons in whose favour an interim order has been made in respect of any child may apply to the Court for the issue of an adoption order in respect of the child, if—
- (a) The interim order is in force at the date of the application and has continued in force for not less than the prescribed period specified in subsection (2) of this section; and
- (b) In any case where the child is under the age of 15 years, the child has been continuously in the care of the applicant or applicants for not less than the said prescribed period since the adoption was first approved by a Social Worker or the interim order was made, whichever first occurred.
- (2) The prescribed period mentioned in subsection (1) of this section shall be 6 months, or such shorter period as may in special circumstances be specified by the Court either in the interim order or, whether or not a shorter period has already been specified in the interim order, subsequent to the making of the interim order.
- (2A) Notwithstanding the foregoing provisions of this section, the Court may, if special circumstances render it desirable to do so, issue an adoption order before the termination of the prescribed period:

Provided that no order under this subsection shall be made without a hearing by the Court.

- (3) Where an application is duly made to the Court under subsection (1) of this section, the Registrar shall issue the adoption order without any further hearing if—
- (a) A Social Worker has filed a report recommending that an adoption order be issued;
 - (b) The interim order did not require the application to be dealt with by the Court;
 - (c) No proceedings for the revocation of the interim order are pending in a District Court or on an appeal to the High Court; and
 - (d) A District Court has not, within the immediately preceding month, refused to revoke the interim order,—
but the adoption order shall not be issued without a further hearing in any other case.
- (4) In any case where a hearing by the Court of an application under this section is required as aforesaid—
- (a) The Registrar shall require a Social Worker to furnish a report on the application:
 - (b) The Registrar shall appoint a time and place for the hearing of the application, and in so doing shall allow reasonable time to enable the Social Worker to furnish his report as aforesaid:
 - (c) The Court shall consider any report which the Social Worker may furnish:
 - (d) The Registrar shall give the Social Worker reasonable notice of the hearing of the application, and the Social Worker shall be entitled to appear, cross-examine, call evidence, and address the Court.
- (5) In any case where an adoption order could issue under this section in favour of one person only, the Court may, upon application by that person and his or her spouse and after further hearing, issue the adoption order in favour of that person and his or her spouse jointly without requiring any further consents to the adoption.

Subsection (1)(b) was amended, as from 1 April 1972, by section 23(4)(b) Department of Social Welfare Act 1971 (1971 No 60) by substituting the words “a Social Worker” for the words “a Child Welfare Officer”.

Subsection (2) was substituted, as from 1 April 1963, by section 5 Adoption Amendment Act 1962 (1962 No 134).

Subsection (2A) was inserted, as from 1 April 1963, by section 5 Adoption Amendment Act 1962 (1962 No 134).

Subsection (3) was substituted, as from 1 April 1963, by section 5 Adoption Amendment Act 1962 (1962 No 134).

Subsection (3)(a) was amended, as from 1 April 1972, by section 23(4)(b) Department of Social Welfare Act 1971 (1971 No 60) by substituting the words “a Social Worker” for the words “a Child Welfare Officer”.

Subsection (3)(b) was amended, as from 24 September 1965, by section 5(3) Adoption Amendment Act 1965 (1965 No 32) by omitting the word “and”.

Subsection (3)(c) was substituted, as from 24 September 1965, by section 5(4) Adoption Amendment Act 1965 (1965 No 32).

Subsection (3)(d) was inserted, as from 24 September 1965, by section 5(4) Adoption Amendment Act 1965 (1965 No 32).

Subsection (4) was substituted, as from 1 April 1963, by section 5 Adoption Amendment Act 1962 (1962 No 134).

Subsection (4)(a), (b), (c), and (d) were amended, as from 1 April 1972, by section 23(4)(b) Department of Social Welfare Act 1971 (1971 No 60) by substituting the words “a Social Worker” for the words “a Child Welfare Officer”. See SR 1972/37.

The words “High Court” in subsection (3)(c) were substituted, as from 1 April 1980, for the words “Supreme Court” pursuant to section 12 Judicature Amendment Act 1979 (1979 No 124). The words “District Court” in subsection (3)(c) and (d) were substituted, as from 1 April 1980, for the words “Magistrate’s Court” pursuant to section 18(2) District Courts Amendment Act 1979 (1979 No 125).

13A Appeal against refusal to make interim order or adoption order

In any case where a District Court has refused to make an interim order or an adoption order in respect of any child, the person or persons who applied for the order may, within one month after the date of the refusal, appeal to the High Court against the decision; and the High Court may, if it thinks fit, grant the order that is sought.

Section 13A was inserted, as from 24 September 1963, by section 5(1) Adoption Amendment Act 1965 (1965 No 32).

The words “District Court” were substituted, as from 1 April 1980, for the words “Magistrate’s Court” pursuant to section 18(2) District Courts Amendment Act 1979 (1979 No 125). The words “High Court” were substituted, as from 1 April 1980, for the words “Supreme Court” pursuant to section 12 Judicature Amendment Act 1979 (1979 No 124).

14 Date on which adoption order becomes effective

- (1) An adoption order made after the commencement of this Act shall be deemed to be made,—
- (a) In any case where it is issued after an interim order has been made and without further hearing, on the date on which it is so issued:
 - (b) In any other case, on the date of the actual granting of the order by the Court, whether or not a formal order is ever signed.
- (2) Where before the commencement of this Act an adoption order has been granted in New Zealand by any Court but no adoption order in the prescribed form has ever been signed, the order shall be deemed to have been signed and to have become effective on the date of the actual granting of the order by the Court:

Provided that, for the purposes of any deed or instrument (except a will) made before the commencement of this Act, or of the will or intestacy of any testator or intestate who died before the commencement of this Act, or of any vested or contingent right of the adopted child or any other person under any such deed, instrument, will, or intestacy, this subsection shall not apply to any adoption order which has been granted before the commencement of this Act.

Effect of interim orders and adoption orders

15 Effect of interim order

- (1) An interim order in respect of any child—
- (a) May require that the adoption order shall not be issued without a further hearing:
 - (b) Shall not effect any change in the child's names, but may specify how they are to be changed by the adoption order:
 - (c) Shall remain in force for one year or until it is sooner revoked or an adoption order is sooner made in respect of the child:

Provided that a further interim order may be made by the Court upon application duly made to it in that behalf:

- (d) Shall not be deemed to be an adoption order for any purpose.
- (2) So long as an interim order remains in force in respect of any child—
- (a) the person or persons in whose favour the order is made have the role of providing day-to-day care for the child; and must comply with all terms (if any) specified in the order in respect of the role of providing day-to-day care for the child:
- (b) Any Social Worker may, at all reasonable times, visit and enter the residence in which the child lives:
- (c) The child shall not be taken out of New Zealand without leave of the Court:
- (d) The person or persons in whose favour the order is made shall give to a Social Worker at least 7 days' notice before changing his, her, or their residence:
- Provided that where an immediate change of residence is necessitated by an emergency it shall be sufficient if notice is given within 48 hours after leaving the residence occupied prior to the change.

Compare: Adoption Act 1950, s 6(4) (UK)

Subsection (2)(a) was substituted, as from 1 July 2005, by section 151 Care of Children Act 2004 (2004 No 90).

Subsection (2)(b) and (d) were amended, as from 1 April 1972, by section 23(4)(b) Department of Social Welfare Act 1971 (1971 No 60) by substituting the words "a Social Worker" for the words "a Child Welfare Officer". See SR 1972/37.

16 Effect of adoption order

- (1) Every adoption order shall confer on the adopted child a surname, and one or more given names.
- (1A) The names conferred on an adopted child by an adoption order shall be those specified by the applicant for the order, unless the Court is satisfied it is not in the public interest for the child to bear those names.
- (1B) Notwithstanding subsection (1) of this section, if the Court is satisfied that it is contrary to the religious beliefs or cultural traditions of the applicant for an adoption order for the adopted child to bear a given name, the order may confer on the child a surname only.

- (2) Upon an adoption order being made, the following paragraphs of this subsection shall have effect for all purposes, whether civil, criminal, or otherwise, but subject to the provisions of any enactment which distinguishes in any way between adopted children and children other than adopted children, namely:
- (a) The adopted child shall be deemed to become the child of the adoptive parent, and the adoptive parent shall be deemed to become the parent of the child, as if the child had been born to that parent in lawful wedlock:
Provided that, where the adopted child is adopted by his mother either alone or jointly with her husband, the making of the adoption order shall not prevent the making of an affiliation order or maintenance order, or of an application for an affiliation order or maintenance order, in respect of the child:
- (b) The adopted child shall be deemed to cease to be the child of his existing parents (whether his natural parents or his adoptive parents under any previous adoption), and the existing parents of the adopted child shall be deemed to cease to be his parents, and any existing adoption order in respect of the child shall be deemed to be discharged under section 20 of this Act:
Provided that, where the existing parents are the natural parents, the provisions of this paragraph shall not apply for the purposes of any enactment relating to forbidden marriages or civil unions or to the crime of incest:
- (c) The relationship to one another of all persons (whether the adopted child, the adoptive parent, the existing parents, or any other persons) shall be determined in accordance with the foregoing provisions of this subsection so far as they are applicable:
- (d) The foregoing provisions of this subsection shall not apply for the purposes of any deed, instrument, will, or intestacy, or affect any vested or contingent right of the adopted child or any other person under any deed, instrument, will, or intestacy, where the adoption order is made after the date of the deed or instrument or after the date of the death of the testator or intestate, as the

case may be, unless in the case of a deed, instrument, or will, express provision is made to that effect:

(e) Subject to the Citizenship Act 1977, the adoption order shall not affect the race, nationality, or citizenship of the adopted child:

(f) The adopted child shall acquire the domicile of his adoptive parent or adoptive parents, and the child's domicile shall thereafter be determined as if the child had been born in lawful wedlock to the said parent or parents:

[Repealed]

(g)

(h) Any existing appointment as guardian of the adopted child shall cease to have effect:

(i) Any affiliation order or maintenance order in respect of the adopted child and any agreement (not being in the nature of a trust) which provides for payments for the maintenance of the adopted child shall cease to have effect:

Provided that, where the adopted child is adopted by his mother either alone or jointly with her husband, the order or agreement shall not cease to have effect by reason of the making of the adoption order:

Provided also that nothing in this paragraph shall prevent the recovery of any arrears which are due under any order or agreement at the date on which it ceases to have effect as aforesaid.

(3) This section shall apply with respect to all adoption orders, whether made before or after the commencement of this Act:

Provided that—

(a) For the purposes of any appointment, affiliation order, maintenance order, or agreement to which paragraph (h) or paragraph (i) of subsection (2) of this section applies, the adoption order, if made before the commencement of this Act, shall be deemed to have been made on the date of the commencement of this Act:

(b) For the purposes of any other deed or instrument (except a will) made before the commencement

of this Act, or of the will or intestacy of any testator or intestate who died before the commencement of this Act, or of any vested or contingent right of the adopted child or any other person under any such deed, instrument, will, or intestacy, this section shall not apply, and the adoption order shall have effect for the purposes of the deed, instrument, will, or intestacy according to the law existing at the date on which the deed, instrument, will, or intestacy took effect:

- (c) An adoption order made before the 1st day of April 1954, shall not affect the operation of any rule of Maori custom as to intestate succession to Maori land.
- (4) Subsection (2)(i) of this section applies to all maintenance orders, whether made before, on, or after the 1st day of July 1992.
- (5) The first proviso to subsection (2)(a) of this section applies subject to section 6(2) of the Child Support Act 1991.
- (6) The first proviso to subsection (2)(i) of this section applies subject to section 25(1)(b)(iii) of the Child Support Act 1991.

Compare: 1950 No 18 s 2

Subsection (1) was substituted, as from 1 September 1995, by section 95 Births, Deaths, and Marriages Registration Act 1995 (1995 No 16).

Subsections (1A) and (1B) were inserted, as from 1 September 1995, by section 95 Births, Deaths, and Marriages Registration Act 1995 (1995 No 16).

Subsection (2)(b) proviso was amended, as from 26 April 2005, by section 40(1) Civil Union Act 2004 (2004 No 102) by inserting the words “or civil unions” after the words “any enactment relating to forbidden marriages”.

Subsection (2)(e) was substituted by section 30(2) Citizenship Act 1977 (1977 No 61).

Subsection (2)(f) proviso and (2)(g) were repealed, as from 1 January 1981, by section 14(2) Domicile Act 1976 (1976 No 17). *See* section 1(2) of that Act.

Subsections (4) to (6) were inserted, as from 1 July 1992, by section 243 Child Support Act 1991 (1991 No 142).

17 Effect of overseas adoption

- (1) Where a person has been adopted (whether before or after the commencement of this section) in any place outside New Zealand according to the law of that place, and the adoption is

one to which this section applies, then, for the purposes of this Act and all other New Zealand enactments and laws, the adoption shall have the same effect as an adoption order validly made under this Act, and shall have no other effect.

- (2) Subsection (1) of this section shall apply to an adoption in any place outside New Zealand, if—
- (a) The adoption is legally valid according to the law of that place; and
 - (b) In consequence of the adoption, the adoptive parents or any adoptive parent had, or would (if the adopted person had been a young child) have had, immediately following the adoption, according to the law of that place, a right superior to that of any natural parent of the adopted person in respect of the role of providing day-to-day care for the person; and
 - (c) Either—
 - (i) The adoption order was made by any Court or judicial or public authority whatsoever of a Commonwealth country, or of the United States of America, or of any State or territory of the United States of America, or of any other country which the Governor-General, by an Order in Council that is for the time being in force, has directed to be deemed to be referred to in this subparagraph; or
 - (ii) In consequence of the adoption, the adoptive parents or any adoptive parent had, immediately, following the adoption, according to the law of that place, a right superior to or equal with that of any natural parent in respect of any property of the adopted person which was capable of passing to the parents or any parent of the person in the event of the person dying intestate without other next of kin and domiciled in the place where the adoption was made and a national of the State which had jurisdiction in respect of that place—
but not otherwise.
- (2A) The production of a document purporting to be the original or a certified copy of an order or record of adoption made by

a Court or a judicial or public authority in any place outside New Zealand shall, in the absence of proof to the contrary, be sufficient evidence that the adoption was made and that it is legally valid according to the law of that place.

- (3) Nothing in this section shall restrict or alter the effect of any other adoption made in any place outside New Zealand.
- (4) In this section the term **New Zealand** does not include any territory in which this Act is not in force.
- (5) This section does not apply to any adoption in another Contracting State that is an adoption—
 - (a) By a person habitually resident in New Zealand; and
 - (b) To which the Convention applies; and
 - (c) Which takes place in that Contracting State on or after the date on which the Convention has entered into force as between New Zealand and that Contracting State.
- (6) In subsection (5), **Contracting State** and **Convention** have the same meaning as in the Adoption (Intercountry) Act 1997.

Subsection (2)(b) was amended, as from 1 July 2005, by section 151 Care of Children Act 2004 (2004 No 90) by substituting the words “the role of providing day-to-day care for” for the words “the custody of”.

Subsection (2)(c)(i) was substituted by section 6(1) Adoption Amendment Act 1965 (1965 No 32).

Subsection (2A) was inserted by section 6(2) Adoption Amendment Act 1965 (1965 No 32).

Subsections (5) and (6) were inserted, as from 1 January 1999, by section 25 Adoption (Intercountry) Act 1997 (1997 No 109). See clause 2 Adoption (Intercountry) Act Commencement Order 1998 (SR 1998/427).

Maori adoptions

18 Application of Act to Maoris

An adoption order may be made under this Act on the application of any person, whether a Maori or not, in respect of any child, whether a Maori or not.

19 Adoptions according to Maori custom not operative

- (1) No person shall hereafter be capable or be deemed at any time since the commencement of the Native Land Act 1909 to have been capable of adopting any child in accordance with Maori custom, and, except as provided in subsection (2) of this sec-

tion, no adoption in accordance with Maori custom shall be of any force or effect, whether in respect of intestate succession to Maori land or otherwise.

- (2) Any adoption in accordance with Maori custom that was made and registered in the Maori Land Court before the 31st day of March 1910 (being the date of the commencement of the Native Land Act 1909), shall during its subsistence be deemed to have and to have had the same force and effect as if it had been lawfully made by an adoption order under Part 9 of the Native Land Act 1909.

Compare: 1953 No 94 s 80

Miscellaneous

20 Adoption order may be varied or discharged

- (1) The Court may in its discretion vary or discharge any adoption order (whether the order was made before or after the commencement of this Act) or any adoption to which subsection (2) of section 19 of this Act applies, subject to such terms and conditions as it thinks fit.
- (2) The Court may, in its discretion and subject to such terms and conditions as it thinks fit, discharge any adoption made in any place outside New Zealand either before or after the commencement of this Act, if—
- (a) The person adopted is living and is domiciled in New Zealand; and
 - (b) Every living adoptive parent is domiciled in New Zealand.
- (3) No application for the discharge of any adoption order or adoption shall be made without the prior approval of the Attorney-General; and no adoption order or adoption shall be discharged unless—
- (a) The adoption order or adoption was made by mistake as to a material fact or in consequence of a material misrepresentation to the Court or to any person concerned; or
 - (b) The discharge is expressly authorised by any other section of this Act.

- (4) Where the Court discharges any adoption order or adoption as aforesaid, it may confer on the person to whom the order or adoption related such surname with such first or Christian name as the Court thinks fit; but, if it does not do so, the names of the person shall not be affected by the discharge of the order.
- (5) Any person may, at any time within one month after the date of the decision of the Court under this section, appeal to the High Court against the decision.
- (6) Upon an adoption order, or an adoption to which subsection (1) of section 17 of this Act applies, or an adoption to which subsection (2) of section 19 of this Act applies, being discharged under this section after the commencement of this Act—
- (a) The relationship to one another of all persons (whether the adopted child, the adoptive parents, the natural parents, the guardians of the child at the date of the adoption order or adoption, or any other persons) shall be determined as if the adoption order or adoption had not been made; and any appointment as guardian of the adopted child which was made while the adoption order or adoption was in force shall cease to have effect:
Provided that the discharge of the order or adoption shall not affect anything lawfully done or the consequences of anything unlawfully done while the order or adoption was in force:
- (b) No change in the child's domicile shall occur by reason only of the discharge; but, where during the infancy of the child any natural parent resumes the exercise of the role of providing day-to-day care for the child to whom the discharged order or adoption related, the domicile of the child shall thereafter be determined as if neither the discharged order or adoption nor any prior adoption order or adoption in respect of the child had been made:
- (c) Any affiliation order, maintenance order, or agreement for payment of maintenance which ceased to have effect under paragraph (i) of subsection (2) of section 16

of this Act shall thereafter have effect according to the terms thereof:

Provided that nothing in this paragraph shall cause the order or agreement to have any effect in respect of the period while the adoption order or adoption remained in force:

Provided also that notice of the discharge of the adoption order or adoption shall be served on every person who is bound by the affiliation order, maintenance order, or agreement, but nothing in this proviso shall restrict the effect of the affiliation order, maintenance order, or agreement between the date of the discharge of the adoption order or adoption and the service of notice of the discharge:

- (d) For the purposes of any other deed or instrument (except a will) made while the order or adoption was in force, or of the will or intestacy of any testator or intestate who died while the order or adoption was in force, or of any vested or contingent right of the adopted child or any other person under any such deed, instrument, will, or intestacy, the order or adoption shall be deemed to continue in force.
- (7) Upon the discharge of any adoption made in any place outside New Zealand, not being an adoption to which subsection (1) of section 17 of this Act applies,—
- (a) If at the date of the discharge adoptions could be discharged in the place where the adoption in question was made, the discharge shall have the same effects as if it was made in that place:
 - (b) If at the date of the discharge adoptions could not be discharged in the place where the adoption in question was made, the discharge shall have the same effects, so far as they are applicable, as the discharge of an adoption order made under this Act.
- (8) Where an adoption order has been discharged before the commencement of this Act, the effect of the discharge shall be determined by reference to the law existing at the date of the discharge.

Compare: 1908 No 86 s 22; 1950 No 18 s 4

Subsection (5) was substituted, 1 April 1963, by section 6 Adoption Amendment Act 1962 (1962 No 134).

The words “High Court” in subsection (5) were substituted, as from 1 April 1980, for the words “Supreme Court” pursuant to section 12 Judicature Amendment Act 1979 (1979 No 124).

Subsection (6)(b) was amended, as from 1 July 2005, by section 151 Care of Children Act 2004 (2004 No 90) by substituting the words “the exercise of the role of providing day-to-day care for” for the words “custody of”.

21 Court to which application for adoption order shall be made

[Repealed]

Section 21 was repealed by section 7 Adoption Amendment Act 1962 (1962 No 134).

22 Applications not to be heard in open Court

No application under this Act shall be heard or determined in open Court, and no report of proceedings under this Act shall be published except by leave of the Court which heard the proceedings.

23 Inspection of adoption records

- (1) An adoption order shall be open to inspection by any person who requires to inspect it for some purpose in connection with the administration of an estate or trust of which that person is executor, administrator, or trustee.
- (2) Adoption records are open to inspection by—
 - (a) any Registrar (as defined in section 2 of the Births, Deaths, Marriages, and Relationships Registration Act 1995) or marriage celebrant under the Marriage Act 1955 for the purpose of investigating forbidden degrees of relationship under the Marriage Act 1955; and
 - (b) any Registrar (as so defined) or civil union celebrant under the Civil Union Act 2004 for the purpose of investigating prohibited degrees of civil union under the Civil Union Act 2004.
- (2A) Adoption records are open to inspection by a Social Worker for the purpose of preparing a report required under section 23A(1).

- (3) Adoption records shall not be available for production or open to inspection except—
- (a) To the extent authorised by subsections (1), (2), or (2A) of this section or by section 11(4)(b) of the Adult Adoption Information Act 1985; or
 - (b) On the order of a Family Court, a District Court, or the High Court, made—
 - (i) For the purposes of a prosecution for making a false statement; or
 - (ii) In the event of any question as to the validity or effect of any interim order or adoption order; or
 - (iii) On any other special ground.

Section 23 was substituted, as from 1 March 1986, by section 15 Adult Adoption Information Act 1985 (1985 No 127).

Subsection (2) was substituted, as from 26 April 2005, by section 40(2) Civil Union Act 2004 (2004 No 102).

Section 23(2)(a): amended, on 24 January 2009, by section 47 of the Births, Deaths, Marriages, and Relationships Registration Amendment Act 2008 (2008 No 48).

Subsection (2A) was inserted, as from 15 November 2000, by section 3(1) Adoption Amendment Act 2000 (2000 No 49).

Subsection (3)(a) was amended, as from 15 November 2000, by section 3(2) Adoption Amendment Act 2000 (2000 No 49) by substituting the words “subsections (1), (2), or (2A)” for the words “subsection (1) or subsection (2)”.

23A Report on application for inspection

- (1) A Court may require a Social Worker to prepare a report following an application for an order under section 23(3)(b) on a ground referred to in subparagraph (iii) of that paragraph (“any other special ground”).
- (2) A Social Worker preparing a report required under subsection (1)—
 - (a) may consider any information obtained for the purpose, including information in the adoption records concerned and the application for the order; but
 - (b) may not consider information relating to any party to the adoption or application that was obtained by the Department before the application was made.

Section 23A was inserted, as from 15 November 2000, by section 4 Adoption Amendment Act 2000 (2000 No 49).

24 Evidence in adoption cases

The Court to which any application is made under this Act may receive as evidence any statement, document, information, or matter that may in its opinion assist it to deal effectually with the application, whether or not the same would be otherwise admissible in a Court of law.

25 Prohibition of payments in consideration of adoption

- (1) Except with the consent of the Court, it shall not be lawful for any person to give or receive or agree to give or receive any payment or reward in consideration of the adoption or proposed adoption of a child or in consideration of the making of arrangements for an adoption or proposed adoption:

[Repealed]

- (1A) Subsection (1) does not apply to the payment of the hospital and medical expenses of the confinement of the mother of a child if—
- (a) the expenses are incurred by virtue of the provision by a society or body of persons of hospital care (within the meaning of the Health and Disability Services (Safety) Act 2001); and
 - (b) the payment is made by an applicant for an adoption order in respect of the child directly to the society or body; and
 - (c) the amount paid has been approved in the particular instance, or is in accordance with a scale approved generally, by the chief executive of the department of State responsible for the administration of the Health and Disability Services (Safety) Act 2001.
- (2) Subsection (1) does not apply to the payment of reasonable costs and expenses to any organisation approved as a New Zealand accredited body under Part 2 of the Adoption (Intercountry) Act 1997, provided those costs and expenses—
- (a) Are in connection with the exercise of a function delegated to that body under Part 1 of that Act; and
 - (b) Are set out in an invoice or statement of account rendered by that body which sets out details of the costs

and expenses, and the services or functions to which they apply.

Compare: 1908 No 86 s 20

Subsection (1) proviso was inserted, as from 4 October 1957, by section 2 Adoption Amendment Act 1957 (1957 No 10).

Subsection (1) proviso was amended by substituting the reference to the “Hospitals Act 1957” (1957 No 40) for a reference to the repealed “Hospitals Act 1926”. The references to a separate institution are now obsolete as Part 4 of the Hospitals Act 1957 was repealed by section 14(1) Hospitals Amendment Act 1970.

Subsection (1) proviso was repealed, as from 1 October 2002, by section 58(1) Health and Disability Services (Safety) Act 2001 (2001 No 93). *See* section 11 of that Act for transitional provisions.

Subsection (1A) was inserted, as from 1 October 2002, by section 58(1) Health and Disability Services (Safety) Act 2001 (2001 No 93). *See* section 11 of that Act for transitional provisions.

Subsection (2) was inserted, as from 1 January 1999, by section 26 Adoption (Inter-country) Act 1997 (1997 No 109). *See* clause 2 Adoption (Inter-country) Act Commencement Order 1998 (SR 1998/427).

Subsection (2) was amended, as from 1 October 2002, by section 58(1) Health and Disability Services (Safety) Act 2001 (2001 No 93), by substituting the words “Subsection (1)” for the words “This section”. *See* section 11 of that Act for transitional provisions.

26 Restriction upon advertisements

(1) It shall not be lawful for any person, other than the chief executive or a Social Worker, to publish any advertisement indicating—

- (a) That the parent or guardian of a child desires to cause the child to be adopted; or
- (b) That any person desires to adopt a child; or
- (c) That any person or body of persons is willing to make arrangements for the adoption of a child:

Provided that the chief executive may in his discretion approve in particular cases of advertisements published by any group or society caring for the welfare of children.

(2) An organisation approved as a New Zealand accredited body under Part 2 of the Adoption (Inter-country) Act 1997 does not commit an offence against subsection (1)(c) by publicly notifying—

- (a) That it is a New Zealand accredited body under that Act; or

- (b) That functions have been delegated to that body under Part 1 of that Act.

Compare: Adoption Act 1950, s 38 (UK)

Section 26 was amended, as from 1 April 1972, by section 23(4)(a) Department of Social Welfare Act 1971 (1971 No 60) by substituting the words “Director-General” for the words “Superintendent of Child Welfare”, and by section 23(4)(b) of that Act by substituting the reference to a “Social Worker” for a reference to a “Child Welfare Officer”. *See* SR 1972/37.

Subsection (1) was amended, as from 1 October 1999, by section 13 Department of Child, Youth and Family Services Act 1999 (1999 No 82) by substituting the words “chief executive” for the words “Director-General”.

Subsection (2) was inserted, as from 1 January 1999, by section 27 Adoption (Intercountry) Act 1997 (1997 No 109). *See* clause 2 Adoption (Intercountry) Act Commencement Order 1998 (SR 1998/427).

27 Offences

- (1) Every person commits an offence against this section who—
- (a) Places or receives or keeps any child in the home of any person for the purpose of adoption in contravention of section 6 of this Act:
 - (b) Takes out of New Zealand without leave of the Court any child in respect of whom an interim order is in force:
 - (c) Being a person in whose favour an interim order has been made, fails to give any notice of change of residence required by paragraph (d) of subsection (2) of section 15 of this Act:
 - (d) Gives or receives or agrees to give or receive any payment in contravention of section 25 of this Act:
 - (e) Publishes any advertisement in contravention of section 26 of this Act:
 - (f) Makes any false statement for the purpose of obtaining or opposing an interim order or adoption order or any variation or discharge of any such order.
- (2) Every person who commits an offence against this section shall be liable on summary conviction before a District Court Judge to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$15,000 or to both.
- (3) Where the Court is satisfied that an offence against this section has been committed in respect of any child, whether or not any person has been convicted of the offence, the Court may order the child to be removed to a place of safety until he can be

restored to his parents or guardian or until other arrangements can be made for him.

Subsection (2) was amended by section 7 Decimal Currency Act 1964 (1964 No 27) by substituting the expression “\$100” for the words “fifty pounds”.

Subsection (2) was amended, as from 1 January 1999, by section 28 Adoption (Inter-country) Act 1997 (1997 No 109) by substituting the expression “\$15,000” for the expression “\$100”. *See* clause 2 Adoption (Inter-country) Act Commencement Order 1998 (SR 1998/427).

The words “District Court Judge” were substituted for the word “Magistrate” pursuant to section 18 District Courts Amendment Act 1979 (1979 No 125).

28 Regulations

- (1) The Governor-General may from time to time, by Order in Council, make all such regulations as may in his opinion be necessary or expedient for giving effect to the provisions of this Act and for the due administration thereof.

(2)

Subsection (2) was repealed, as from 19 December 1989, by section 11 Regulations (Disallowance) Act 1989.

28A Rules

Rules may be made regulating the practice and procedure of Courts in proceedings under this Act,—

- (a) in the case of the High Court, under section 51C of the Judicature Act 1908;
- (b) in the case of District Courts, under section 122 of the District Courts Act 1947;
- (c) in the case of Family Courts, under section 16A of the Family Courts Act 1980.

Section 28A was inserted, as from 13 September 2002, by section 6 Family Courts Amendment Act 2000 (2000 No 65). *See* clause 2 Family Courts Amendment Act Commencement Order 2002 (SR 2002/254).

29 Consequential amendments

The enactments specified in Schedule 1 to this Act are hereby amended in the manner indicated in that Schedule.

30 Repeals and savings

- (1) The enactments specified in Schedule 2 to this Act are hereby repealed.

- (2) Without limiting the provisions of the Acts Interpretation Act 1924, it is hereby declared that the repeal of any provision by this Act shall not affect any document made or any thing whatsoever done under the provision so repealed or under any corresponding former provision, and every such document or thing, so far as it is subsisting or in force at the time of the repeal and could have been made or done under this Act, shall continue and have effect as if it had been made or done under the corresponding provision of this Act and as if that provision had been in force when the document was made or the thing was done.
- (3) All applications, matters, and proceedings commenced under any such enactment and pending or in progress at the commencement of this Act may, at the discretion of the Court, be continued and completed—
- (a) Under this Act; or
- (b) Under the said enactments in all respects as if the said enactments continued in force and as if this Act had not been passed.

Schedule 1

Section 29

Consequential Amendments

[Repealed]

The enactments specified in this Schedule have been repealed by:

Section 134(1) Domestic Proceedings Act 1968 (1968 No 62) (impliedly).

Section 4(3) Births and Deaths Registration Amendment Act 1961.

Section 204(1) Education Act 1964 (1964 No 135).

Section 12(2) Status Of Children Act 1969 (1969 No 18).

Schedule 2

Section 30

Enactments repealed

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- 1925, No 22—The Child Welfare Act 1925: So much of Schedule 3 as relates to section 24 of the Infants Act 1908. (1931 Reprint, Vol III, p 1113.)

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- 1939, No 39—The Statutes Amendment Act 1939: Section 34.
 - 1941, No 26—The Statutes Amendment Act 1941: Section 36.
 - 1942, No 18—The Statutes Amendment Act 1942: Sections 14 to 17.
 - 1947, No 60—The Statutes Amendment Act 1947: Section 26.
 - 1948, No 48—The Child Welfare Amendment Act 1948: Section 10.
 - 1950, No 18—The Infants Amendment Act 1950.
 - 1951, No 81—The Statutes Amendment Act 1951: Section 15.
 - 1953, No 94—The Maori Affairs Act 1953: Part 9.

Schedule 2 was amended, as from 19 December 1989, by section 2(c) Infants Act Repeal Act 1989 (1989 No 145) by omitting the item relating to the “Infants Act 1908”.

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Notes

1 *General*

This is an eprint of the Adoption Act 1955. It incorporates all the amendments to the Act as at 24 January 2009. The list of amendments at the end of these notes specifies all the amendments incorporated into this eprint since 3 September 2007. Relevant provisions of any amending enactments that contain transitional, savings, or application provisions are also included, after the Principal enactment, in chronological order.

2 *About this eprint*

This eprint has not been officialised. For more information about officialisation, please see “Making online legislation official” under “Status of legislation on this site” in the About section of this website.

3 *List of amendments incorporated in this eprint (most recent first)*

Births, Deaths, Marriages, and Relationships Registration Amendment Act 2008 (2008 No 48): section 47
