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TURKS AND CAICOS ISLANDS

CHAPTER 11.13

ADOPTION ORDINANCE

Revised Edition

showing the law as at 31 August 2009

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Ordinance 1997.

This edition contains a consolidation of the following laws—

ADOPTION ORDINANCE

Ordinance 7 of 1971 .. in force 29 October 1971

Amended by Ordinance 9 of 1998 .. in force 15 May 1998

No Subsidiary Legislation has been made under this Ordinance

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CHAPTER 11.13

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CHAPTER 11.13

ADOPTION ORDINANCE

(Ordinances 7 of 1971 and 9 of 1998)

AN ORDINANCE RELATING TO THE ADOPTION OF INFANTS.

Commencement

[29 October 1971]

Short title

1. This Ordinance may be cited as the Adoption Ordinance.

Interpretation

2. In this Ordinance unless the context otherwise requires—

"adoption order" has the meaning assigned to it by section 3 of this Ordinance; "Adoption Rules" means rules made under subsection (2) of section 10; "Court" means a court having jurisdiction to make adoption orders; "father", in relation to an illegitimate infant, means the natural father;

"guardian", in relation to an infant, means a person appointed by a court of competent jurisdiction to be the guardian of the infant;

"infant" means a person under twenty-one years of age, but does not include a person who is or has been married;

"person" means a male or female person and does not include the meanings assigned to it by the Interpretation Ordinance;

"place of safety" means a home provided by a local authority, remand home, police station, hospital or other suitable place the occupier of which is willing temporarily to receive a child.

Power to make adoption orders

3. (1) Subject to the provisions of this Ordinance, the Magistrate's Court may, upon an application made in the prescribed manner by a person residing in the Islands make an order authorising the applicant to adopt an infant.

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

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

(4) Subject to the provisions of section 12 an adoption order shall not be made in the Islands unless the applicant and the infant reside in the Islands.

Age and sex of applicant

4. (1) An adoption order shall not be made in respect of an infant unless the applicant—

- (a) is the mother or father of the infant; or
- (b) is a person who has attained the age of twenty-one years.

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

- (a) if either of the applicants is the mother or father of the infant; or
- (b) if the condition set out in paragraph (b) of subsection (1) of this section is satisfied in the case of the female spouse.

Care and possession of infant before adoption

5. An adoption order shall not be made in respect of any infant unless he has been continuously in the care and possession of the applicant for at least three consecutive months immediately preceding the date of the order, not counting any time before the date which appears to the court to be the date on which the infant attained the age of six weeks.

Consents

6. (1) An adoption order shall not be made—

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

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

Power to dispense with consent

7. (1) The Court may dispense with any consent required by paragraph (a) of subsection (1) of section 6 of this Ordinance if it is satisfied that the person whose consent is to be dispensed with—

- (a) has abandoned, neglected or persistently ill-treated the infant;
- (b) cannot be found or is incapable of giving his consent or is withholding his consent unreasonably;
or
- (c) has granted custody of the infant to the prospective adopter or one of the prospective adopters.

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

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

(4) The Court may dispense with the consent of the spouse of an applicant for an adoption order if it is satisfied that the person whose consent is to be dispensed with cannot be found or is incapable of giving his consent or that the spouses have separated and are living apart and that the separation is likely to be permanent.

Evidence of consent of parent or guardian

8. (1) Where a parent or guardian of an infant does not attend in the proceedings on an application for an adoption order for the purpose of giving his consent to the making of the order, then, a document signifying his consent to the making of such an order, if the person in whose favour the order is to be made is named in the document or (where the identity of that person is not known to the consenting party) is distinguished therein, shall be admissible as evidence of that consent, whether the document is executed before or after the commencement of the proceedings, and where any such document is attested, it shall be admissible as aforesaid without further proof of the signature of the person by whom it is executed.

(2) As to the execution in the absence of attestation the Court shall accept evidence of a document required by subsection (1) of this section from any person other than the prospective adopter or adopters as proof of such execution.

Functions of Court as to adoption orders

9. (1) The Court before making an adoption order shall be satisfied—

10.

- (a) that every person whose consent is necessary under this Ordinance, and whose consent is not dispensed with, has consented to and understands the nature and effect of the adoption order for which application is made, and in particular in the case of any parent understands that the effect of the adoption order will be permanently to deprive him or her of his or her parental rights;
- (b) that the order if made will be for the welfare of the infant; and
- (c) that the applicant has not received or agreed to receive, and that no person has made or given or agreed to make or give to the applicant, any payment or other reward in consideration of the adoption except such as the Court may sanction.

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

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

Jurisdiction and procedure

10. (1) An application for an adoption order shall be made to the Magistrate's Court.

(2) Rules in regard to any matter to be prescribed under this Ordinance and dealing generally with all matters of procedure and incidental matters arising out of this Ordinance and for carrying this Ordinance into effect shall be made by the Chief Justice of the Supreme Court and shall be known as "Adoption Rules".

(3) Adoption Rules may provide for applications for adoption orders being heard and determined otherwise than in open court and may make provision for excluding or restricting the jurisdiction of any court where a previous application made by the same applicant in respect of the same infant has been refused by that or any other courts.

Appeals

11. Where, on an application to the Magistrate's Court, the Court makes or refuses to make an adoption order, an appeal shall lie to the Supreme Court.

Applicants not ordinarily resident in the Islands

12. An adoption order may, notwithstanding anything in this Ordinance, be made on the application of a person who is not ordinarily resident in the Islands and in relation to such an applicant subsection (4) of section 3 does not apply.

Rights and duties of parents and capacity to marry

13. (1) Upon an adoption order being made, all rights, duties, obligations and liabilities of the parents or guardians of the infant in relation to the future custody, maintenance and education of the infant, including all rights to appoint a guardian and to consent or give notice of dissent to marriage, shall be extinguished, and all such rights, duties, obligations and liabilities shall vest in and be exercisable by and enforceable against the adopter as if the infant were a child born to the adopter in lawful wedlock; and in respect of the matters aforesaid the infant shall stand to the adopter exclusively in the position of a child born to the adopter in lawful wedlock.

(2) In any case where two spouses are the adopters, the 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 rights of access to children, stand to each other and to the infant in the same relation as they would have stood if they had been the lawful father and mother of the infant and the infant shall stand to them in the same relation as to a lawful father and mother.

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

Affiliation orders, etc

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

(2) After an adoption order has been made in respect of an infant who is illegitimate, no affiliation order or decree of affiliation and aliment shall be made with respect to the infant unless the adoption order was made on the application of the mother of the infant alone.

Intestacies, wills and settlements

15. (1) Where at any time after the making of an adoption order, the adopter or the adopted person or any other person dies intestate in respect of any real or personal property (other than property subject to an entailed interest under a disposition to which subsection (2) of this section does not apply) that property shall devolve in all respects as if the adopted person were the child of the adopter born in lawful wedlock and were not the child of any other person.

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

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

Provisions supplementary to Inheritance (Family Provisions) Ordinance

16. (1) For the purpose of the application of the Inheritance (Family Provisions) Ordinance to the devolution of any property in accordance with the provisions of the last foregoing section, and for the purposes of the construction of any such disposition as is mentioned in that section, an adopted person shall be deemed to be related to any other person being the child of 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) For the purpose of subsection (2) of the last foregoing section, a disposition made by will or codicil shall be treated as made on the date of death of the testator.

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

(4) Where an adoption order is made in respect of a person who has been previously adopted, the previous adoption shall be disregarded for the purpose of the last foregoing section in relation to the devolution of any property on the death of a person, dying intestate after the date of the subsequent adoption order, and in relation to any disposition of property made, or taking effect on the death of a person dying after that date.

Citizenship

17. Where an adoption order is made in respect of an infant who is not a British Dependent Territories Citizen, then, if the adopter, or in the case of a joint adoption either adopter, is a British Dependent Territories Citizen, the infant shall be a British Dependent Territories Citizen, as from the date of the order, as provided in the British Nationality Act 1981 (U.K.). (*Substituted by Ord. 9 of 1998*)

Adopted children register

18. (1) The Registrar of Deeds shall maintain at the Deeds Registry a register, to be called the Adopted Children Register, in which shall be made such entries as may be directed to be made therein by adoption orders, but no other entries.

(2) A certified copy of an entry in the Adopted Children Register, if purporting to be sealed or stamped with the seal of the Deeds Registry, shall, without any further or other proof of that entry, be received as evidence of the adoption to which it relates and, where the entry contains a record of the date of birth or place of birth of the adopted person, shall also be received as aforesaid as evidence of that date or place in all respects as if the copy were a certified copy of an entry in the Register of Births.

(3) The Registrar of Deeds shall cause an index of the Adopted Children Register to be made and kept in the Deeds Registry; and every person shall be entitled to search that index and to have a certified copy of any entry in the Adopted Children Register in all respects upon and subject to the same terms, conditions and regulations as to payment of fees and otherwise as may be prescribed under the Adoption Rules.

(4) The Registrar of Deeds shall, in addition to the Adopted Children Register and the index thereof, keep such other registers and books, and make such entries therein, as may be necessary to record and make traceable the connection between any entry in the Register of Births which has been marked "Adopted" pursuant to the next following section or any enactment at the time in force, and any corresponding entry in the Adopted Children Register.

(5) The registers and books kept under subsection (4) of this section shall not be, nor shall any index thereof be, open to public inspection or search, and the Judge shall not furnish any person with any information contained in or with any copy or extract from any such registers or books except under an order of the Supreme Court.

Registration of adoptions

19. (1) Every adoption order made by the Court shall contain a direction to the Registrar of Deeds to make in the Adopted Children Register an entry in the prescribed form, and (subject to subsection (2)) shall specify the particulars to be entered.

(2) For the purposes of compliance with the requirements of the last foregoing subsection where the precise date of the infant's birth is not proved to the satisfaction of the Court, the Court shall determine the probable date of his birth and the date so determined shall be specified in the order as the date of his birth and the names to be specified in the order as the name and surname of the infant shall be the name or names and surname stated in that behalf in the application for the adoption order, or, if no name or surname is so stated, the original name or names of the infant and the surname of the applicant.

Amendment of orders and rectification of Registers

20. (1) The Court by which an adoption order has been made may, on the application of the adopter or of the adopted person, amend the order by the correction of any error in the particulars contained therein and may if satisfied on the application of the adopter or of the adopted person that within one year beginning with the date of the order any new name has been given to the adopted person (whether in baptism or otherwise), or taken by him, either *in lieu* of or in addition to a name specified in the particulars required to be entered in the Adopted Children Register in pursuance of the order, amend by substituting or adding that name in those particulars, as the case may require.

(2) Where an adoption order is amended or a direction revoked under subsection (1) of this section, the prescribed officer of the Court shall cause the amendments to be communicated in the prescribed manner to the Registrar of Deeds, who shall as the case may require—

- (a) cause the entry in the Adopted Children Register to be amended accordingly; or
- (b) cause the markings of the entry in the Register of Births or the Adopted Children Register to be cancelled.

(3) Where an adoption order is quashed or an appeal against an adoption order allowed by the Supreme Court, the Court shall give directions to the Registrar of Deeds to cancel any entry in the Adopted Children Register, and any markings of an entry in that Register, or the Register of Births, as the case may be, which was effected in pursuance of the order.

Legitimation, revocation of adoption orders and cancellation of entries in Registers

21. (1) Where any person adopted by his father or mother alone has subsequently become a legitimated person on the marriage of his father and mother, the Court by which the adoption order was made may, on the application of any of the parties concerned, revoke that order.

(2) Where an adoption order is revoked under this section, the prescribed officer of the Court shall cause the revocation to be communicated in the prescribed manner to the Registrar of Deeds who shall cause to be cancelled—

- (a) the entry in the Adopted Children Register relating to the adopted person; and
- (b) the marking with the word "adopted" of any entry relating to him in the Register of Births,

and a copy or extract of an entry in any register, being an entry the marking of which is cancelled under this section shall be deemed to be an accurate copy if and only if both the marking and the cancellation are omitted therefrom.

Restriction on removal of infant by parent or guardian after giving consent

22. While an application for an adoption order in respect of an infant is pending in any court, a parent or guardian of the infant who has signified his consent to the making of an adoption order in pursuance of the application shall not be entitled, except with the leave of the court, to remove the infant from the care and possession of the applicant, and in consideration whether to grant or refuse such leave the court shall have regard to the welfare of the infant and if it grants such order shall designate the persons who shall care for the child and prescribe the conditions of such care.

Offences

23. (1) A person commits an offence if—

- (a) being required under any provision of this Ordinance to give any notice or information he fails to give the notice within the time specified in that provision or fails to give the information within a reasonable time, or knowingly makes or causes or procures another person to make any false or misleading statement in the notice or information; or
- (b) he refuses to allow the visiting of a protected child by a duly authorised officer who, after producing, if asked to do so, some duly authenticated documents showing that he is so authorised;
or

- (c) he refuses to comply with an order under this Ordinance for the removal of any child or obstructs any person in the execution of such an order.

(2) A person who commits an offence under this section is liable on conviction to a term of imprisonment of six months or to a fine of \$200 or to both such fine and imprisonment.

Prohibition of certain payments

24. (1) Subject to the provisions of this section, it shall not be lawful to make or give to any person any payment or reward for or in consideration of—

- (a) the adoption by that person of an infant;
- (b) the grant by that person of any consent required in connection with the adoption of an infant
- (c) the transfer by that person of the care and possession of an infant with a view to the adoption of the infant; or
- (d) the making by that person of any arrangements for the adoption of an infant.

(2) Any person who makes or gives, or agrees or offers to make or give any payment or reward prohibited by this section, or who receives or agrees to receive or attempts to obtain any such payment or reward, commits an offence and is liable on conviction to a term of imprisonment of six months or to a fine of \$200 or to both such fine and imprisonment, and the Court may order any infant in respect of whom the offence was committed 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.