

NEW ZEALAND ADOPTION RESOURCE

CONVENTIONS

AND

STATUTES

VOL 11

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**NEW ZEALAND
ADOPTION
RESOURCE**

**CONVENTIONS
AND
STATUTES**

VOL 11

CONVENTIONS & STATUTES

CONVENTIONS

- United Nations Universal Declaration of Human Rights 1948**
- United Nations Declaration of the Rights of the Child 1959**
- United Nations Declaration of Social and Legal Principles 1986** Relating to the Protection and Welfare of Children, with special reference to Foster Placements and Adoption Nationally and internationally.
- United Nations Convention on The Rights of the Child 1989**
- Hague Convention 1993** On the protection of children and cooperation in respect of intercountry adoption 29th May 1993
- United Nations International Covenant of Civil and Political Rights 1996**

ADOPTION STATUTES and REGULATIONS

STATUTES

- 1881 Adoption of Children Act No.9** 19/9/1881 First Adoption Act, children under 12 years
- 1885 Adoption of Children Act 1881 Amendment** 10/8/1885 adoption jurisdiction Magistrates
- 1893 Infant Life Protection Act No.35** 2/10/1893 notification of Commissioner required by anyone taking a child under age of three into their home for adoption
- 1895 Adoption of Children Act No.8** 20/8/1895 adoption age increase to under 15 years. Increased protection
- 1896 Infant Life Protection Act No.23** 12/10/1896 After Minnie Dean, inspection and registration of Childrens Homes tightened up
- 1901 Native Land Claims Adjustment and Laws Amendment Act 1901 No.65** 8/11/1901 s50 register customary Maori adoptions, required for legal recognition
- 1906 Adoption of Children Act Amendment Act No.37** 20/10/1906 premium payments need Court consent
- 1906 Statutes Law Amendment Act No.58** 29/10/1906 can't marry a sibling, on adoption discharge responsibilities of natural parents revive
- 1907 Infant Life Protection Act No.42** 20/11/1907 consent of natural parents may be dispensed with, where birth parents unfit to have custody
- 1908 Infant Act No.86** 26/6/1908 consolidation of Infants Law Part III
- 1909 Native Land Act No.15** 24/12/1909 Part IX s161-170 Maori adoption by Native Land Court, new customary Maori adoptions have no legal status
- 1915 Births and Deaths Registration Amendment Act No.56** 11/10/1915 re-registration of adoptees birth entry. Registrar-General's national adoption records
- 1924 Births & Deaths Registration Act 1924 No.13** 6/10/1924 consolidation and reprint
- 1925 District Courts Abolition Act No.19** 29/9/1925 District Courts abolished, adoption jurisdiction to Magistrate's Court
- 1925 Child Welfare Act No.22** 1/10/1925 Established Child Welfare Division. Abolished Institutional adoptions and hyphenated adoptee surnames
- 1931 Native Land Act Part IX No.31** 11/11/1931 Part IX s202-211 consolidated Maori Adoption legislation
- 1939 Statutes Amendment Act No.39** 7/10/1939 s34 amend Infants Act 1908 Part III s15 age < 21yrs
- 1940 Native Purposes Act No.25** adoption by Natives married in accordance with Native custom
- 1941 Statutes Amendment Act No.26** 17/10/1941 s36 mentally affected birth parents re consent
- 1942 Statutes Amendment Act No.18** 26/10/1942 s14-17 consent of older children, adoption by unmarried persons less than 40 years older than child
- 1943 Statutes Amendment Act 1943 No.20** 26/8/1943 birth registration of adoptees but not born in NZ
- 1947 Statutes Amendment Act No.60** 27/11/1947 s26 modifying consent provision of adoption of child
- 1947 Magistrates Court Act No.16** 24/10/1947 right of appeal on all matters to Supreme Court
- 1948 Child Welfare Amendment Act No.48 s10** 19/11/1948 consent for refugee child
- 1949 Statute Amendment Act 1949 No.51** 21/10/1949 s27 legal status of adopted child
- 1950 Infants Amendment Act No.18** 4/9/1950 s1-4 redraft s21 of Infants Act 1908 legal status of adoptees, also adoptions discharge s22
- 1950 Statutes Amendment Act 1951 No.91** 1/12/1950 consequences of reversal or discharge of adoption
- 1951 Births & Deaths Registration Act 1951 No.22** 1/12/1951 registration of adoptions
- 1951 Statutes Amendment Act No.81** 6/12/1951 s15 addition to Infants Act 1908 s18(e) re adoption consents deserted child p517
- 1953 Maori Affairs Act No.94** 26/11/1953 Part IX s80-90 consolidates Legislation on Maori Adoption
- 1955 Adoption Act No.93** 27/10/1955 major reform, new supervision of placements, interim adoption orders, investigation *before* child can be received into a home for adoption, adopted child regarded 'as if' born to the family regarding rights and privileges, paved way for implementation of complete break theory and secrecy
- 1957 Adoption Amendment Act No.10** 4/10/1957 allows payment by adoptive parents for hospital and medical expenses of birth mother
- 1957 Infant Amendment Act No.55** 24/10/1957 repeals s41(1) of the Infant Act 1908 (as amended by s43(1) of Child Welfare Act 1925)
- 1962 Adoption Amendment Act No.134** 14/12/1962 ended Maori Land Court adoption jurisdiction, all adoptions now via the Pakeha Court
- 1965 Adoption Amendment Act No.32** 24/9/1965 provides appeal to Supreme Court re adoption, also overseas adoption issues
- 1969 Births and Deaths Registration Amendment Act No.68 s3**
- 1969 Status of Children Act No.18** 22/8/1969 all children of equal status, paternity issues
- 1970 Age of Majority Act No.137** 2/12/1970 age of majority changed 21 to 20 years, Adoptees must now be under 20 at date of interim order
- 1971 Department of Social Welfare Act No.60** 25/11/1971 s23 amends definition of social worker
- 1974 Children and Young Persons Act No.72** 8/11/1974 s73 refers to Adoption Act 1955 re child in care
- 1979 Judicature Amendment Act No.124** 13/12/1979 s12 Supreme Court becomes High Court
- 1979 District Courts Amendment Act No.125** 14/12/1979 s3 Magistrates Courts replaced by District Courts, Magistrate's become District Court Judges
- 1980 Family Courts Act No.161** 21/1/1981 established Family Courts as division of District Courts, s11 grants jurisdiction re Adoption, in force 1/10/1981
- 1985 Adult Adoption Information Act No.127** 13/9/1985 provides adult adoptees access to birth information, birth parents may obtain information on adoptee subject to safeguards, veto provisions
- 1987 Adoption Amendment Act No.19** 25/3/1987 Niue

- or Cook Island adoption witnessing documents.
- 1989 Children, Young Persons, and Their Families Act No.24** 27/5/1989 s450 amends Adoption Act 1955 s6(4) provisions re keeping a child in the home
- 1989 Infants Act 1908 repeal Act No.145** 19/12/1989 repeals Infants Act 1908 and amendments
- 1990 Social Welfare (Transitional Provisions) Act No 26** 30/3/1990 s36 (1)(2) amends s2 of Adoption Act 1955, redefines "Director-General" and "Social Worker"
- 1991 Adult Adoption Information Amendment Act No.94** 8/8/1991 sets comprehensive fees
- 1992 Citizens Amendment Act s3(2)** child 14>yrs adopted by NZ citizen no automatic NZ citizenship.
- 1995 Adoption Amendment Act No.4** 23/3/1995 Appointment of Maori Community officers
- 1995 Births, Deaths, and Marriages Registration Act No16** 31/3/1995 s24-27,63,73-76,86. In force 1/9/1995
- 1997 Adoption (Inter-country) Act No109/1997
- 2004 Human Assisted Reproductive Technology Act No92** Assent 21/11/2004 Part in force 21/11/2004 Fully in force 21/5/2005

REGULATIONS

- 1882** Adoption of Children Act 1881 Gazette 5/1/1882
- 1883** Adoption of Children Act 1881 Gazette 15/3/1883
- 1895** Adoption of Children Act 1985 Gazette 28/11/1895
- 1901** Native Land Court Act 1901. Gazette 12/12/1901
Registration of Customary Maori Adoptions.
- 1910** Native Land Court Supplement Gazette 14/4/1910
Adoption Part IX p1197,1207
- 1912** Part III Infants Act 1908 Gazette 22/2/1912
- 1914** Native Land Court Act 1909 Adoption Part IX
Gazette 27/8/1914 Vol.11 p3243
- 1916** New rule Part Infants Act 1908 copy of child's
birth entry required Gazette 28/9/1916
- 1940** Infants Act 1908 SR 1940/270 Gazette 24/10/1940
Transfer adoption records to R-General
- 1941** *Order* court adoption records prior to 1/1/1916
transfer to RG. Gazette No28 1941 p820
- 1956** SR1956/169 Adoption Act 1955 16/10/1956
Gazette 18/10/1956
- 1958 Maori Land Court Rules** SR1958/162 Part V
R121-127 Forms 277-291 17/11/1958 In force
1/1/1959 Gazette 27/11/1958
- 1959** SR1959/109 Adoption Act 1955 8/7/1959
Gazette 9/7/1959 In force 23/7/1959
- 1962** SR1962/91 New Application Form No.1
Gazette 21/6/1962 In force 19/7/1962
- 1967** SR1967/68 Recognition overseas adoption 3/4/1967
Gazette 6/4/1967
- 1980** SR1980/93 New wording consent Forms 26/4/1980
Gazette 1/5/1980 In force 15/5/1980
- 1981** SR1981/206 Fees adoption \$5 3/8/1981
Gazette 6/8/1981 In force 17/8/1981
- 1984** SR1984/309 Fees adoption \$20 26/11/1984 Gazette
In force 1/1/1985
- 1986** SR1986/207 Fees Adult Adopt Information Act
25/8/1986 Gazette 28/8/1986 In force 1/9/1986
- 1987** SR1987/48 Fees adoption proceedings. \$75
16/3/1987 Gazette 19/3/1987 In force 1/4/1987
- 1987** SR1987/150 Fees Adult Adopt Information Act
8/6/1987 Gazette 11/6/1987 In force 1/7/1987
- 1988** SR1988/75 Fees Adult Adopt Information Act
18/4/1988 Gazette 21/4/1988 In force 23/5/1988
- 1989** SR1989/318 Fees Adult Adoption Information Act.
Date 30/10/1989 Gazette 2/11/1989 In force 1/12/1989
- 1991** SR1991/191 Fees adoption \$80 2/9/1991
Gazette 5/9/1991 In force 8/10/1991
- 1991** SR1991/196 Fees Adult Adopt Information Act
2/9/1991 Gazette 5/9/1991 In force 3/10/1991
- 1992** SR1992/142 Fees Adoption Application 2/6/1992
Gazette 4/6/1992 In force 1/7/1992
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HISTORIC CODES & STATUES

- Great Code of Hammurabi- Babylon c1770BC**
—and Legal Commentary
- Great Code of Alfonso X of Spain 1263AD**
— Las Siete Partidas
- Code Napoleon- Frech Civil Code 1803**
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CONVENTIONS

UNITED NATIONS UNIVERSAL DECLARATION OF HUMAN RIGHTS 1948

Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948

On December 10, 1948 the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights the full text of which appears in the following pages. Following this historic act the Assembly called upon all Member countries to publicize the text of the Declaration and “to cause it to be disseminated, displayed, read and expounded principally in schools and other educational institutions, without distinction based on the political status of countries or territories.”

PREAMBLE

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, Therefore THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration con-

stantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3

Everyone has the right to life, liberty and security of person.

Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 6

Everyone has the right to recognition everywhere as a person before the law.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9

No one shall be subjected to arbitrary arrest, detention or exile.

Article 10

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11

(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13

(1) Everyone has the right to freedom of movement and residence within the borders of each state.

(2) Everyone has the right to leave any country, including his own, and to return to his country.

Article 14

(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.

(2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15

(1) Everyone has the right to a nationality.

(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16

(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17.

(1) Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property.

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions with-

out interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20

(1) Everyone has the right to freedom of peaceful assembly and association.

(2) No one may be compelled to belong to an association.

Article 21

(1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

(2) Everyone has the right of equal access to public service in his country.

(3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23

(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

(2) Everyone, without any discrimination, has the right to equal pay for equal work.

(3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

(4) Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25

(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26

(1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available

and higher education shall be equally accessible to all on the basis of merit.

(2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

(3) Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27

(1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29

(1) Everyone has duties to the community in which alone the free and full development of his personality is possible.

(2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

(3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

UNITED NATIONS DECLARATION OF THE RIGHTS OF THE CHILD 1959

G.A. res. 1386 (XIV), 14 U.N. GAOR Supp. (No. 16) at 19, U.N. Doc. A/4354.

[CIRP note: This file contains the text of the Declaration of the Rights of the Child. This declaration was drafted by the UN Commission on Human Rights and adopted by the General Assembly of the United Nations on 20 November 1959.

The special rights of the child were first enunciated in the Universal Declaration of Human Rights (1948) which provided in Article 25(2) "Motherhood and Childhood are entitled to special care and assistance."

This document expands and amplifies that theme.

Circumcision of male children violates Principles 1, 2, 8, 9 and 10 of this document.

This document is a non-binding resolution of the United Nations General Assembly. It should not be confused with the International Convention on the Rights of the Child which was adopted by the UN General Assembly on the thirtieth anniversary of this document, 20 November 1989. That document is a binding treaty to which 176 nations have become "states parties".]

Preamble

Whereas the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Whereas the United Nations has, in the *Universal Declaration of Human Rights*, proclaimed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Whereas the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth,

Whereas the need for such special safeguards has been stated in the *Geneva Declaration of the Rights of the Child* of 1924, and recognized in the *Universal Declaration of Human Rights* and in the statutes of specialized agencies and international organizations concerned with the welfare of children,

Whereas mankind owes to the child the best it has to give,
Now therefore,

The General Assembly

Proclaims this *Declaration of the Rights of the Child* to the end that he may have a happy childhood and enjoy for his own good and for the good of society the rights and freedoms herein set forth, and calls upon parents, upon men and women as individuals, and upon voluntary organizations, local authorities and national Governments to recognize these rights and strive for their observance by legislative and other measures progressively taken in accordance with the following principles:

Principle 1

The child shall enjoy all the rights set forth in this Declaration. Every child, without any exception whatsoever, shall be entitled to these rights, without distinction or discrimination on account of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, whether of himself or of his family.

Principle 2

The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration.

Principle 3

The child shall be entitled from his birth to a name and a nationality.

Principle 4

The child shall enjoy the benefits of social security. He shall be entitled to grow and develop in health; to this end, special care and protection shall be provided both to him and to his mother, including adequate pre-natal and post-natal care. The child shall have the right to adequate nutrition, housing, recreation and medical services.

Principle 5

The child who is physically, mentally or socially handicapped shall be given the special treatment, education and care required by his particular condition.

Principle 6

The child, for the full and harmonious development of his personality, needs love and understanding. He shall, wherever possible, grow up in the care and under the responsibility of his parents, and, in any case, in an atmosphere of affection and of moral and material security; a child of tender years shall not, save in exceptional circumstances, be separated from his mother. Society and the public authorities shall have the duty to extend particular care to children without a family and to those without adequate means of support. Payment of State and other assistance towards the maintenance of children of large families is desirable.

Principle 7

The child is entitled to receive education, which shall be free and compulsory, at least in the elementary stages. He shall be given an education which will promote his general culture and enable him, on a basis of equal opportunity, to develop his abilities, his individual judgement, and his sense of moral and social responsibility, and to become a useful member of society.

The best interests of the child shall be the guiding principle of those responsible for his education and guidance; that responsibility lies in the first place with his parents.

The child shall have full opportunity for play and recreation, which should be directed to the same purposes as education; society and the public authorities shall endeavour to promote the enjoyment of this right.

Principle 8

The child shall in all circumstances be among the first to receive protection and relief.

Principle 9

The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of traffic, in any form.

The child shall not be admitted to employment before an appropriate minimum age; he shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education, or interfere with his physical, mental or moral development.

Principle 10

The child shall be protected from practices which may foster racial, religious and any other form of discrimination. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, and in full consciousness that his energy and talents should be devoted to the service of his fellow men.

Citation:

· Declaration of the Rights of the Child G.A. res. 1386 (XIV), 14 U.N. GAOR Supp. (No. 16) at 19, U.N. Doc. A/4354 (1959).
Reference · The United Nations and Human Rights, 1945-1995, Department of Public Information, United Nations, New York 1995 (ISBN 92-1-100560-4) (Revised 10 June 2002)

UNITED NATIONS DECLARATION ON SOCIAL AND LEGAL PRINCIPLES 1986

Relating to the Protection and Welfare of Children, with special reference to Foster Placements and Adoption Nationally and internationally.

Adopted by General Assembly resolution 41/85 of 3 December 1986

The General Assembly

Recalling the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Convention on the Elimination of All Forms of Discrimination against Women,

Recalling also the Declaration of Rights of the Child, which it proclaimed by its resolution 1386 (XIV) of 20 November 1959,

Reaffirming principle 6 of that Declaration, which states that the child shall, wherever possible, grow up in the care and under the responsibility of his parents and, in any case, in an atmosphere of affection and of moral and material security,

Concerned at the large number of children who are abandoned or become orphans owing to violence, internal disturbance, armed conflicts, natural disasters, economic crises or social problems,

Bearing in mind that in all foster placement and adoption procedures the best interests of the child should be the paramount consideration,

Recognizing that under the principal legal systems of the world, various valuable alternative institutions exist, such as the kafalah of Islamic Law, which provide substitute care to children who cannot be cared for by their own parents,

Recognizing further that only where a particular institution is recognized and regulated by the domestic law of a State would the provisions of this Declaration relating to that institution be relevant and that such provisions would in no way affect the existing alternative institutions in other legal systems,

Conscious of the need to proclaim universal principles to be taken into account in cases where procedures are instituted relating to foster placement or adoption of a child, either nationally or internationally,

Bearing in mind, however, that the principles set forth hereunder do not impose on States such legal institutions as foster placement or adoption,

Proclaims the following principles:

A. General Family and Child Welfare

Article 1

Every State should give a high priority to family and child welfare.

Article 2

Child welfare depends upon good family welfare.

Article 3

The first priority for a child is to be cared for by his or her own parents.

Article 4

When care by the child's own parents is unavailable or inappropriate, care by relatives of the child's parents, by another substitute - foster or adoptive - family or, if necessary, by an appropriate institution should be considered.

Article 5

In all matters relating to the placement of a child outside the care of the child's own parents, the best interests of the child, particularly his or her need for affection and right to security and continuing care, should be the paramount consideration.

Article 6

Persons responsible for foster placement or adoption procedures should have professional or other appropriate training.

Article 7

Governments should determine the adequacy of their national child welfare services and consider appropriate actions.

Article 8

The child should at all times have a name, a nationality and a legal representative. The child should not, as a result of foster placement, adoption or any alternative regime, be deprived of his or her name, nationality or legal representative unless the child thereby acquires a new name, nationality or legal representative.

Article 9

The need of a foster or an adopted child to know about his or her background should be recognized by persons responsible for the child's care unless this is contrary to the child's best interests.

B. Foster Placement

Article 10

Foster placement of children should be regulated by law.

Article 11

Foster family care, though temporary in nature, may continue, if necessary, until adulthood but should not preclude either prior return to the child's own parents or adoption.

Article 12

In all matters of foster family care, the prospective foster parents and, as appropriate, the child and his or her own parents should be properly involved. A competent authority or agency should be responsible for supervision to ensure the welfare of the child.

C. Adoption

Article 13

The primary aim of adoption is to provide the child who cannot be cared for by his or her own parents with a permanent family.

Article 14

In considering possible adoption placements, persons responsible for them should select the most appropriate environment for the child.

Article 15

Sufficient time and adequate counselling should be given to the child's own parents, the prospective adoptive parents and as appropriate, the child in order to reach a decision on the child's future as early as possible.

Article 16

The relationship between the child to be adopted and the prospective adoptive parents should be observed by child welfare agencies or services prior to adoption. Legislation should ensure that the child is recognized in law as a member of the adoptive family and enjoys all the rights pertinent thereto.

Article 17

If a child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the country of origin, intercountry adoption may be considered as an alternative means of providing the child with a family.

Article 18

Governments should establish policy, legislation and effective supervision for the protection of children involved in intercountry adoption. Intercountry adoption should, wherever possible, only be undertaken when such measures have been established in the States concerned.

Article 19

Policies should be established and laws enacted, where necessary, for the prohibition of abduction and of any other act for illicit placement of children.

Article 20

In intercountry adoption, placements should, as a rule, be made through competent authorities or agencies with application of safeguards and standards equivalent to those existing in respect of national adoption. In no case should the placement result in improper financial gain for those involved in it.

Article 21

In intercountry adoption through persons acting as agents for prospective adoptive parents, special precautions should be taken in order to protect the child's legal and social interests.

Article 22

No intercountry adoption should be considered before it has been established that the child is legally free for adoption and that any pertinent documents necessary to complete the adoption, such as the consent of competent authorities, will become available. It must also be established that the child will be able to migrate and to join the prospective adoptive parents and may obtain their nationality.

Article 23

In intercountry adoption, as a rule, the legal validity of the adoption should be assured in each of the countries

involved.

Article 24

Where the nationality of the child differs from that of the prospective adoptive parents, all due weight shall be given to both the law of the State of which the child is a national and the law of the State of which the prospective adoptive parents are nationals. In this connection due regard shall be given to the child's cultural and religious background and interests.

UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD 1989

UNGA Doc A/RES/44/25 (12 December 1989) with Annex

The General Assembly,

Recalling its previous resolutions, especially resolutions 33/166 of 20 December 1978 and 43/112 of 8 December 1988, and those of the Commission on Human Rights and the Economic and Social Council related to the question of a convention on the rights of the child,

Taking note, in particular, of Commission on Human Rights resolution 1989/57 of 8 March 1989, by which the Commission decided to transmit the draft convention on the rights of the child, through the Economic and Social Council, to the General Assembly, and Economic and Social Council resolution 1989/79 of 24 May 1989,

Reaffirming that children's rights require special protection and call for continuous improvement of the situation of children all over the world, as well as for their development and education in conditions of peace and security,

Profoundly concerned that the situation of children in many parts of the world remains critical as a result of inadequate social conditions, natural disasters, armed conflicts, exploitation, illiteracy, hunger and disability, and convinced that urgent and effective national and international action is called for,

Mindful of the important role of the United Nations Children's Fund and of that of the United Nations in promoting the well-being of children and their development,

Convinced that an international convention on the rights of the child, as a standard-setting accomplishment of the United Nations in the field of human rights, would make a positive contribution to protecting children's rights and ensuring their well-being,

Bearing in mind that 1989 marks the thirtieth anniversary of the Declaration of the Rights of the Child and the tenth anniversary of the International Year of the Child,

Expresses its appreciation to the Commission on Human Rights for having concluded the elaboration of the draft convention on the rights of the child;

Adopts and opens for signature, ratification and accession the Convention on the Rights of the Child contained in the annex to the present resolution;

Calls upon all Member States to consider signing and ratifying or acceding to the Convention as a matter of priority and expresses the hope that it will come into force at an early date;

Requests the Secretary-General to provide all the facilities and assistance necessary for dissemination of information on the Convention;

Invites United Nations agencies and organizations, as well as intergovernmental and non-governmental organizations, to intensify their efforts with a view to disseminating information on the Convention and to promoting its understanding;

Requests the Secretary-General to submit to the General Assembly at its forty-fifth session a report on the status of the Convention on the Rights of the Child;

Decides to consider the report of the Secretary-General at its forty-fifth session under an item entitled "Implementation of the Convention on the Rights of the Child".

61st plenary meeting 20 November 1989

ANNEX

Preamble and Part 1

The States Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognising that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, 4/ proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognising that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 5/ and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 2/ and recognised in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), 4/ in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) 4/ and in the statutes and relevant instruments of specialised agencies and international organisations concerned with the welfare of children,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth”,

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules); and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict,

Recognising that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child,

Recognising the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:

PART I

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by

competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognised in the present Convention.

Article 6

1. States Parties recognise that every child has the inherent right to life.

2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognised by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to speedily re-establishing his or her identity.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child’s place of residence.

2. In any proceedings pursuant to paragraph 1 of the

present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 10

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 2, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (*ordre public*), public health or morals or the rights and freedoms of others and are consistent with the other rights recognised in the present Convention.

Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly,

or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others; or

(b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 15

1. States Parties recognise the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

Article 17

States Parties recognise the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. To this end, States Parties shall:

(a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child

and in accordance with the spirit of article 29;

(b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;

(c) Encourage the production and dissemination of children's books;

(d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;

(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement,

kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 21

States Parties that recognise and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) Ensure that the adoption of a child is authorised only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

(b) Recognise that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

(c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;

(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organisations or non-governmental organisations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of

his or her family environment for any reason, as set forth in the present Convention.

Article 23

1. States Parties recognise that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

2. States Parties recognise the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

3. Recognising the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

4. States Parties shall promote, in the spirit of international co-operation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled

children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

Article 24

1. States Parties recognise the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

- (a)** To diminish infant and child mortality;
- (b)** To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;
- (c)** To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;

(d) To ensure appropriate pre-natal and post-natal health care for mothers;

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breast-feeding, hygiene and environmental sanitation and the prevention of accidents;

(f) To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realisation of the right recognised in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Article 25

States Parties recognise the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 26

1. States Parties shall recognise for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realisation of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27

1. States Parties recognise the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of

the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Article 28

1. States Parties recognise the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

- (a) Make primary education compulsory and available free to all;
- (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
- (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
- (d) Make educational and vocational information and guidance available and accessible to all children;
- (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international co-operation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

1. States Parties agree that the education of the child shall be directed to:

- (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
- (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
- (c) The development of respect of the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilisations different from his or her own;
- (d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;
- (e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be con-

strued so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Article 31

1. States Parties recognise the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 32

1. States Parties recognise the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

- (a) Provide for a minimum age or minimum ages for admission to employment;
- (b) Provide for appropriate regulation of the hours and conditions of employment;
- (c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 37 States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.
3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.
4. In accordance with their obligations under international

humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40

1. States Parties recognise the right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

- (a) No child shall be alleged as, be accused of, or recognised as having infringed the penal law by reason of facts or omissions that were not prohibited by national or international law at the time they were committed;
- (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:
 - (i) To be presumed innocent until proven guilty according to law;
 - (ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;
 - (iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;
 - (iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
 - (v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;
 - (vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;
 - (vii) To have his or her privacy fully respected at all stages

of the proceedings.

3. States Parties shall seek to promote the establishment of law, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognised as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Article 41

Nothing in the present Convention shall affect any provisions which are more conducive to the realisation of the rights of the child and which may be contained in:

- (a) The law of a State Party; or
- (b) International law in force for that State.

PART II

Article 42

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

Article 43

For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.

The Committee shall consist of ten experts of high moral standing and recognized competent in the field covered by this Convention. The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.

The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which

have nominated them, and shall submit it to the States Parties to the present Convention.

The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.

If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.

The Committee shall establish its own rules of procedure. The Committee shall elect its officers for a period of two years.

The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined, and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

Article 44

States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights:

- (a) Within two years of the entry into force of the Convention for the State Party concerned;
- (b) Thereafter every five years.

Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfillment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understand-

ing of the implementation of the Convention in the country concerned.

A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article, repeat basic information previously provided.

The Committee may request from States Parties further information relevant to the implementation of the Convention.

The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.

States Parties shall make their reports widely available to the public in their own countries.

Article 45

In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:

(a) The specialized agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

PART III

Article 46

The present Convention shall be open for signature by all States.

Article 47

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 48

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 49

The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

Article 50

Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

Article 51

The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession. A reservation incompatible with the object and purpose of the present Convention shall not be permitted. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General.

Article 52

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

Article 53

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

Article 54

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations. In witness thereof the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Convention.

HAGUE CONVENTION 1993

On the protection of children and co-operation in respect of intercountry adoption 29th May 1993

The States signatory to the present Convention.

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding.

Recalling that each State should take, as a matter of priority, appropriate measures to enable the child to remain in the care of his or her family of origin.

Recognizing that intercountry adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot in his or her State of origin.

Convinced of the necessity to take measures to ensure that intercountry adoptions are made in the best interests of the child and with respect for his or her fundamental rights, and to prevent the abduction, the sale of, or traffic in children.

Desiring to establish common provisions to this effect, taking into account the principles set forth in international instruments, in particular the *United Nations Convention on the Rights of the Child*, of 20 November 1989, and the United Nations Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationality and Internationally (General Assembly Resolution 41/85, of 3 December 1986).

Have agreed upon the following provisions-

Chapter 1 Scope of the Convention

Article 1 The objects of the present Convention are

a to establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect of his or her fundamental rights as recognized in international law:

b to establish a system of co-operation amongst Contracting States to ensure that those safeguards are respected and thereby prevent the abduction, the sale of, or traffic in children:

c to secure the recognition in Contracting States or adoptions made in accordance with the Convention.

Article 2

1 The Convention shall apply where a child habitually resident in one Contracting State ('the State of origin') has been, is being, or is to be moved to another Contracting State ('the receiving State') either after his or her adoption in the State of origin by spouses or a person habitually resident in the receiving State, or for the purposes of such an adoption in the receiving State or in the State of origin.

2 The Convention covers only adoptions which create a permanent parent-child relationships.

Article 3 The Convention ceases to apply if the agreements mentioned in *Article 17, sub-paragraph c*, have not been given before the child attains the age of eighteen years.

Chapter 2 Requirements for intercountry adoptions

Article 4 An adoption within the scope of the Convention shall take place only if the authorities of the State of origin

a have established that the child is adoptable:

b have determined, after possibilities for placement of the child within the State of origin have been given due consideration, that an intercountry adoption is in the child's best interests:

c have ensured that

(1) the persons, institutions and authorities whose consent is necessary for adoption, have been counselled as may be necessary and duly informed of the effect of their consent, in particular whether or not an adoption will result in the termination of the legal relationship between the child and his or her family of origin,

(2) they have given their consent freely, in the required legal form, and expressed or evidenced in writing.

(3) the consents have not been induced by payment or compensation of any kind and have not been withdrawn, and

(4) the consent of the mother, where required, has been given only after the birth of the child; and

d have ensured, having regard to the age and degree of maturity of the child, that

(1) he or she has been counselled and duly informed of the effects of the adoption and of his or her consent to the adoption, where such consent is required.

(2) consideration has been given to the child's wishes and opinions,

(3) the child's consent to the adoption, where such consent is required, has been given freely, in the required legal form, and expressed or evidenced in writing, and

(4) such consent has not been induced by payment or compensation of any kind,

Article 5 An adoption within the scope of the Convention shall take place only if the competent authorities of the receiving State

a have determined that the prospective adoptive parents are eligible and suited to adopt;

b have ensured that the prospective adoptive parents have been counselled as may be necessary; and

c have determined that the child is or will be authorized to enter and reside permanently in that State.

Chapter 3 Central authorities and accredited bodies

Article 6

1 A contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities.

2 Federal States, with more than one system of law or States having autonomous territorial units shall be free to appoint more than one Central Authority and to specify

the territorial or personal extent of their functions. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which any communication may be addressed for transmission to the appropriate Central Authority within that State.

Article 7

1 Central Authorities shall co-operate with each other and promote co-operation amongst that competent authorities in their States to protect children and to achieve the other objects of the Convention.

2 They shall take directly all appropriate measures to

a provided information as to the laws of their States concerning adoption and other general information, such as statistics and standard forms;

b keep one another informed about the operation of the Convention and, as far as possible, eliminate any obstacles to its application.

Article 8 Central Authorities shall take, directly or through public authorities, all appropriate measures to prevent improper financial or other gain in connection with an adoption and to deter all practices contrary to the objects of the Convention.

Article 9 Central Authorities shall take, directly or through public authorities or other bodies duly accredited in their State, all appropriate measures, in particular to

a collect, preserve and exchange information about the situation of the child and the prospective adoptive parents, so far as is necessary to complete the adoption.

b facilitate, follow and expedite proceedings with a view to obtaining the adoption;

c promote the development of adoption counselling and post-adoption services in their States;

d provided each other with general evaluation reports about experiences with intercountry adoption;

e reply, in so far as is permitted by the law of their State, to justified requests from other Central Authorities or public authorities for information about a particular adoption situation.

Article 10 Accreditation shall only be granted to an maintained by bodies demonstrating their competence to carry out properly the tasks with which they may be entrusted.

Article 11 An accredited body shall

a pursue only non-profit objectives according to such conditions and within such limits as may be established by the competent authorities of the State of accreditation;

b be directed and staffed by persons qualified by their ethical standards and by training or experience to work in the field of intercountry adoption: and

c be subject to supervision by competent authorities of that State as to its composition, operation and financial situation.

Article 12 A body accredited in one Contracting State may act in another Contracting State only if the competent authorities of both States have authorized it to do so.

Article 13 The designation of the Central Authorities and, where appropriate, the extent of their functions, as well as the names and addresses of the accredited bodies shall be communicated by each Contracting State to the Perma-

nent Bureau of the Hague Conference on Private International Law.

Chapter 4 - Procedural requirements in intercountry adoption

Article 14 Persons habitually resident in a Contracting State, who wish to adopt a child habitually resident in another Contracting State, shall apply to the Central authority in the State of their habitual residence.

Article 15

1 If the Central Authority of the receiving State is satisfied that the applicants are eligible and suited to adopt, it shall prepare a report including information about their identity, eligibility and suitability to adopt, background, family and medical history, social environment, reasons for adoption, ability to undertake an intercountry adoption, and the characteristics of the children for whom they would be qualified to care.

2 It shall transmit the report to the Central Authority of the State of origin.

Article 16

1 If the Central Authority of the State of origin is satisfied that the child is adoptable, it shall

a prepare a report including information about his or her identity, adoptability, background, social environment, family history, medical history including that of the child's family, and any special needs of the child;

b give due consideration to the child's upbringing and to his or her ethnic, religious and cultural background;

c ensure that consents have been obtained in accordance with Article 4; and

d determine on the basis in particular of the reports relating to the child and the prospective adoptive parents, whether the envisaged placement is in the best interests of the child.

2 It shall transmit to the Central Authority of the receiving State its report on the child, proof that the necessary consents have been obtained and the reasons for its determination on the placement, taking care not to reveal the identity of the mother and the father if, in the State of origin, these identities may not be disclosed.

Article 17 Any decision in the State of origin that a child should be entrusted to prospective adoptive parents may only be made if

a the Central Authority of that State has ensured that the prospective adoptive parents agree;

b the Central Authority of the receiving State has approved such decision, where such approval; is required by the law of that State or by the Central Authority of the State of origin;

c the Central Authority of both States have agreed that the adoption may proceed; and

d it has been determined, in accordance with Article 5, that the prospective adoptive parents are eligible and suited to adopt and that the child is or will be authorized to enter and reside permanently in the receiving State.

Article 18 The Central Authorities of both States shall take all necessary steps to obtain permission for the child to leave the State of origin and to enter and reside permanently in the receiving State.

Article 19

1 The transfer of the child to the receiving State may only be carried out if the requirements of *Article 17* have been satisfied.

2 The Central Authority of both States shall ensure that this transfer takes place in secure and appropriate circumstances and, if possible, in the company of the adoptive or prospective adoptive parents.

3 If the transfer of the child does not take place, the reports referred to in *Article 15 and 16* are to be sent back to the authorities who forwarded them.

Article 20 The Central Authorities shall keep each other informed about the adoption process and the measures taken to complete it, as well as about the progress of the placement if a probationary period is required.

Article 21

1 Where the adoption is to take place after the transfer of the child to the receiving State and it appears to the Central Authority of that State that the continued placement of the child with the prospective adoptive parents is not in the child's best interests, it shall take the measures necessary to protect the child, in particular

a to cause the child to be withdrawn from the prospective adoptive parents and to arrange temporary care;

b in consultation with the Central Authority of the State of origin, to arrange without delay a new placement of the child with a view to adoption or, if this is not appropriate, to arrange alternative long term care; an adoption shall not take place until the Central Authority of the State of origin has been duly informed concerning the new prospective adoptive parents.

Article 22

1 The functions of a Central Authority under this Chapter may be performed by public authorities or by bodies accredited under *Chapter 3*, to the extent permitted by the law of its State.

2 Any Contracting State may declare to the depositary of the Convention that the functions of the Central Authority under *Articles 15 to 21* may be performed in that State, to the extent permitted by the law and subject to the supervision of the competent authorities of that State, also by bodies or persons who

a meet the requirements or integrity, professional competence, experience and accountability of that State; and

b are qualified by their ethical standards and by training or experience to work in the field of intercountry adoption.

3 A Contracting State which makes the declaration provided for in *paragraph 2* shall keep the Permanent Bureau of the Hague Conference on Private International Law informed of the names and addresses of these bodies and persons.

4 Any Contracting State may declare to the depositary of the Convention that adoptions of children habitually resident in its territory may only take place if the functions of the Central Authorities are performed in accordance with *paragraph 1*.

5 Notwithstanding any declaration made under *paragraph 2*, the reports provided for in *Articles 15 and 16* shall, in

every case, be prepared under the responsibility of the Central Authority or other authorities or bodies in accordance with *paragraph 1*.

Chapter 5 Recognition and effects of the adoption**Article 23**

1 An adoption certified by the competent authority of the State of the adoption as having been made in accordance with the Convention shall be recognized by operation of law in the other Contracting States. The certificate shall specify when and by whom the agreements under *Article 17, sub-paragraph c*, were given.

2 Each Contracting State shall, at the time of signature, ratification, acceptance, approval or accession, notify the depositary of the Convention of the identity and the functions of the authority or the authorities which, in that State, are competent to make the certification. It shall also notify the depositary of any modification in the designation of these authorities.

Article 24 The recognition of an adoption may be refused in a Contracting State only if the adoption is manifestly contrary to its public policy, taking into account the best interests of the child.

Article 25 Any Contracting State may declare to the depositary of the Convention that it will not be bound under this Convention to recognize adoptions made in accordance with an agreement concluded by application of *Article 39, paragraph 2*.

Article 26

1 The recognition of an adoption includes recognition of

a the legal parent-child relationship between the child and his or her adoptive parents;

b parental responsibility of the adoptive parents for the child;

c the termination of a pre-existing legal relationship between the child and his or her mother and father, if the adoption has this effect in the Contracting State where it was made.

2 In the case of an adoption having the effect of terminating a pre-existing legal parent-child relationship, the child shall enjoy in the receiving State, and in any other Contracting State where the adoption is recognized, rights equivalent to those resulting from adoptions having this effect in each such State.

3 The preceding paragraphs shall not prejudice the application of any provision more favourable for the child, in force in the Contracting State which recognizes the adoption.

Article 27

1 Where an adoption granted in the State of origin does not have the effect of terminating a pre-existing legal parent-child relationship, it may, in the receiving State which recognizes the adoption under the Convention, be converted into an adoption having such an effect

a if the law of the receiving State permits; and

b if the consents referred to in *Article 4, sub-paragraphs c and d*, have been or are given for the purpose of such an adoption.

2 *Article 23* applies to the decision converting the adoption.

Article 28 The Convention does not effect any law of a State of origin which requires that the adoption of a child habitually resident with that State takes place in that State or which prohibits the child's placement in, or transfer to, the receiving State prior to adoption.

Article 29 There shall be no contact between the prospective adoptive parents and the child's parents or any other person who has care of the child until the requirements of *Article 2, sub-paragraph a to c*, and *Article 5, sub-paragraphs a*, have been met, unless the adoption takes place within a family or unless the contact is in compliance with the conditions established by the competent authority of the State of origin.

Article 30

1 The competent authorities of a Contracting State shall ensure that information held by them concerning the child's origin, in particular information concerning the identity of his or her parents, as well as the medical history, is preserved.

2 They shall ensure that the child or his or her representative has access to such information, under appropriate guidance, in so far as is permitted by the law of that State.

Article 31 Without prejudice to *Article 30*, personal data gathered or transmitted under the Convention, especially data referred to in *Article 15 and 16*, shall be used only for the purposes for which they were gathered or transmitted.

Article 32

1 No one shall derive improper financial or other gain from an activity related to an intercountry adoption.

2 Only costs and expenses, including reasonable professional fees of persons involved in the adoption, may be charged or paid.

3 The directors, administrators and employees of bodies involved in an adoption shall not receive remuneration which is unreasonable high in relation to services rendered.

Article 33 A competent authority which finds that any provision of the Convention has not been respected or that there is a serious risk that it may not be respected, shall immediately inform the Central Authority of its State. This Central Authority shall be responsible for ensuring that appropriate measures are taken.

Article 34 If the competent authority of the State of destination of a document so requests, a translation certified as being in conformity with the original must be furnished. Unless otherwise provided, the costs of such translation are to be borne by the prospective adoptive parents.

Article 35 The competent authorities of the Contracting States shall act expeditiously in the process of adoption.

Article 36 In relation to a State which has two or more systems of law with regard to adoption applicable in different territorial units

a any reference to habitual residence in the State shall be construed as referring to habitual residence in a territorial unit of that State;

b any reference to the law of that State shall be construed as referring to the law in force in the relevant territorial unit;

c any reference to the competent authorities or to the public authorities of that State shall be construed as referring to those authorized to act in the relevant territorial unit;

d any reference to the accredited bodies of that State shall be construed as referring to the bodies accredited in the relevant territorial unit.

Article 37 In relation to a State which with regard to adoption has two or more systems of law applicable to different categories of persons, and reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.

Article 38 A State within which different territorial units have their own rules of law in respect of adoption shall not be bound to apply this Convention where a State with a unified system of law would not be bound to do so.

Article 39

1 The Convention does not affect any international instrument to which Contracting States are Parties and which contains provisions on matters governed by the States Parties to such instrument.

2 Any Contracting State may enter into agreements with one or more Contracting States, with a view to improving the application of the Convention in their mutual relations. These agreements may derogate only from the provisions of *Articles 14 to 16* and *18 to 21*. The States which have concluded such an agreement shall transmit a copy to the depositary of the Convention.

Article 40 No reservation to the Convention shall be permitted.

Article 41 The Convention shall apply in every case where an application pursuant to *Article 14* has been received after the Convention has entered into force in the receiving State and the State of origin.

Article 42 The Secretary General of the Hague Conference on Private International Law shall at regular intervals convene a Special Commission in order to review the practical operation of the Convention.

Chapter 7 Final Clauses

Article 43

1 The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Seventeenth Session any be other States which participated in that Session.

2 It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention.

Article 44

1 Any other State may accede to the Convention after it has entered into force in accordance with *Article 46, paragraph 1*.

2 The instrument of accession shall be deposited with the depositary.

3 Such accession shall have effect only as regards the re-

lations between the acceding State and those Contracting States which have not raised an objection to its accession in the six months after the receipt of the notification referred to in *sub-paragraph b of Article 48*. Such an objection may also be raised by States at the time when they ratify, accept or approve the Convention after an accession. Any such objection shall be notified to the depositary.

Article 45

1 If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in the Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

2 Any such declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.

3 If a State makes no declaration under this *Article*, the Convention is to extend to all territorial units of that State.

Article 46

1 The Convention shall enter into force on the first day of the month or the expiration of three months after the deposit of the third instrument of ratification, acceptance or approval referred to in *Article 43*.

2 Thereafter the Convention shall enter into force

a for each State ratifying, accepting or approving it subsequently, or acceding to it, on the first day of the month following the expiration of three months after the deposit of its instrument of ratification, acceptance, approval or accession;

b for a territorial unit to which the Convention has been extended in conformity with *Article 45*, on the first day of the month following the expiration of three months after the notification referred to in that *Article*.

Article 47

1 A State Party to this Convention may denounce it by a notification in writing addressed to the depositary.

2 The denunciation takes effect on the first day of the month following the expiration of twelve months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

Article 48 The depositary shall notify the States Members of the Hague Conference on Private International Law, the other States which participated in the Seventeenth Session and the States which have acceded in accordance with *Article 44*, of the following

a the signatures, ratifications, acceptances and approvals referred to in *Article 43*;

b the accessions and objections raised to accessions referred to in *Article 44*;

c the date on which the Convention enters into force in accordance with *Article 46*;

d the declaration and designations referred to in *Articles*

22, 23, 25 and 45;

e the agreements referred to in *Article 39*;

f the denunciations referred to in *Article 47*.

In witness whereof the undersigned, being duly authorized thereto, have signed this Convention.

Done at The Hague on the...day of...19...in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Seventeenth Session and to each of the other States which participated in the Session.

Some on going work by the Commission is listed (4)

a Jurisdiction, and recognition and enforcement of decisions in matters of succession upon death,

b protection of privacy in connection with transfrontier data flows,

c the law applicable to unmarried couples,

d the law applicable to negotiable instruments,

e the international legal problems raised by electronic data exchange,

f the law applicable to unfair competition.

Decision of the 17th Session of the Hague Conference on private international law; Re refugees

Considering that the *Convention of Protection of Children and Co-operation in Respect of Intercountry Adoption* will apply to children habitually resident in the Contracting States under the circumstances described in Article 2 of the Convention; *Concerned that refugee children and other internationally displaced children be afforded the special consideration within the framework of this Convention that their particularly vulnerable situation may require; *Considering the consequent need for further study and possibly the elaboration of a special instrument supplementary to this Convention; *Requests the Secretary General of the Hague Conference in consultation with the United Nations High Commissioner for Refugees, to convene in the near future a working group to examine this issue and make specific proposals which might be submitted to the Special Commission of the Hague Conference to ensure appropriate protection of these categories of children.

Note The objective of the Convention is not unification of the substantive or international adoption law amongst the Contracting States. The goal is to ensure by means of procedural guarantees that the interests of adoptive children affected by intercountry adoptions are given the utmost degree of consideration. **For this purpose, the Contracting States are to establish a Central Authority**

UNITED NATIONS INTERNATIONAL COVENANT OF CIVIL AND POLITICAL RIGHTS 1966

G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976.

PREAMBLE

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as

race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

2. There shall be no restriction upon or derogation from

any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.
3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.
4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.
6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.
2. No one shall be held in servitude.
3. (a) No one shall be required to perform forced or compulsory labour;
- (b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;
- (c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:
 - (i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;
 - (ii) Any service of a military character and, in countries

where conscientious objection is recognized, any national service required by law of conscientious objectors;

- (iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;
- (iv) Any work or service which forms part of normal civil obligations.

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.
4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;
- (b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.
3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 11

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (order public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.

4. No one shall be arbitrarily deprived of the right to enter his own country.

Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of

witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 20

1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the

Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

PART IV**Article 28**

1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.

2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.

3. The members of the Committee shall be elected and shall serve in their personal capacity.

Article 29

1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 28 and nominated for the purpose by the States Parties to the present Covenant.

2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.

3. A person shall be eligible for renomination.

Article 30

1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.

2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with article 34, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Covenant to submit their nominations for membership of the Committee within three months.

3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.

4. Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Covenant convened by the Secretary General of the United Nations at the Headquarters of the United Nations. At that meeting, for which two thirds of the States Parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

Article 31

1. The Committee may not include more than one national of the same State.

2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

Article 32

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in article 30, paragraph 4.

2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.

Article 33

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.

2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

Article 34

1. When a vacancy is declared in accordance with article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.

2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.

3. A member of the Committee elected to fill a vacancy declared in accordance with article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

Article 35

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

Article 36

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant.

Article 37

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.

2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.

Article 38

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

Article 39

1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:

(a) Twelve members shall constitute a quorum;

(b) Decisions of the Committee shall be made by a majority vote of the members present.

Article 40

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights:

(a) Within one year of the entry into force of the present Covenant for the States Parties concerned;

(b) Thereafter whenever the Committee so requests.

2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.

3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.

4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.

5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

Article 41

1. A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a

State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

(a) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter;

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged;

(d) The Committee shall hold closed meetings when examining communications under this article;

(e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the present Covenant;

(f) In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;

(g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:

(i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph 1 of this article. Such decla-

rations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 42

1. (a) If a matter referred to the Committee in accordance with article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an ad hoc Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant;

(b) The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned, or of a State not Party to the present Covenant, or of a State Party which has not made a declaration under article 41.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States Parties concerned.

5. The secretariat provided in accordance with article 36 shall also service the commissions appointed under this article.

6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information. **7.** When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized of the matter, it shall submit to the Chairman of the Committee a report for communication to the States Parties concerned:

(a) If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter;

(b) If an amicable solution to the matter on tie basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached;

(c) If a solution within the terms of subparagraph (b) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned;

(d) If the Commission's report is submitted under subparagraph (c), the States Parties concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.

8. The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.

9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties concerned, in accordance with paragraph 9 of this article.

Article 43

The members of the Committee, and of the ad hoc conciliation commissions which may be appointed under article 42, shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 44

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

Article 45

The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities.

PART V

Article 46

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the special-

ized agencies in regard to the matters dealt with in the present Covenant.

Article 47

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART VI**Article 48**

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 49

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 50

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 51

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have

been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes. 3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 52

Irrespective of the notifications made under article 48, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph 1 of the same article of the following particulars:

(a) Signatures, ratifications and accessions under article 48;

(b) The date of the entry into force of the present Covenant under article 49 and the date of the entry into force of any amendments under article 51.

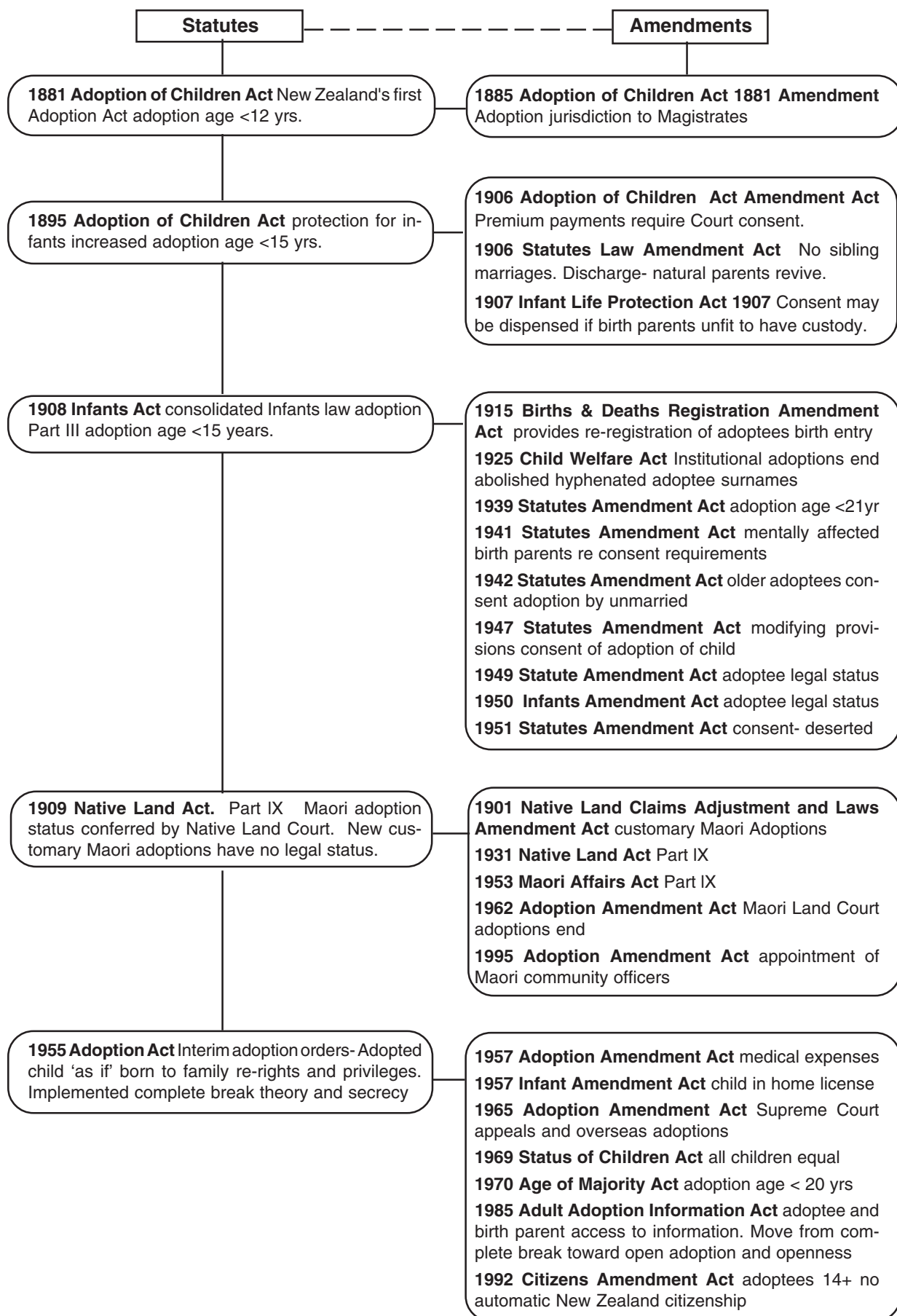
Article 53

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 48.

N Z ADOPTION STATUTES

ADOPTION STATUTES



ADOPTION STATUTES TABLE (cont)

ADOPTION STATUTES and REGULATIONS

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1956 SR1956/169 Adoption Act 1955 16/10/1956 Gaz 18/10/1956 [p530 this book]

1958 Maori Land Court Rules SR1958/162 Part V R121-127 Forms 277-291 17/11/1958 In force 1/1/1959 Gaz 27/11/1958 [p489-92 this book]

1959 SR1959/109 Adoption Act 1955 8/7/1959 Gaz 9/7/1959 In force 23/7/1959 [p531 this book]

1962 SR1962/91 New Application Form No.1 Gaz 21/6/1962 In force 19/7/1962 [p543 this book]

1967 SR1967/68 Recognition overseas adoption 3/4/1967 Gaz 6/4/1967 [p543 this book]

1980 SR1980/93 New wording consent Forms 26/4/1980 Gaz 1/5/1980 In force 15/5/1980 [p543 this book]

1981 SR1981/206 Fees adoption \$5 3/8/1981 Gaz 6/8/1981 In force 17/8/1981 [p543 this book]

1984 SR1984/309 Fees adoption \$20 26/11/1984 Gaz ? In force 1/1/1985 [p544 this book]

1986 SR1986/207 Fees Adult Adopt Information Act 25/8/1986 Gaz 28/8/1986 In force 1/9/1986 [p382 this book]

1987 SR1987/48 Fees adoption proceedings. \$75 16/3/1987 Gaz 19/3/1987 In force 1/4/1987 [p544 this book]

1987 SR1987/150 Fees Adult Adopt Information Act 8/6/1987 Gaz 11/6/1987 In force 1/7/1987 [p382 this book]

1988 SR1988/75 Fees Adult Adopt Information Act 18/4/1988 Gaz 21/4/1988 In force 23/5/1988 [p383 this book]

1989 SR1989/318 Fees Adult Adoption Information Act. Date 30/10/1989 Gaz 2/11/1989 In force 1/12/1989 [p383 this book]

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1991 SR1991/196 Fees Adult Adopt Information Act 2/9/1991 Gaz 5/9/1991 In force 3/10/1991 [p383 this book]

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1895 Adoption of Children Act 1885 Gaz 28/11/1895 [p502 this book]

1901 Native Land Court Act 1901. Gaz 12/12/1901 p485 Registration of Customary Maori Adoptions.

1910 Native Land Court Supplement Gaz 14/4/1910 Adoption Part IX p1197,1207 [p486 this book]

1912 Part III Infants Act 1908 Gaz 22/2/1912 [p509-511 this book]

1914 Native Land Court Act 1909 Adoption Part IX Gaz 27/8/1914 Vol.11 p3243 [p487 this book]

1916 New rule Part Infants Act 1908 copy of child's birth entry required Gaz 28/9/1916 [p512 this book]

1940 Infants Act 1908 SR 1940/270 Gaz 24/10/1940 Transfer adoption records to R-General [p512 this book]

ADOPTION OF CHILDREN ACT 1881

Statute No. 9 19/9/1881. An Act to legalize the adoption of children. Be it enacted by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:-

1 The short title of this Act is "The Adoption of Children Act, 1881."

2 Interpretation In this Act, if not inconsistent with the context,-

"*Child*" means any boy or girl under the age of twelve years, or, in the absence of positive information as to age, means any boy or girl under the apparent age of twelve years in the opinion of the District Judge dealing with such child under the provisions of this Act:

"*Deserted child*" means any child who, in the opinion of the District Judge dealing with such child under the provisions of this Act, is deserted and has ceased to be cared for and maintained by its parents, or by such one of them as may be living, or by its guardian, or by its mother if it be illegitimate:

"*Adopted child*" means any child concerning whom an order of adoption has been made as herein provided:

"*Adopting parent*" means any person who is, by any such order of adoption as herein provided, authorized to adopt a child, and, if such person be married, includes the person to whom such adopted parent is married.

3 Application for order of adoption Upon the application in writing of any married person of good repute, or who, being of the same sex as the child proposed to be adopted, is desirous of adopting any child, and upon hearing such evidence, upon oath or otherwise, as he shall think fit to require, any District Judge may, with the consent in writing of the parents of such child, or such one of them as shall be living at the date of such application, or, if both parents be dead, then of its legal guardian, or, if of one such parents has deserted and ceased to care for and maintain such child, then with the consent of the other of such parents, and, in the case of a deserted child, without such consent, and on being satisfied that the applicant is of sufficient ability to bring up the child, and that the interests of such child will be promoted by the adoption, make an order authorizing such person making the application to adopt such child: Provided that such applicant shall be at least eighteen years older than such child, and also provided that nothing herein contained shall be deemed to prohibit the adoption of any child by any person of good repute who is forty years older than such child, subject, nevertheless, to the said evidence and consent, and to the satisfaction of the District Judge in manner aforesaid.

4 Consent of husband and wife If the applicant be a married person, such order shall not be made without the consent of the person to whom such applicant is married, and, except by husband and wife, as herein, no child shall be adopted by more than one person.

5 Adopted child When such order has been made, the adopted child shall, for all purposes, civil and criminal, and all advantages and benefits and other legal consequences

of the natural relation of parent and child, be deemed in law to be the child born in lawful wedlock of its adopting parent: Provided always that such adopted child shall not by such adoption acquire any right, title, or interest whatsoever in any property whatsoever which would devolve on any child of its adopting parent by virtue of any deed, will, or instrument whatsoever prior to the date of such order, unless it be expressly so stated in such deed, will, or instrument: nor be entitled to take property expressly limited to the heirs of the body or bodies of the adopting parents, nor property from lineal or collateral kindred of such parents by right of representation; nor acquire any property vested or to become vested in any child of lawful wedlock of such adopting parent, in the case of intestacy of such last-mentioned child, or otherwise than directly through such adopting parent.

6 Adopting parent When such order has been made, the adopting parent shall, for all purposes, civil, criminal, and otherwise howsoever, be deemed in law to be the parent of such adopted child, and subject to all liabilities affecting such child as if such child had been born to such adopting parent in lawful wedlock; and such order shall thereby terminate all the rights and legal responsibilities and incidents existing between the said child and his or her natural parents, except the right of such child to take property as heir or next of kin of his or her natural parents, directly or by right of representation.

7 Order may be reversed and discharged It shall be lawful for the District Judge before whom any order of adoption was made, or his successor in office, in his discretion to reverse and discharge the said order: Provided such reversal and discharge shall take place within three months after the making of such order, but shall not be deemed to prohibit any further application under section three.

8 Adoption in connection with benevolent and other institutions Upon the application of the manager for the time being of any benevolent or other institution established in connection with any religious denomination, and not maintained by Government subsidy, who is desirous of adopting any deserted child in connection with such institution, the District Judge of the district wherein such institution is situated, on being satisfied-

(1) That such child is deserted, and of the same religious denomination as that of the institution whose manager makes the application; and

(2) That such institution is properly conducted, and is capable of properly bringing up such child, may make an order authorizing the manager for the time being to adopt such child in connection with such institution, such child retaining his or her own name, and in no manner inheriting or succeeding to any property, real or personal, or otherwise howsoever, of such manager or institution.

9 Sections four, five, and six shall in no way apply to the case of any child adopted as in section eight of this Act, except as to the determination on such order of all rights of natural parents, and as to the rights of such child to take property, as respectively stated in section six of this Act: Provided such child shall be entitled to the support, main-

tenance, education, and advancement afforded by such institution, and all such other rights, benefits, privileges, and advantages appertaining thereto, and which it shall be the duty of the person or body managing or controlling the said institution to provide.

10 Name of adopted child The order of adoption, except that made under section eight, shall confer the name of the adopting parent on the adopted child, in addition to the proper name of the latter.

11 Regulations The Governor may make, and from time to time alter and revoke, such regulations as he shall think fit prescribing the forms and mode of procedure to be used and followed in exercising the jurisdiction hereby conferred upon District Judges, and for prescribing the mode of registering and keeping a proper register of all such orders, and also for prescribing the fees to be paid in respect of such procedure and registration. *Act Repealed by Adoption of Children Act 1895.*

[Amendment 1885 1885 Amendment Adoption of Children Act 1881. Extended jurisdiction to Magistrates. *Act repealed by Adoption of Children Act 1895]*

Regulations 1882 Adoption of Children Act 1881

Arthur Gordon, Governor. In pursuance and exercise of the power and authorities conferred by the eleventh section of "The Adoption of Children Act, 1881," and of every other power and authority enabling me in that behalf, I, Arthur Hamilton Gordon, the Governor of the Colony of New Zealand, do hereby make and publish the following regulations under the said Act.

1 In these regulations, if not inconsistent with the context, "The Act" means "The Adoption of Children Act, 1881." "The Judge" means the District Judge to whom any application under the Act is made: "The Court" means the Court of the District constituted under "The District Courts Act, 1858," to which the Judge to whom the application is made may have been appointed "Order" means an order made under the Act.

2 Every application under section 3 of the Act shall set out the names and sex of the applicant, and, if the applicant be married, the names of the person to whom the applicant is married, of the child proposed to be adopted, and of the parents or parent or legal guardian of such child (and, in case of a deserted child, the facts relied upon in proof of such desertion), and all other facts upon which the applicant relies in support of the application. Such application, together with an affidavit verifying the same, shall be filed in the Court

3 The Judge shall fix some convenient place and time for hearing the application.

4 The Clerk of the Court shall cause a notice of the place and time so fixed to be served upon the applicant personally, forty-eight hours at least before the time appointed for the hearing.

5 The consent in writing of the parents or parent or legal guardian of the child proposed to be adopted shall be verified by affidavit, and filed in the Court.

6 Where the applicant is a married person a consent in writing (verified by affidavit) to the application shall be made by the person to whom such applicant is married, and shall be filed in the Court.

7 In all cases where the Judge thinks fit to take evidence upon oath such evidence shall be reduced to writing, and filed by the Clerk of the Court.

8 The order may be in the form in the Schedule hereto annexed, or as near thereto as possible.

9 The provisions of section 2 of these regulations shall apply, as nearly as circumstances will permit, to applications made under section 8 of the Act, and the same procedure shall be had thereupon.

10 The order under section 8 of the Act shall be in the form in the Schedule hereunto annexed, or as near thereto as possible.

11 The clerk of the Court shall keep a register-book, and shall record therein a copy of every order made under the Act. Such registered copy shall be verified under the hand of the Judge.

12 Any person desirous of obtaining the reversal and discharge of an order shall apply in writing to the Judge, and shall serve a copy of such application forthwith upon the person in whose favour such order was made.

13 The Judge shall appoint a time and place for hearing such application, and shall cause notice thereof to be served personally upon the person in whose favour the order was made and upon the person applying for the reversal and discharge of the order forty-eight hours at least before the time appointed for the hearing.

14 The Judge at the hearing of such application may take evidence upon oath or otherwise, as he shall think fit to require.

15 In all cases where an order is reversed and discharged a memorandum (signed by the Judge) of such reversal and discharge shall be written across the face of the registered copy of the order.

16 Every person interested may, upon the hearing of any application under the Act, appear personally or by a barrister or solicitor of the Supreme Court of New Zealand

17 The schedule of forms and scale of fees hereunto annexed shall form part of these regulations.

Schedule 1882 Adoption order under s3 of Act

"The Adoption of Children Act. 1881." Colony of New Zealand, Provincial District of to wit. Be it remembered that, on the ...day of...18...application was made to me...a District Judge, sitting at...by...of...for an order to adopt...now aged...now aged...Now I, the said District Judge, having read the application of the said...and heard the evidence of...and being satisfied that *...and that the applicant is of sufficient ability to bring up such child, and that the interests of the said...will be promoted by such adoption, do hereby order and adjudge that the said...may be adopted by the said...Given under my hand at...this...day if...18... ..District Judge.

* Here insert whether the application is made with the consent of the parents or parent or legal guardian, or whether such child is a deserted child; and, where the applicant is a married person, that the consent of the person to whom such person is married has been given to the application.

Adoption Order under s8 of the Act “*The Adoption of Children Act 1881*” Colony of New Zealand, Provincial District of to wit. Be it remembered that, on the...day of ...18...application was made to me...a District Judge, sitting at...manager of the...established in connection with the...denomination, for an order to adopt...now aged ...Now I, the said District Judge, having read the application of the said...and head the evidence of...and being satisfied that the said...is a deserted child and of the same religious denomination as that of the institution of which the said...is manager, and that such institution is properly conducted, and is capable of properly bringing up the said...do hereby order and adjudge that the said...as manager for the time being, may adopt the said...in connections with the said institution. Given under my hand at...this...day of...18...District Judge

Scale of fees

Filing application, and affidavit verifying same	0-5-0
Filing any other doc required by regulations	0-5-0
Service of any notice under regulations	0-5-0
Hearing of any application	0-5-0
Order thereupon	1-0-0
Registered copy of order	0-5-0
Registering reversal and discharge	0-10-0
Professional costs not to exceed	3-3-0

Dated 3/1/1882. Gazette 5/1/1882 p9. Revoked by Adoption Regulations 1883. 5/3/1883 Gazette 15/3/1883 p317

Regulations 1883 Adoption of Children Act 1881

Gazette 15/3/1883 p317 Almost identical to 1882 Regulations- but fees reduced approx 50%. 1883 Regulations revoked by 1895 Regulations Gazette 28/11/1895.

Debate

Council 1st Reading	12/7/1881	Vol.38 p409
Council 2nd Reading	22/7/1881	Vol.39 p4
Committee	27/7/1881	Vol.39 p94
Council 3rd Reading	28/7/1881	Vol.39 p131
House 1st Reading	28/7/1881	Vol.39 p141
House 2nd Reading	4/8/1881	Vol.39 p281
Committee	11/8/1881	Vol.39 p456
Re committal	18/8/1881	Vol.39 p645
House 3rd Reading	8/9/1881	Vol.40 p429

Waterhouse (Marsden-Wellington) His introductory speech drew on an in-depth knowledge of adoption practices of Biblical, Roman, Greek, India, France and Germany. The drafting of the bill relied mainly on American and German law. Reasons given included, security of tenure to both adoptive parents and adoptee, promoting the best interest of the child, allowing the child to become in every way a full member of a family. Main opposition was re estate and property, legitimising children and exploitation risks akin to slavery.

Scotland Hon Henry (Taranaki) “Foolish old men might, perhaps, adopt very pretty young girls, and foolish old women might adopt very nice young boys, with ideas of matrimony at a future time...*This adoption of children had its origin in slavery*, and might be used for purposes bordering on slavery in future. As capital required strength in this country, and as want increased, they might see parents willing to sell their children for a very little. He had seen in the police reports in England accounts of persons who had offered their children for a glass of gin. A woman had done this. It was not very long ago that a wife was sold in Wellington for 50s - a woman who could play the piano. He dared say she was dear at the price, but such a thing did take place.” NZPD Vol.39 p7

Wilson Hon John (Hawke's Bay) objected the Bill would provide a means of legitimating illegitimate children.

Voting Legislative Council 3rd Reading 17 for 6 against. Similar debates took place in the House:-

Tole Mr. (Eden) Stressed that the adopted child should for all purposes whatsoever, occupy the same position as if it were born in lawful wedlock. Adoptees names are to be retained along with the new adoptive surname- origin of hyphenated surname practice re adoptees 1881-1925.

Bowen Mr (Kaiapoi) stressed the need of adoptees to have clear documentation of their origins, on the same basis as non adopted people. Thus adoptees retained access of right to their original birth entry.

The original Bill provided for Magistrates to handle adoption. Concern was raised as to their proficiency. The Act gave the jurisdiction to Judges of District Courts.

1885 Amendment Adoption of Children Act 1881

Statute No.9 10/8/1885. An Act to confer on Resident Magistrates the Jurisdiction vested in District Judges by “The Adoption of Children Act 1881.” Be it enacted by the General Assembly of New Zealand in Parliament assembled by the authority of the same, as follows:-

1 The short title of this Act is “The Adoption of Children Act 1881 Amendment Act, 1885.”

2 Resident Magistrate to have jurisdiction as to adoption of children: All powers, authorities, duties, and functions granted, conferred, or imposed upon a District Judge by “The Adoption of Children Act , 1881” (herein referred to as “the said Act”) or by any regulations made thereunder, may be exercised by an Resident Magistrate within the Resident Magistrate’s district wherein he has jurisdiction, or by any other Resident Magistrate acting in his place in such district. But nothing herein shall be deemed to limit or to take away the jurisdiction of any District Judge under the said Act.

3 Interpretation of regulations All regulations heretofore made or hereafter to be made under the said Act or this Act shall be subject to the following additional interpretations, that is to say,- “*The Act*” shall mean the said Act, and shall include this Act: “*The Judge*” shall mean the District Judge or Resident Magistrate to whom any application is made under the said Act or this Act:

“*The Court*” shall mean the District Court or Resident Magistrate's Court, as the case may be, of the district wherein the Judge or Resident Magistrate to whom the application is made has jurisdiction:

“*Order*” shall mean an order made under the said Act or this Act. *Repealed by Adoption of Children Act 1895 No.8 20/8/1895*

House	1st Reading	11/6/1885
House	3rd Reading	10/7/1885
Council	1st Reading	Vol.41 p246 2/6/1885
Council	2nd Reading	26/6/1885
Council	3rd Reading	16/7/1885

Debate In the original 1881 Bill, jurisdiction on adoption was conferred on Magistrates. This resulted in heated debate that the issue was too serious for Magistrates, some had very little legal training. It was amended to jurisdiction by Judges of the District court. However by 1885 it was clear that limited access to District Courts, in horse and buggy days was a serious impediment to obtaining an adoption order. After some debate jurisdiction on adoption was granted to Magistrates as well as Judges.

Infant Life Protection Act 1893

Statute No.35. 2/10/1893. “**Section 15 Registration of adopted children** If any person adopt or take over the entire care and charge of any child under the age of three years from its parents or guardians, such person shall, within fourteen days of so doing, give or send notice thereof to the Commissioner, and such person shall in such notice state his or her name and place of residence and occupation, and the name of such child. If any person neglect, refuse, or omit to comply with the provisions of this section, he shall be guilty of an offence under this Act, and on conviction thereof be liable to imprisonment for a period not exceeding three months or to a penalty not exceeding fifteen pounds. Nothing in this section shall excuse any person from making any other registration required by any other provision of this Act, or from any penalty for omitting to do so.” *Repealed and replaced by Infant Life Protection Act 1896 No.23 12/10/1896.*

Debate The Act was a response to the 1/7/93 Annual Police Report requesting legislation. Buckley Hon. “With few exceptions the disclosures that had been made showed that these houses were of such a character as almost made one's flesh creep...it was considered desirable to pass a measure of that kind to protect the poor things who were unable to protect themselves.” 28/9/1893 House.

ADOPTION OF CHILDREN ACT 1895

Statute No.8 20/8/1895. An Act to consolidate and amend the Law relating to the Adoption of Children...

1 The Short Title of the Act is “The Adoption of Children Act, 1895.”

2 Interpretation In this Act, and in all rules made thereunder, if not inconsistent with the context,- “*Child*” means any boy or girl under the age of fifteen years:

“*Clerk of the Court*” means the Clerk of the District Court

or Magistrate's Court, as the case may be, at which any application is made under this Act:

“*Deserted child*” means any child who, in the opinion of the Judge dealing with such child under the provisions of this Act, is deserted, and has ceased to be cared for and maintained but its parents, or by such one of them as is living, or by the guardian of such child, or by the mother of such child if the child is illegitimate:

“*Adopted child*” means any child concerning whom an order of adoption has been made as herein provided:

“*Adopting parent*” means any person who is by any such order of adoption, as herein provided, authorised to adopt a child; and in the case of an order being made in favour of a husband and wife on their joint application, shall mean and include both husband and wife:

“*Judge*” means a District Judge appointed under “The District Courts Act 1858,” and includes “Magistrate”:

“*Magistrate*” means a Stipendiary Magistrate appointed under “The Magistrates' Courts Act, 1893”:

“*Prescribed*” means prescribed by rules to be made by the Governor under this Act.

3 By whom female child may be adopted Upon the application in writing, in the prescribed form, to a Judge by-

- (1) Husband and wife jointly, or by
- (2) A married woman alone, but with the written consent of her husband, or by
- (3) Any unmarried woman who is, in the opinion of the Judge, at least eighteen years older than the child, or by
- (4) Any unmarried man who is, in the opinion of the Judge, at least forty years older than the child,- an order of adoption of a female child may be made by the Judge in favour of the applicant, in the prescribed form, and subject to the provisions of this Act.

4 By whom male child may be adopted Upon the application in writing, in the prescribed form, or a Judge by-

- (1) Husband and wife jointly, or by
- (2) A married man alone, but with the written consent of his wife, or by
- (3) Any unmarried man who is, in the opinion of the Judge, at least eighteen years older than the child, or by
- (4) Any unmarried women who is, in the opinion of the Judge, at least forty years older than the child,- an order of adoption or a male child may be made by the Judge in favour of the applicant, in the prescribed form, and subject to the provisions of this Act

5 Consents required previous to adoption of child Before making such order of adoption, the Judge-

- (1) May compel the attendance before him of any witness; and for that purpose may sign, issue, and cause to be personally served upon the witness a summons, in the prescribed form;
- (2) Shall take evidence *viva voce* upon oath or by affidavit, to be sworn before any Judge, Magistrate, Solicitor, Reg-

istrar, or Deputy Registrar of the Supreme Court, Clerk of the Court, or any Justice of the Peace, in proof of or concerning any fact, matter, or thing required by this Act or by the Judge to be proved:

(3) Shall be satisfied that the child is under the age of fifteen years, that the person proposing to adopt the child is of good repute and a fit and proper person to have the care and custody thereof, and of sufficient ability to bring up, maintain, and educate the child, that the welfare and interests of the child will be promoted by the adoption, and that the consents required by this Act have been duly signed and filed;

(4) Shall be satisfied that the child, if over the age of twelve years, consents to the adoption;

(5) Shall require the consent in writing of the parents, whether living within the colony or beyond the limits thereof, or such one of them as is living at the date of such application, or, if both the parents are dead, then of the legal guardian of the child, or if one of the parents has deserted the child, then the consent of the other parent;

(6) Shall not require any such consent in the case of a deserted child.

6 Child adopted by one person only Except by husband and wife, as hereinbefore mentioned, no child shall be adopted by more than one person.

7 Adopted child to have legal status of legitimate child When an order of adoption has been made, the adopted child shall for all purposes, civil and criminal, and as regards all legal and equitable liabilities, rights, benefits, privileges, and consequences of the natural relation of parent and child, be deemed in law to be the child born in lawful wedlock of the adopting parent: Provided always that such adopted child shall not by such adoption-

(1) Acquire any right, title, or interest whatsoever in any property which would devolve on any child of the adopting parent by virtue of any deed, will, or instrument whatsoever prior to the date of such order of adoption, unless it is expressly so stated in such deed, will, or instrument; nor

(2) Be entitled to take property expressly limited to the heirs of the body of the adopting parent, nor property from the lineal or collateral kindred of such parent by right of representation: nor

(3) Acquire any property vested or to become vested in any child of lawful wedlock of the adopting parent in the case of the intestacy of such last-mentioned child, or otherwise than directly through such adopting parent.

8 Adopting parent to have legal status of natural parent When an order of adoption has been made, the adopting parent shall for all purposes, civil, criminal, or otherwise howsoever, be deemed in law to be the parent of such adopted child, and be subject to all liabilities affecting such child as if such child has been born to such adopting parent in lawful wedlock; and such order of adoption shall thereby terminate all the rights and legal responsibilities and incidents existing between the child and his or her natural; parents, except the right of the child to take property as heir or next of kin of his natural parents directly or by right of representation.

9 Order may be reversed or discharged It shall be lawful for any Judge for the time being exercising jurisdiction within the district where any order of adoption was made, and whether by himself or by any other Judge, in his discretion to vary, reverse, and discharge such order, and also any order made under the Acts hereby repealed, subject to such terms and conditions as he thinks fit.

10 Adoption in connection with benevolent or other institutions Upon application in writing of the manager for the time being of any benevolent or other institution, established in connection with any religious denomination, and not maintained by Government subsidy, who is desirous of adopting any deserted child in connection with such institution, the Judge usually exercising jurisdiction in the district wherein such institution is situated, on being satisfied-

(1) That such child is deserted,

(2) That such child is of the same religious denomination as that of the institution whose manager makes the application, and

(3) That such institution is properly conducted, and is capable of properly bringing up such child,- may make an order authorising the manager for the time being of such institution to adopt such child in connection with such institution, such child retaining his or her own name, and in no manner inheriting or succeeding to any property, real or personal, or otherwise howsoever, of such manager or institution.

11 Sections 6,7, and 8 not to apply thereto Sections six, seven, and eight hereof shall not apply to the case of any child adopted as provided in section ten hereof, except as to the determination of all rights of the child's natural parents, and as to the rights of the child to take property, as respectively stated in section eight of this Act: Provided always that such child shall be entitled to the support, maintenance, and advancements afforded by such institution, and all other such rights, benefits, privileges, and advantages appertaining thereto, all which it shall be the duty of the person or body managing or controlling the said institution to provide.

12 Name of adopted child The order of adoption, except when the same is made under section ten hereof, shall confer the name of the adopting parent on the adopted child, in addition to the proper name of the child.

13 Power to make rules The Governor may from time to time make such rules as he thinks fit, prescribing the forms and mode of procedure to be used in exercising the jurisdiction hereby conferred upon any Judge, and prescribing the mode of registering and keeping a proper register of all orders made under this Act, and also prescribing the fees to be paid in respect of such procedure, registration, and otherwise, and generally giving full effect to the provisions of this Act.

14 Repeal The Acts enumerated in the Schedule hereto are hereby repealed, but their repeal shall not in any way affect-

(1) The past operation of the said Acts, or either of them; or

(2) The validity of any order of adoption or other order made thereunder; or

(3) Any application or proceeding lawfully made, taken, or commenced under the said Acts or either of them before the commencement of this Act; and the same shall severally be as valid, and may be continued, completed, and enforced, as if they had been commenced under the authority of this Act: Provided that all rules made under any Act hereby repealed, and in force at the commencement of this Act, shall remain in force until new rules are made under this Act.

Schedule 1895 Repealed 1881 No.9. Adoption of Children Act 1881. 1885 No.9 Adoption of Children Act 1881 Amendment Act 1885 *The 1895 Act was Consolidated as Part III of Infant Act 1908 No.86 26/6/1908.*

[**Amendment 1906** Adoption of Children Act Amendment Act 1906. No.37. Adopting parent not to receive premium except with consent of the Court.]

[**Amendment 1906** Statute Law Amendment Act 1906 No.58 Marriage law re adoption. Discharging of adoption orders, rights and responsibility of natural parent revive]

[**Amendment 1907** Infant Life Protection Act 1907 No.42. Disposing of adoption consent of natural parents.]

Regulations Adoption of Children Act 1895

26/11/1895. Glasgow, Governor...**1** Every application under sections 3 and 4 of the Act shall be in Form No.1. in the Schedule hereto, or as near thereto as circumstances will permit, and shall be signed by the applicant or applicants in the presence of an shall be attested by a Judge, Clerk of Court, solicitor, Registrar, or Deputy Registrar of the Supreme Court, or a Justice of the Peace. Every application under section 10 of the Act shall be in Form No.2. in the Schedule hereto, and shall be signed and attested as aforesaid.

2 Every such application and every other application made to the Judge under the Act shall be filed in Court.

3 On the filing of an application the Judge shall appoint some convenient place and time for the hearing of the same, and shall indorse on the application and sign a memorandum of such appointment in the Form No.3. in the Schedule hereto.

4 The Clerk of the Court shall cause a written notice, signed by him or the Judge, of the place and time so appointed for the hearing of the application to served upon the applicant or applicants personally forty-eight hours at least before the time appointed for the hearing. The Judge may direct substituted service of any such notice to be effected in such manner as he thinks fit.

5 The applicant or applicants and the child proposed to be adopted shall attend personally before the Judge on the hearing of the application, but the Judge may, in his discretion, dispense with such personal attendance.

6 The Judge may adjourn the hearing of the application to such place and time as he considers necessary of convenient.

7 Any *viva voce* evidence upon oath taken by the Judge on the hearing of any application under the Act shall be reduced to writing by the Judge or Clerk of Court, signed by the witness, and filed by the Clerk of Court.

8 A summons for the attendance of a witness may be in the Form No.4. in the Schedule hereto, and shall be signed either by the Judge, Clerk of Court, or any Justice of the Peace. The summons shall be served personally on the witness, and may, if necessary, contain a clause requiring the witness to produce any books, deeds, papers, and writings in his possession or under his control.

9 The consent in writing of the parents or parent or legal guardian of the child proposed to be adopted shall be in the Form No.5 in the Schedule hereto, and shall be signed, attested, and filed in the same manner as an application is required by Rule 1 to be signed, attested, and filed.

10 The order of adoption shall be in the Form No.6 in the Schedule hereto, or as near thereto as circumstances will permit.

11 The order of adoption under section 10 of the Act shall be in Form No.7 in the Schedule hereto, or as near thereto as circumstances will permit.

12 The Clerk of Court shall keep a register-book, properly indexed, and shall record therein a true copy of every order made under this Act. Such copy-order shall be verified under the hand of the Judge.

13 Any person desirous of obtaining the reversal and discharge of any order made under the Act shall apply in writing to the Judge, and shall serve a copy of such application forthwith upon the person or persons in whose favour such order was made. Such application shall set forth the grounds upon which the reversal and discharge of the order is sought, and shall be signed, attested, and filed in the same manner as an application under Rule 1.

14. Upon the filing of the application the Judge shall, by memorandum under his hand indorsed on the application, appoint a convenient place any time for hearing the application. Such memorandum shall be in the Form No.3 in the Schedule hereto.

15 The Clerk of Court shall cause a written notice of the place and time so appointed, signed by him or the Judge, to be served personally upon the person or persons in whose favour the order was made, forty-eight hours at least before the time appointed for the hearing. The Judge may direct substituted service of such notice to be effected in such manner as he thinks fit.

16 The Judge may at the hearing of such application take evidence *viva voca*, on oath or otherwise, as he thinks fit.

17 In all cases where an order is varied or discharged, a memorandum of such variation or discharge shall be written across the face of the registered copy of the order, and signed by the Judge.

18 Every person interested may, upon the hearing of any application under the Act, appear personally, or by a barrister or solicitor.

19 The following schedule of forms and scale of fees shall form part of these rules.

20 The Judge shall, by memorandum under his hand indorsed on the application, have power to remit the said fees or any of them, or to reduce the amount thereof, in any case where in his opinion there is reasonable grounds for remitting or reducing the same.

Schedule 1895

Form No.1 Application for Order of Adoption under section 3 or 4 of Act “Adoption of Children Act, 1895”.

To A.B., Judge of the District Court holden at...[or Stipendiary Magistrate for the Magistrate's Court holden at ...] I [or, in case of husband and wife, We] [Here state name of names in full, and add occupation and place or residence], do hereby apply to adopt as my [or our] child C.D. [name of child in full], a male [or female, (and, if illegitimate, add illegitimate)] child under the age of fifteen years, whose parents are [State names in full, occupation, and place of residence of child's parents or legal guardian, is same can be ascertained]. Dated at... this...day of...18...Signatures. Witness to the signatures of the above applicants A.B., Judge, SM., J.P., Clerk of Court, solicitor, Registrar, or Deputy Registrar of Supreme Court.

Form No.2 Application for order of adoption under s10 of Act “The Adoption of Children Act, 1895. To A.B., Judge of the District Court holden at...[or Stipendiary Magistrate of the Magistrate's Court holden at...] I [name in full], of [place of residence, etc.], manager for the time being of [Here give name of institution and where situate, etc.], established in connection with the...denomination, being desirous of adopting [name in full of child], a male [or female] deserted child in connection with the said institution, do hereby apply for an order of adoption under section 10 of “The Adoption of Children Act 1895.”

Dated at...this...day of...18...A.B. Manager of the [State name of institution]. Witness to the signatures of the above applicants A.B.,

Form No.3 Appointment to be indorsed on application “The Adoption of Children Act 1895.” Upon reading the above [or within] application, I hereby appoint [Here state place, street etc] as the place, and...the...of...18...at ...o'clock in the...noon, as the time, for hearing the said application. Dated this...day of...18...A.B. Judge [or SM]

Form No.4. Summons to a witness “The Adoption of Children Act 1895.” To [name], of [address], in the Provincial District of...New Zealand [occupation]. You are hereby commanded to attend, in your own proper person, at...on...the...day of...18...at the hour...o'clock in the...noon, to testify the truth according to your knowledge in [Here state nature of proceeding], and to remain in attendance until the said matter be concluded or until you shall be lawfully discharged from attendance. Herein fail not at your peril. Given under my hand, this...day of ...18... A.B. Judge, etc. [or Clerk of Court, or J.P]

Form No.5 Consent to order of adoption “The Adoption of Children Act 1895.” We [or I], of [place of residence, occupation, etc], the parents [or one of the

parents, or the guardian] of [name of child], do hereby consent to an order of adoption being made in terms of “The Adoption of Children Act 1895,” in favour of [name or names, etc of applicants of applicant]. Dated at...this...day of..18... (Signature.) Witness to the signature of the above-named [name] A.B. Judge, S.M., Justice of the Peace, Clerk of Court, solicitor, Registrar, or Deputy Registrar of Supreme Court.

Form No.6 Order of adoption under Section 3 or 4 of Act “The Adoption of Children Act 1895.” Whereas, on the...day of...18...an application under section 3 [or 4] of “The Adoption of Children Act, 1895.” was duly filed in the office of [name of Court], at...in the Provincial District of...in the Colony of New Zealand, by [name, place of residence, and occupation of applicant], for an order to adopt [name of child], a male [or female] child now aged ...years: And whereas all the conditions and requirements of the said Act, and the rules made thereunder, have been duly complied with and fulfilled, and I am satisfied of the several matters of which by the said Act I am required to be satisfied: Now, therefore I A.B. Judge of the District Court for the District of...[or Stipendiary Magistrate exercising jurisdiction for the time being within the District of...], do hereby order and adjudge that the said male [or female] child named...may be and is hereby adopted by the said [names of applicants], [add and each of them if husband and wife] under the said Act, as from the date hereof. Given under my hand at...this...day of... 18...A.B. Judge etc [or S.M., etc]

Form No.7 Order of adoption under section 10 “The Adoption of Children Act, 1895.” Whereas, on the...day of...18...an application under section 10 of “The Adoption of Children Act, 1895.” was duly filed in the office of [name of Court], at...in the Provincial District of...in the Colony of New Zealand, by...manager of the...established in connection with the...denomination, for and order to adopt [name of child], a male [or female] child now aged ... years: And whereas all the conditions and requirements of the said Act, and the rules made thereunder, have been duly complied with and fulfilled, and I am satisfied of the several matters of which by the said Act I am required to be satisfied: Now, therefore I A.B. Judge of the District Court for the District of...[or Stipendiary Magistrate exercising jurisdiction for the time being within the District of...], do hereby order and adjudge that the said male [or female] child named...may be and is hereby adopted in connection with the said institution by the said by [names of manager], under section 10 of the said Act, as from the date hereof. Given under my hand at...this... day of...18...A.B. Judge etc [or S.M., etc]

Scale of fees

in respect of proceedings under “The Adoption of Children Act, 1895.” Filing application for order of adoption 0-2-0. Filing application discharge or very order 0-2-0. Filing every affidavit or statutory declaration 0-2-0. Filing every consent 0-2-0. Filing copy order of adoption 0-2-0. Filing evidence of each witness taken *viva voca* on oath, or any document required by the Act or ordered by the Judge to be filed.. 0-2-0 Hearing an application 0-5-0. Order thereon 0-10-0. Duplicate filing 0-2-0. Regis-

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tered memorandum of discharge of order 0-3-0. Summons for witness 0-2-0. Swearing each witness 0-2-0. Service of any notice, appointment, summons, order, or other document 1s per mile for one way only from Court-house. As witness the hand of His Excellency the Governor this twenty-sixth day of November, 1895. WP Reeves Date 26/11/1895 Gazette 28/11/1895 p1839 *Revoked by Rules Infants Act 1908 Part III Gazette 22/2/1912 p328*

Debate

House	1st Reading	21/6/1895	Vol.87	p16
House	2nd Reading	3/7/1895	Vol.87	p293
House	3rd Reading	22/7/1895	Vol.88	p112
Council	1st Reading	24/7/1895	Vol.88	p161
Council	2nd Reading	?/7/1895	Vol.88	p217
Council	3rd Reading	31/7/1895	Vol.88	p315

The only significant debate was the Council 2nd Reading. Sir P.A. Buckley (Wellington) "Said it was a consolidation of the Acts of 1881 and 1885. In the Act of 1881 the age of adoption was 12 years. It was proposed to raise that to 15. and the age of a person who adopted must be at least 40 years more than of the person to be adopted. The only other provision was in subsections (1) and (2) of clause 5, which made better provisions for taking evidence with regard to adoption. Clause 9 supplied an omission in the original Act. While it had been provided that a Judge could reverse or discharge an order, it was considered necessary that he should have the power also to vary the order. The Bill had been before the Statutes Revision committee, which had agreed to it as it stood." There was questioning of the new maximum age of adoption being raised from under 12 to 15. Adoptee should be consulted. A statistical report on adoption orders was requested.

Infant Life Protection Act 1896

Statute. No.23 12/10/1896. This Act was a shocked response to the Minnie Dean baby farm murders. It repealed the Infant Life Protection Act 1893 No 35. Inspections, conditions, and registration were tightened up. **s11** "Every infants' Home and the infants therein shall at all reasonable times be open to inspection by the Commissioner, or by any medical practitioner or member of the Police Force whom the Commission authorises, whether generally or specially on that behalf, or by any Justice of the Peace." *Repealed by Infant Life Protection Act 1907. No.42.* [The Infant Life Protection Act 1907.No.42 was Consolidated in the Infants Act 1908. No.86] The debates on these Acts contain much important insight and information on the care of children. They have application to pre-adoption status of children, but have limited application to adoption. The adoption issues are mainly contained in the Adoption Acts.

Adoption of Children Act Amendment Act 1906

Statute No.37 20/10/1906. An Act to amend "The Adoption of Children Act, 1895." Be it enacted by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:-

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1 The short title of those Act is "The Adoption of Children Act Amendment Act, 1906"; and it shall form part of an be read together with "The Adoption of Children Act, 1895" (hereinafter.. "the principal Act")

2 Adopting parent not to receive premium It shall not be lawful for any person adopting a child under the principal Act to receive any premium or other consideration in respect of such adoption, except with the consent of a Stipendiary Magistrate. *Consolidated in Part III of Infant Act 1908 No.86 26/6/1908.*

Debate The Bill was introduced to combat the abuse of premiums. The sums of money paid to adopters by the birth parents, or their families, to take a child off their hands. An extensive informed debate took place. NZPD House 2nd Reading 24/8/1906 Vol.137 p.20. See subject Premiums for details.

Statute Law Amendment Act 1906

Statute No.58 29/10/1906. S2 and 3 amend the Adoption of Children Act 1895...

2 Marriage law not effected Nothing in "The Adoption of Children Act 1895," shall be construed to authorise any marriage that could not lawfully have been contracted if the Act not been passed.

3 On discharge of order, rights and responsibilities of natural parent revive Where an order of adoption is discharged under section nine of the last-mentioned Act, then, subject to the conditions (if any) named in the discharging order, the child and it's natural parents shall be deemed for all purposes to be restored to the same position *inter se* as existed immediately before the order of adoption was made: Provided that such restoration shall not effect anything lawfully done whilst the order of adoption was in force." *Repealed and Consolidated in Infants Act 1908 No.86 26/6/1908.*

Debates The Attorney General, Hon. Mr. Pitt spoke briefly, asking members to refer to the *Report of the Statutes Revision Committee for reasons. He said, "It will be seen that under the present law the extraordinary consequence may follow under certain circumstances that legally a girl who has been adopted might marry her own brother. Such a thing as that was never contemplated, and the provision made here is to meet such a case as that." (Only reference to adoption in debate). NZPD 25/10/1906. Council p566. *Cannot locate Report. KCG.

Infant Life Protection Act 1907

Statute No.42. 20/11/1907 s21 In certain cases of adoption consent of parents may be dispensed with

(1) Notwithstanding anything contained in section five of the Adoption of Children Act, 1895, if the Judge or Magistrate making an order of adoption of any child is satisfied that any parent or guardian of the child is for any reason unfit to have the custody or control of the child, and that notice of the application for the order of adoption has been given to such parent or guardian, the said Judge or

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Magistrate may, if he thinks fit, in making the said order dispense with the consent of such parent or guardian.

(2) Any parent or guardian whose consent is thus dispensed with may, within one month after the making of the order of adoption, make application to any Judge of the Supreme Court, on notice to the adopting parent or parents, to discharge such order, and the said Judge may in his discretion discharge such order accordingly on such terms as he thinks fit. Any such discharge shall have the same effect as a discharge made under section nine of the Adoption of Children Act 1985." *Repealed and Consolidated in Infants Act 1908 No.86 26/6/1908.*

Preliminary debate

A major debate took place on the **subject** of Infant Life Protection in the Legislative Council in September 1907. NZPD 4/9/1907 Vol.140 pp630-849. This was followed by the introduction and debate of the Infant Life Protection Bill in November 1907. NZPD 6/11/1907 Council Vol.142 p494. These major debates contain important material on attitudes to child welfare in 1907.

First suggestion of an interim adoption order,

a system eventually enacted by the Adoption Act 1955. Hon Dr Finlay (Attorney General) "The system under our present Adoption Act is far from safe. I have had scores of cases in practice as a lawyer. The system is this: You go before the Magistrate and obtain the certificates required, and the Magistrate- probably he is a busy man - has not time, or has not, may be, the qualifications to decide as to the fitness of the adoptive parent. The thing is more or less perfunctory. There are some Magistrates who are to some extent inquisitive, but the thing is more or less perfunctory, and necessarily so. A lump sum is paid over, and thereafter the child must take its chance. The State has done with the child as soon as the order is made by the Magistrate. I think that is proper. The order should, I consider, be made in this way: I would not allow a Magistrate to make an absolute order at all. *The first order should be a conditional order.* This conditional order should be reviewed at the end of not less than six months by the Magistrate, and should not be confirmed unless upon a favourable report from the Education officer or the Education Minister. There you would have this protection: for *six or more months there is probation.* The child is with the adoptive parent. The Department can ascertain from time to time how that child is being taken care of, and whether the adoptive parent is really doing her duty or not, and at the end of that time you are in a position to say whether the life long interests of that child can be safely committed to that woman." NZPD Vol.140 p656 4/9/1907.

Debate extracts

Dr Finlay (Attorney-General)...s21...may call for some explanation. In certain cases of adoption the consent of the parents may be dispensed with. The Department have reported to me that sometimes a parent of notoriously bad character will refuse consent to adoption, and the child cannot be adopted by people who are ready to adopt it because of this refusal on the part of the parent." NZPD 8/11/1907 Council Vol.142 p619.

Hon Mr George..."There is doubt in my mind that hundreds of deaths have occurred from the system of paying

a small sum for the adoption of a child. In some instances it has absolutely become a trade, and there have been cases which we have seen in the Police Courts in which within a few months a woman who adopted a number of children has lost no less than two or three. But the Bill looks to me as if it were inclined to go a little bit too far on the question of adopted children. This bill, in section 19, repeals the Infant Life Protection Act of 1896. That was a fairly strict Act; but there was in it a clause in reference to the adoption of children which I shall move to insert in Committee- or, at any rate, a portion of it - as a proviso to clause 18. There are many instances where children have been adopted by relatives - that is, a child has been left an orphan, and relatives have adopted it. It is true this Bill only applies to persons who adopt children for the purpose of payment or reward, but clause 18 says, 'When any infant is adopted' the clause of the Bill shall apply." NZPD 8/11/1907 Council Vol.142 p619

Hon Dr Collins "It seems to me the Bill will have a very great effect in protecting infant life, and the fact that protection of infant-life being placed under the Education Department instead of the Justice Department is a very great improvement on the previous legislation." NZPD 8/11/1907 Council Vol.142 p620.

Stop Maori adoption?

In the House Committee debate there is curious contribution: "Mr Heke (Northern Maori) moved the addition of the following new clause: 'After to the coming into operation of this Act it shall not be lawful for any Maori to adopt the child of any other person.'" The Chairman ruled the clause out of order, as it had not been translated into Maori. Mr Heke moved, "That progress be reported in order to ask Mr Speaker's ruling as to whether the whole Bill should not also be translated into Maori." Vote For 22 Against 30 lost. NZPD 14/11/1907 House Vol.142 p888

INFANTS ACT 1908

NOTE THIS IS ONLY A CONSOLIDATION ACT
Consolidated Statute No.86 Part III S15-26 4/8/1908

[**Note consolidation** "Pursuant to 'The Reprint of Statutes Act, 1895,' Commissioners were appointed by His Excellency the Governor to prepare and arrange for publication an edition of the Public General Statutes of New Zealand: And whereas the said Commissioners have prepared and submitted to His Excellency a *revised and consolidated edition of two hundred and eight Acts...*the aforesaid revised and consolidated edition, has been transmitted to the Legislature...in order that the said edition may be enacted by the Legislature and the force of law be given thereto." The Act includes a list of the statutes consolidated, with new titles. Consolidated Statutes Enactment Act 1908 No.4. 4/8/1908]

15 Interpretation In this part of this Act, if not inconsistent with the context,

"*Adopted child*" means any child concerning whom an order of adoption has been made as herein provided:

"*Adopting parent*" means any person who is by any such order of adoption, as herein provided, authorised to adopt

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a child; and, in the case of an order being made in favour of a husband and wife on their joint application, means both husband and wife:

“*Child*” means any boy or girl under the age of fifteen years: [Amendment 1939 New definition, “Child means a person under the age of twenty-one years”. Statutes Amendment Act 1939 s34(1)]

“*Clerk of the Court*” means the Clerk of the District Court or Magistrate's Court, as the case may be, at which any application is made under this part of this Act:

[Amendment 1925 Words “of the District Court” omitted by District Courts Abolition Act 1925 s3]

[Amendment 1947 s18(2) The word “Registrar” substituted for “Clerk”. Magistrate's Courts Act 1947 s12.

“*Deserted child*” means any child who, in the opinion of the Judge dealing with such child under this Act, is deserted, and has ceased to be cared for and maintained but its parents, or by such one of them as is living, or by the guardian of such child, or by the mother of such child if the child is illegitimate:

“*Judge*” means a Judge of any District Court or a Magistrate: [Amendment 1925 Words “a Judge of and District Court” omitted by District Courts Abolition Act 1925 s3]

“*Prescribed*” means prescribed by rules made by the Governor under this Part of this Act.

[Note s15 re-enacts s2 of Adoption of Children Act 1895]

16 Adoption of female child On the application in writing, in the prescribed form, to a Judge by- (a) Husband and wife jointly; or by (b) A married woman alone, but with the written consent of her husband; or by (c) Any unmarried woman who is, in the opinion of the Judge, at least eighteen years older than the child; or by (d) Any unmarried man who is, in the opinion of the Judge, at least forty years older than the child,- an order of adoption of a female child may be made by the Judge in favour of the applicant, in the prescribed form and subject to the provisions of this Part of this Act.

[Note s16 re-enacts s3 of Adoption of Children Act 1895]

[Amendment 1942 “s17 As to adoption of children by unmarried persons less than forty years older than child: Notwithstanding the provisions of paragraph (d) of section sixteen of paragraph (d) of section seventeen of the principal Act an order of adoption may be made in any case to which either of those paragraphs relates where the applicant is less than forty years older than the child sought to be adopted if the Judge hearing the application considers that such an order should be made.” Statutes Amendment Act 1942 s17.

[Note s16 re-enacts s3 of Adoption of Children Act 1895]

17 By whom male child may be adopted On the application in writing, in the prescribed form, to a Judge by- (a) Husband and wife jointly; or by (b) A married man alone, but with the written consent of his wife; or by (c) Any unmarried man who is, in the opinion of the Judge, at least eighteen years older than the child; or by (d) Any unmarried woman who is, in the opinion of the Judge, at least forty years older than the child,-an order of adoption or a male child may be made by the Judge in favour of the

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applicant, in the prescribed form and subject to the provisions of this Part of this Act

[Note s17 re-enacts s4 of Adoption of Children Act 1895]

[Amendment 1942 (d) Discretionary powers now vested in Judge by s17 of Statutes Amendment Act 1942 see Amendment to s16 of 1908 Act on this page for full detail]

18 Consents required previous to adoption of child

(1) Before making such order of adoption, the Judge-

(a) May compel the attendance before him of any witness and for that purpose may sign, issue, and cause to be personally served upon the witness a summons in the prescribed form:

(b) Shall take evidence on oath *viva voce* or by affidavit, in proof of or concerning any fact, matter, or thing required by this Act or by the Judge to be proved:

(c) Shall be satisfied that the child is under the age of fifteen years; that the person proposing to adopt the child is of good repute, and a fit and proper person to have the care and custody thereof, and of sufficient ability to bring up, maintain, and educate the child; that the welfare and interests of the child will be promoted by the adoption; and that the consents required by this Act have been duly signed and filed:

(d) Shall be satisfied that the child, if over the age of twelve years, consents to the adoption:

(e) Shall require the consent in writing of the parents, whether living in or out of New Zealand, or such one of them as is living at the date of the application, or if both the parents are dead, then of the legal guardian of the child, or if one of the parents has deserted the child, then the consent of the other parent:

(f) Shall not require any such consent in the case of a deserted child.

(2) The affidavit referred to in paragraph (b) hereof may be sworn before any Judge, Magistrate, solicitor, Registrar or Deputy Registrar of the Supreme Court, Clerk of the Court, or any Justice.

[Note s18 re-enacts s5 of Adoption of Children Act 1895]

[Amendment 1939 s18.1(c) words “twenty-one years” substituted for “fifteen years”. Statutes Amendment Act 1939 s34(2)]

[Amendment 1942 “s18 When consent of infant to adoption may be dispensed with Notwithstanding anything to the contrary in section eighteen of the principal Act, if the Judge making an order of adoption of any child over the age of twelve years is satisfied that it would not be desirable to require the consent of the child to the adoption, he may, if he thinks fit, dispense with the consent of the child.” Statutes Amendment Act 1942 s15]

[Amendment 1943 Consent for adoption when both parents are dead and no guardian Addition to s18. by Statutes Amendment Act 1943 No.20 s17. Provisions as to consent to adoption where there is no parent or guardian.

“**Infants: 17(1)** This section shall be read together with the Infants Act, 1908 (in this section referred to as the principal Act), and shall be deemed to form part of Part III of that Act.

(2) Notwithstanding the provisions of section eighteen of the principal Act, if the Judge making an order of adoption of any child is satisfied that both the parents of the child are dead and that there is no legal guardian of the child, he may dispense with the consents required by paragraph (e) of subsection one of that section: Provided that in any such case the Judge shall be satisfied that the Superintendent of the Child Welfare Branch of the Department of Education consents to the adoption". 1943 Statutes Amendment Act No.20 s17. Prior to this amendment, if both parents were dead and there was no legal guardian, anyone wanting to adopt the child would have to apply to the Supreme Court to appoint a guardian for the purpose of consenting to the adoption. *Repealed and replaced by Statutes Amendment Act 1951 No.81 s15*

Explanatory note to Bill "Clause 17: Provision as to consent to adoption where no parent or guardian. The Infants Act, 1908, requires that before an adoption order can be made written consent to the adoption must be obtained from the parents or the legal guardian. Difficulties have arisen in cases where both parents are dead and there is no legal guardian to give consent. This clause will enable these difficulties to be overcome, the Superintendent of the Child Welfare Branch being for the purpose of consent placed in the position of a legal guardian." Statutes Amendment Bill.No.34-1 Nil debate.

[Amendment 1947 s18(2)] The word "Registrar" substituted for "Clerk". Magistrate's Courts Act 1947 s12]

[Amendment 1947 "Modifying provisions as to consent to adoption of child 26

(1) For the purposes of section eighteen of the Infants Act, 1908 (which relates to the consents required before the adoption of a child), the term "parents"- (a) In the case of an illegitimate child, shall be deemed not to include the natural father of the child: (b) In the case of a child that has previously been adopted by an adoption order which is still in force, shall be deemed to mean the adoptive parent or parents of the child for the time being, and not to include the natural parents of the child or his adoptive parents under any previous adoption that is not for the time being in force.

(2) Notwithstanding anything in subsection one of this section, the Judge may in any case require the consent of any such natural father, natural parent, or adoptive parent if in his opinion it is expedient in the special circumstances of the case so to do.

(3) Where a second or subsequent adoption order is made in respect of the same child the second or subsequent adoption order shall be deemed to vacate any previous order.

(4) No adoption order made before the passing of this section in respect of a child shall be invalid because a previous order in respect of that child had not been discharged." Statutes Amendment Act 1947 s26.]

[Amendment 1951 "s15

(1) **Consents required before adoption** Section eighteen of the Infants Act 1908 is hereby amended by adding to paragraph (e) of subsection one the following proviso:- "Provided that the Judge may dispense with the consent

required as aforesaid under this paragraph in any case where the Superintendent of the Child Welfare Division of Education consents to the adoption, and-

(i) Each parent of the child is dead or unknown or missing or of unsound mind and the child has no legal guardian who is living and of sound mind; or

(ii) A licence has been granted in respect of the child under section forty 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."

(2) Section seventeen of the Statutes Amendment Act 1943 is hereby consequentially repealed. Statutes Amendment Act 1951 s15(1)]

19 Child can be adopted by one person only Except by husband and wife, as hereinbefore mentioned, no child shall be adopted by more than one person.

[Note s19 re-enacts s of Adoption of Children Act 1895]

20 Adopting parent not to receive premium It shall not be lawful for any person adopting a child under this Act to receive any premium or other consideration in respect of such adoption, except with the consent of the Judge. **[Note s20 re-enacts 1906 Adoption of Children Amendment Act No.37 s2]**

21 Adopted child to have legal status of legitimate child (1) Such order of adoption shall confer the name of the adopting parent on the adopted child, in addition to the proper name of the child; and the adopted child shall for all purposes, civil and criminal, and as regards all legal and equitable liabilities, rights, benefits, privileges, and consequences of the natural relation of parent and child, be deemed in law to be the child born in lawful wedlock of the adopting parent:

Exception Provided always that such adopted child shall not by such adoption- (a) Acquire any right, title, or interest in any property which would devolve on any child of the adoptive parent by virtue of any deed, will, or instrument prior to the date of such order of adoption, unless it is expressly so stated in such deed, will, or instrument; nor (b) Be entitled to take property expressly limited to the heirs of the body of the adopting parent, nor property from the lineal or collateral kindred of such parent by right of representation: nor (c) Acquire any property vested or to become vested in any child of lawful wedlock of the adopting parent in the case of the intestacy of such last-mentioned child, or otherwise than directly through such adopting parent.

(b) Be entitled to take property expressly limited to the heirs of the body of the adopting parent, nor property from the lineal or collateral kindred of such parent by right of representation: nor (c) Acquire any property vested or to become vested in any child of lawful wedlock of the adopting parent in the case of the intestacy of such last-mentioned child, or otherwise than directly through such adopting parent.

(2) **Adopting parent to have legal status of natural parent** Where such order of adoption has been made, the adopting parent shall for all purposes, civil, criminal, or otherwise, be deemed in law to be the parent of such adopted child, and be subject to all liabilities affecting such child as if such child has been born to such adopting parent in lawful wedlock; and such order of adoption shall thereby terminate all the rights and legal responsibilities and incidents existing between the child and his natural; parents, except the right of the child to take property as heir or next of kin of his natural parents directly or by right of representation.

[**Note:** s21 consolidates s7,8, and 12 of Adoption of Children Act 1895]

[**Amendment 1925** Words in s21(1) “in addition to the proper name of the child” substituted by “with such proper of Christian name as the Judge, on the application of the adopting parents, may fix” Child Welfare Act 1925 s42]

[**Note 1947 Effect of 2nd or subsequent adoption Statutes Amendment Act 1947 s26(3-4)** “(3) Where a second or subsequent adoption order is made in respect of the same child the second or subsequent adoption order shall be deemed to vacate any previous order.

(4) No adoption order made before the passing of this section in respect of a child shall be invalid because a previous order in respect of that child had not been discharged.”]

[**1st Repeal 1949** Whole s21 was repealed and substituted by a new s21 by Statutes Amendment Act 1949 s27 as printed on page...of this book...See new section 21]

[**2nd Repeal 1950** The whole of new s21 was repealed and substituted by a new s21 by Infants Amendment Act 1950 s2 as printed on page...of this book- see new s21]

22 Order may be reversed or discharged

(1) Any Judge for the time being exercising jurisdiction within the district where any order of adoption was made, whether by himself or by any other Judge, may in his discretion vary, reverse, or discharge such order, subject to such terms and conditions as he thinks fit.

(2) Where an order of adoption is discharged, then, subject to the conditions (if any) named in the discharging order, the child and its natural parents shall be deemed for all purposes to be restored to the same position *inter se* as existed immediately before the order of adoption was made. Provided that such restoration shall not effect anything lawfully done whilst an order of adoption was in force.

[**Note** s22 consolidates s9 of Adoption of Children Act 1895 and s3 of Statutes Law Amendment Act 1906]

[**Amendment 1950** The original s22(2) was repealed by s4 of Infants Amendment Act 1950, subs (2),(3) and (4) substituted. “**s4. Discharge of adoption order** Section twenty-two of the Principal Act is hereby amended by repealing subsection two, and substituting the following subsections:-

(2) Where a Judge discharges any order of adoption as aforesaid he may confer on the person to whom the order related such name with such proper or Christian name as the Judge thinks fit; but, if he does not do so, the names of the child shall not be affected by the discharge of the order.

(3) Where an order of adoption is discharged after the commencement of this section, the relationship to one another of all persons (whether the adopted child, the adoptive parents, the natural parents, or any other persons) shall be determined as if the order of adoption had not been made:- Provided that the discharge of the order shall not affect anything lawfully done or the consequence of anything lawfully done while the order was in force; -Provided also that, for the purpose of any deed or instrument (other than a will) made while the order was in force, or of the will

or intestacy of any testator or intestate who died while the order 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 shall be deemed to continue in force.

(4) Where an order of adoption has been discharged before the commencement of this subsection, the effect of the discharge shall be determined by reference to the law existing on the date of the discharge.” Infants Amendment Act 1950 No.18 s4.(2),(3) and (4)]

23 Cases of dispensing parents consent

(1) Notwithstanding anything in section eighteen hereof, if the Judge making an order of adoption of any child is satisfied that any parent or guardian of the child is for any reason unfit to have custody or control of the child, and that notice for the application for the order of adoption has been given to such parent or guardian, the said Judge may, if he thinks fit, in making the said order dispense with the consent of such parent or guardian.

(2) Any parent or guardian whose consent is thus dispensed with may, within one month after the making of the order of adoption, make application to any Judge of the Supreme Court, on notice to the adopting parent or parents, to discharge such order, and the said Judge may in his discretion discharge such order accordingly on such terms as he thinks fit.

(3) Any such discharge shall have the same effect as a discharge made under section twenty-two hereof.”

[**Note** s23 re-enacts s21 of Infant Life Protection Act 1907]

[Amendment 1941 “Service of application for adoption order on mentally defective person

In any case where a mentally defective person is a parent or guardian of a child in respect of whom an application for an order of adoption has been made under Part III of the Infants Act, 1908, service of notice of the application on the committee of the parent or guardian, if one has been appointed, or on the person who whom the parent or guardian resides or under whose care he is shall, unless a Magistrate otherwise orders, be deemed sufficient service thereof for the purposes of section twenty-three of that Act.” Statutes Amendment Act 1941 No.26 s36]

24 (1) Adoption in connection with benevolent or other institutions

On the application in writing of the manager for the time being of any benevolent or other institution established in connection with any religious denomination, and not maintained by Government subsidy, who is desirous of adopting any deserted child in connection with such institution, the Judge usually exercising jurisdiction in the district wherein such institution is situated, on being satisfied-

(a) That such child is deserted;

(b) That such child is of the same religious denomination as that of the institution whose manager makes the application; and

(c) That such institution is properly conducted, and is capable of properly bringing up such child,- may make an order authorising the manager for the time being of such

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institution to adopt such child in connection with such institution, such child retaining his or her own name, and in no manner inheriting or succeeding to any property, or otherwise howsoever, of such manager or institution.

(2) Sections nineteen and twenty one hereof shall not to apply to the case of any child adopted under this section, except as to the determination of all rights of the child's natural parents, and as to the rights of the child to take property, as respectively stated in section twenty-one hereof: Provided that such child shall be entitled to the support, maintenance, and advancements afforded by such institution, and in all other such rights, benefits, privileges, and advantages appertaining thereto, all which it shall be the duty of the person or body managing or controlling the said institution to provide.

[**Note** s24 re-enacts s10 Adoption of Children Act 1895]

[**Repeal 1925** s24 repealed by Child Welfare Act 1925 s48(3) & 3rd Schedule. Ended adoptions by institutions.]

25 Power to make rules The Governor may from time to time make such rules as he thinks fit prescribing the forms and mode of procedure to be used in exercising the jurisdiction hereby conferred upon any Judge, and prescribing the mode of registering and keeping a proper register of all orders made under this Part of this Act, and also prescribing the fees to be paid in respect of such procedure, registration, and otherwise, and generally giving full effect to this Part of this Act.

[**Note** s25 re-enacts s13 Adoption of Children Act 1895]

26 Marriage law not affected Nothing in this Part of this Act shall be construed to authorise any marriage that could not lawfully have been contracted if this Act had not been passed. [**Note** s26 re-enacts s2 Statutes Law Amendment Act 1906]

Part 5 Infants Act “Infant’s Homes” applies to adopted children s56 Act to apply to adopted children “When any infant is adopted under Part III of this Act, the provisions of this Part V of this Act shall apply to such infant and to the person or persons adopting the same in the same manner and to the same extent as if no such adoption had taken place.” Infants Act s56 1908.

[**Note** Part V is the section ‘Infant's Homes’ is a consolidation of the Infant Life Protection Act 1907 No.42]

Acts Consolidated in Part III Infants Act 1908 No.86

1895 No.8 The Adoption of Children Act

1906 No.37 Adoption of Children Act Amendment Act

1906 No.58 The Statutes Law Amendment Act. s2+3

1907 No.42 The Infant Life Protection Act

Infants Act Part III plus s56 Repealed by Adoption Act 1955 s30. The complete Infants Act 1908 was repealed by the Infants Act Repeal Act 1989 No.145 19/12/1989

Rules Infants Act 1908 part III

Gazette. 22/2/1912. **1** Every application under section 16 or section 17 of the said Act shall be in the Form 1 in the First Schedule hereto, or as near thereto as circumstances will permit, and shall be signed by the applicant or the applicants in the presence of and shall be attested by a

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Stipendiary Magistrate, Justice of the Peace, Clerk of Court, or solicitor. Every application under section 24 of the said Act shall be in form No.2 in the said Schedule, or to the effect thereof, and shall be signed and attested as aforesaid. [*See Rule 1A 1912 original birth certificate*]

2 Every such application and every other application made to a Magistrate under Part III of the said Act shall be filed in the Court, and the Clerk of the Court shall keep a register in the Form No.3 in the First Schedule hereto, wherein particulars of all documents filed in each application for an adoption order shall be entered in numerical order.

3 On the filing of an application under these rules the Magistrate shall appoint some convenient place and time for the hearing of the same, and shall indorse on the application and sign a memorandum of such appointment in the form N.4 in the First Schedule hereto.

4 The Clerk of the Court shall cause written notice of the place and time so appointed to be served upon the applicant or applicants forty-eight hours at least before the time appointed for the hearing. Such notice shall be signed either by the Clerk or by the Magistrate to whom the application is made, and shall be served personally unless the Magistrate in his direction otherwise directs.

5 The consent in writing of the parents or parent or legal guardian of the child proposed to be adopted shall be in the form No.5 or the form No.6 in the First Schedule hereto (as the case may require), and shall be signed, attested, and filed in the same manner as applications are required by these rules to be signed, attested, and filed.

6 A summons for the attendance of a witness at the hearing of an application under these rules shall be in the form No.7 in the First Schedule hereto or to the effect thereof, and shall be signed either by the Clerk of the Court or by any Justice of the Peace. The summons shall be served personally on the witness, and may in necessary contain a clause requiring the witness to produce any books, papers, writings, or other documents in his possession or under his control.

7 The applicant or applicants and the child proposed to be adopted shall attend personally before the Magistrate on the hearing of the application, unless the Magistrate in his discretion dispenses with such personal attendance.

8 (1) Every application under section 16 or section 17 of the said Act shall be supported by an affidavit by some reputable and well known person in the form No.8 in the First Schedule hereto or to the effect thereof, and such affidavit shall be filed in the Court with the application to which it relates. **(2)** And evidence taken *viva voce* upon oath by the Magistrate on the hearing of any application under Part III of the said Act or these rules shall be reduced to writing by the Magistrate or the Clerk of the Court, signed by the witness, and filed by the Clerk of the Court.

9 The Magistrate may adjourn the hearing of the application to such place and time as he considers necessary or convenient.

10 An order of adoption under section 16 or section 17 of the said Act shall be in the form No.9 in the First Schedule hereto, or as near thereto as circumstances will permit.

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11 An order of adoption under section 24 of the said Act shall be in the form No.10 in the First Schedule hereto, or as near thereto as circumstances will permit.

12 The Clerk of the Court shall keep with the papers in the proceedings a duplicate of every order made under Part III of the said Act and these rules.

13 Any person desirous of obtaining the variation, reversal, or discharge of an order of adoption made under the said Act shall apply in writing to the Magistrate exercising jurisdiction in the district where the said order was made, and shall forthwith serve a copy of that application upon such persons as the Magistrate orders. Such application shall set forth the grounds upon which the variation, reversal, or discharge of the order is sought, and shall be signed, attested, and filed in the same manner as an application under Rule 1 hereof.

14 Upon the filing of the application the Magistrate shall, by memorandum under his hand indorse on the application, appoint a convenient place and time for hearing the application. Such memorandum shall be in form No.4 in the First Schedule hereto.

15 The Clerk of the Court shall cause written notice of the place and time so appointed to be served upon the applicant or applicants forty-eight hours at least before the time appointed for the hearing. Such notice shall be signed either by the Clerk or by the Magistrate to whom the application is made, and shall be served personally unless the Magistrate in his discretion otherwise directs.

16 The Magistrate hearing such application may take evidence thereon either *viva voce* or in writing, and on oath or otherwise as he thinks fit.

17 In all cases where an order is varied, reversed, or discharged, a memorandum of such variation, reversal, or discharge shall be written across the face of the registered copy of the order, and shall be signed by the Magistrate.

18 Every person interested may upon hearing of any application under Part III of the said Act or these rules appear personally or by a solicitor.

19 The fees specified in the Second Schedule hereto shall be payable in respect of the several matters mentioned in that Schedule: Provided that the Magistrate may, by memorandum under his hand indorse on the application or other document, remit the said fees or on them, or reduce the amount thereof, in any case where in his opinion there are reasonable grounds for remitting or reducing the same.

20 The rules of procedure under the Adoption of Children Act 1895, dated 26/11/1895, and published in the Gazette of the 28/11/1895, at page 1889 are hereby revoked.

First Schedule 1908 Act

Form No.1 Application for adoption order In the matter of Part III of the Infants Act 1908; and in the matter of an application by...to adopt...To...Esq., Stipendiary Magistrate at...We [I] [Full name or names], of [Address], in the Dominion of New Zealand [Occupation], and...wife of the said...do hereby apply to adopt as our [my] child [Full name of child], a [Sex, State whether legitimate or illegitimate] child, born on or about the...day of...19...whose

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mother is [Full name], of [Address]. Dated at...this...day of...19...[Signatures] [Witness to signatures] (Note Witness may be a Stipendiary Magistrate, Justice of Peace, Clerk of Court, or solicitor.)

Form No.2 Application adoption order institutional

In the matter of Part III of the Infants Act 1908; and in the matter of an application by...to adopt...To...Esq Stipendiary Magistrate at...I [Full name], the manager for the time being of [Designation of institution], situated at...in the Dominion of New Zealand, and established in connection with the...religious denomination, which institution is not maintained by Government subsidy, do hereby apply in connection with the said institution [Full name of child], a [Sex, State whether legitimate or illegitimate] deserted child, born on or about the...day of...19...whose mother is [Full name], of [Address]. Dated at...this ...day of...19... [Signatures] [Witness to signatures.] (Note- Witness may be a Stipendiary Magistrate, Justice of Peace, Clerk of Court, or solicitor.)

Form No.3 Court register of documents filed In the matter of Part III of the Infants Act, 1908; and in the matter of an application by...to adopt...Register of Documents ...Filed. Date...File No...Nature of Document

Form No.4 Notification of hearing (*To be indorsed on Forms Nos. 1 and 2*) In the matter of Part III of the Infants Act, 1908; and in the matter of an application by...to adopt ...Upon reading the within application, I hereby appoint ...as the place, and ...the...day of...19...at...o'clock in the ...noon, as the time, for hearing the said application. Dated this...day of...19... ...Stipendiary Magistrate.

Form No.5 Consent to order of adoption I [We], [Full name or names], of [Address], [Occupation], [one of] the parents of...a [Sex, State whether legitimate or illegitimate] child, born on the...day of...19...hereby consent to an order being made under Part III of the Infants Act, 1908, for the adoption of the said...by...of...and...his wife [*or as the case may be*]. Dated at...his...day of...19...Signature and signature of witness. (Note Witness may be a Stipendiary Magistrate, Justice of Peace, Clerk of Court, or solicitor.)

Form No.6 Consent to order of adoption I [Full name, address, and occupation], being the legal guardian of...a [Sex, State whether legitimate or illegitimate] child, born on or about the...day of...19...do hereby consent to an order being made under Part III of the Infants Act, 1908, for the adoption of the said...by...of...and...his wife [*or as the case may be*]. Dated at...this...day of...19...Signature and signature of witness. (Note- Witness may be a Stipendiary Magistrate, Justice of Peace, Clerk of Court, or solicitor.)

Form No.7 Summons to a witness To [Name in full, description, and residence of witness]. You are hereby commanded to attend before the Magistrate in Chambers at the Magistrate's Court at...on...the...day of...noon, 19...at the hour of...noon, to give evidence on behalf of [State name of party requiring evidence of witness], [and then and there to have and produce (*state any particular documents required*) and all other books, papers, writings, and other documents relating to the said matter which may be in your custody, possession, or power. Herein fail not at your peril.

Given under my hand and the seal of the Court at...day of...19...Clerk of the Court, or Justice of the peace.

Form No.8 Affidavit support of adoptive parents In the matter of Part III of the Infants Act, 1908; and in the matter of an application by...to adopt...I...of...make oath and say as follows: That I know the said...and the said...they are of good repute, that I believe them to be fit and proper person to have the care and custody of the said...that they are of sufficient ability to bring up, maintain, and educate the said child, and that the welfare and interests of the said child will be promoted by the adoption. Sworn at...this...day of...19...before me...Justice of the Peace or Clerk of Court, or Solicitor.

Form No.9 Order of adoption under section 16 or 17 In the matter of Part III of the Infants Act, 1908; and in the matter of an application by...to adopt. Order of Adoption under Section 16 or 17. Whereas on the...day of...19...an application, under section...of the Infants Act, 1908, was duly filed in the Magistrate's Court at...by...of...and...his wife, for an order to adopt...a (*sex*) [*State whether legitimate or illegitimate*] child, born on the...day of...19... And whereas all the conditions and requirements of the said Act and the rules made thereunder relating to the adoption of children have been duly complied with and fulfilled, and I am satisfied of the several matters of which by the said Act I am required to be satisfied: Now, therefore, I, ...Stipendiary Magistrate, do hereby order and adjudge that the said...male...child named...may be and is hereby adopted by the said...and...his wife, and each of them, under section 16 [*or section 17*] of the said Act as from the date hereof, and shall thenceforth bear the name of ... Given under my hand, at...this...day of...16... ..Stipendiary Magistrate.

Form No.10 Order of adoption section 10 Institutional In the matter of Part III of the Infants Act, 1908; and in the matter of an application by...to adopt... Order of Adoption under Section 24. Whereas on the.. day of...19...an application, under section 24 of the Infants Act, 1908, was duly filed in the Magistrate's Court at...by...manager of the [*Designation of institution*], situated at...and established in connection with the...religious denomination...and order to adopt a...male...deserted child, born on or about the...day of...19...And whereas all the conditions and requirements of the said Act and the rules made thereunder relating to the adoption of children have been duly complied with and fulfilled, and I am satisfied of the several matters of which by the said Act I am required to be satisfied: Now, therefore, I...Stipendiary Magistrate, do hereby order and adjudge that the said...male...deserted child named...may be and is hereby adopted by the said... in connection with the said institution, under section 24 of the said Act as from the date hereof, and shall thenceforth bear the name of...Given under my hand, at...this...day of...16... ..Stipendiary Magistrate.

[Amendment 1942 "Form of order of adoption of illegitimate child

(1) No order of adoption made after the passing of this Act shall state whether or not the child therein referred to is an illegitimate child

(2) Notwithstanding anything to the contrary in the principal Act or in any rules made thereunder, no order of adoption shall be deemed to be or to have been invalid by reason only that it failed to state whether the child therein referred to was legitimate or illegitimate. Statutes Amendment Act. 1942 No.18 s16]

Second Schedule 1908 Act Fees in respect of proceedings under Part III of the Infants Act 1908, in respect of the Adoption of Children. Filing application, affidavit or stat declaration 0-2-0. Filing any consent 0-2-0. Appointment for hearing of any application 0-3-0. Hearing an application 0-5-0. Filing *viva voce* evidence on oath each witness 0-2-0. Filing any document not otherwise provided 0-2-0. Adoption order, including seal and filing 0-12-0. Every duplicate order, including seal 0-2-0. Registering memorandum of discharge of order 0-3-0. Summons for witness 0-2-0. Swearing each witness 0-2-0. Service of any notice, appointment, summons, order or other document: 1s per mile for one way from Courthouse. As witness the hand of His Excellency the Governor, this thirteenth day of February, one thousand nine hundred and twelve. D. Duddo. For Minister of Justice. *Date 13/2/1912 Gazette 22/2/1912.*

1916 Additional rule Infants Act 1908

Original Birth Certificate required Part III of Infants Act, 1908. Additional Rule relating to the Adoption of Children. **Schedule "1a** Every such application shall be accompanied by a certified copy of the entry of the registration of the birth of the child referred to therein." As witness the hand of His Excellency the Governor, this twentieth day of September, one thousand nine hundred and sixteen. Robert McNab. Minister of Justice. *Dated 20/9/1916. Gazette 28/9/1916 p3139.*

1940 Additional rule Infants Act 1908

Authority to transfer Court adoption records to Registrar-General "Rule: Notwithstanding anything contained in the rules made under Part III of the Infants Act 1908, on the 13th day of February, 1912, the Minister of Justice may from time to time direct in writing that any specified records in any Court or Courts shall be transferred for safe custody to the office of the Registrar-General, and the person having the custody of any such records shall upon the receipt of such direction forthwith deliver the said records to the Registrar-General. The Registrar-General shall be deemed to be the officer having the proper custody of any records entrusted to him in pursuance of any such direction. As witness the hand of His Excellency the Governor-General, this 18th day of October 1940. H. Mason. Minister of Justice." *SR1940/270 Dated 18/10/1940. Gazette 24/10/1940. [Order all court adoption records prior to 1/1/1916 transferred to Registrar-General. Gazette 1941 p820*

Births & Deaths Registration Amendment Act 1915

Statute No.56 11/10/1915 s8 Special provisions as to re-registration of adopted children

(1) Whenever an order of adoption is made under Part III of the Infant's Act. 1908, it shall be the duty of the Clerk of the Court by which such order was made forthwith to send to the Registrar-General notice, in the prescribed form, setting forth the following particulars so far as they are known to the Court:

- (a) The full name of the child as before the making of the order;
- (b) The date and place of birth of the child;
- (c) The sex of the child;
- (d) The names, address, and occupation of the natural parents of the child;
- (e) The name or names and the occupation and address of the adopting parent or adopting parents.
- (f) The name of the Judge by whom the order of adoption was made, and the date of the order; and
- (g) Such other particulars as may be prescribed.

(2) On receipt of such particulars the Registrar-General shall, if the duplicate of the entry as to the birth of the child has been transmitted to him pursuant to section twelve of this principal Act, forthwith note and sign on such duplicate a memorial in the following form namely, "Order of adoption of [Name of child] dated the...day of...19...made by [Name of Judge], in favour of [Name or names, address, and occupation of adopting parent or adopting parents]."

(3) The Registrar-General shall in every case forthwith send to the Registrar by whom the birth was registered a copy of the notice received by him from the Clerk of the Court; and the Registrar shall forthwith note and sign on the original entry as to the birth of the child, and on the duplicate entry in cases where the duplicate has not been transmitted to the Registrar-General, a memorial in the form prescribed by the last preceding subsection; and shall also reregister, in duplicate, particulars as to the birth of the child, substituting the name by adoption for the natural name of the child, and substituting particulars as to the adopting parent or parents for particulars as to the natural parents; and shall transmit the duplicate of such entry to the Registrar-General as if it were a duplicate of an entry made by him pursuant of section eleven of the principal Act.

(4) When ever a copy of the entry as to be birth of any child to whom this section relates is required for any purpose the Registrar or the Registrar-General, as the case may be, shall supply a copy of the entry made pursuant to the last preceding subsection in lieu of a copy of the original entry unless the applicant certifies that the particulars recorded in the original entry are material for the purpose for which the copy is required.

(5) Nothing in this section shall be deemed to dispense with the obligation to register the birth of any child in the manner prescribed by the principal Act.

(6) The foregoing provisions of this section, relating to the registration of particulars as to adopted children, shall apply in the case of children in respect of whom orders of

adoption under Part III of the Infants Act 1908, or the corresponding provisions of any former Act have been made before the passing of this Act if the Registrar-General is satisfied, by certificate made under the hand of the Clerk of the Court or otherwise, as to the truth of the particulars required to be registered." *Repealed by Births & Deaths Registration Act 1924 s61.*

Debate Re-registration of adoptee birth entry

When the Births & Deaths Registration Amendment Bill 1915 was debated, Mr Lee (Oamaru) proposed that a totally new clause be added to the Bill. The effect was, when an adoption took place the adoptee's birth would be re-registered in the adoptive parents names and the adoptee's new names. A certified copy of the re-registered entry could be issued as a birth certificate to adoptees.

To avoid the stigma of illegitimacy

was the purpose of the legislation as stated in the debate. It was never intended as a means of concealing truth of origins from the adoptee but to provide a "clean certificate" in the new adoptive names to avoid embarrassment to the adoptee. Prior to 1915 the only birth certificate of an adoptee was their original one with their birth names and birth parents names. The proposal was agreed to and became s8 of the Births & Deaths Registration Act 1915. NZPD. House 26/8/1915. Vol. p164. Therefore, since 1915 all adoptees have two birth entries, the original, and the re-registered entry.

Births & Deaths Registration Act 1924

Statute No.13 6/10/1924 Consolidation Reprint. s27 Special provisions as to re-registration of adopted children

(1) Whenever an order of adoption is made under Part III of the Infant's Act. 1908, it shall be the duty of the Clerk of the Court by which such order was made forthwith to send to the Registrar-General notice, in the prescribed form, setting forth the following particulars so far as they are known to the Court:-

- (a) The full name of the child as before the making of the order;
- (b) The date and place of birth of the child;
- (c) The sex of the child;
- (d) The names, address, and occupation of the natural parents of the child;
- (e) The name or names and the occupation and address of the adopting parent or adopting parents.
- (f) The name of the *Stipendiary Magistrate* by whom the order of adoption was made, and the date of the order; and
- (g) Such other particulars as may be prescribed.

(2) On receipt of such particulars the Registrar-General shall, if the duplicate of the entry as to the birth of the child has been transmitted to him pursuant to section thirteen of this Act, forthwith note and sign on such duplicate a memorial in the following form- namely, "Order of adoption of [Name of child] dated the...day of...19...made by [Name of Magistrate], in favour of [Name or names, address, and occupation of adopting parent or adopting parents]."

(3) The Registrar-General shall in every case forthwith

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send to the Registrar by whom the birth was registered a copy of the notice received by him from the Clerk of the Court; and the Registrar shall forthwith note and sign on the original entry as to the birth of the child, and on the duplicate entry in cases where the duplicate has not been transmitted to the Registrar-General, a memorial in the form prescribed by the last preceding subsection; and shall also re-register, in duplicate, particulars as to the birth of the child, substituting the name by adoption for the natural name of the child, and substituting particulars as to the adopting parent or parents for particulars as to the natural parents; and shall transmit the duplicate of such entry to the Registrar-General as if it were a duplicate of an entry made by him pursuant of section eleven of the principal Act.

(4) When ever a copy of the entry as to be birth of any child to whom this section relates is required for any purpose the Registrar or the Registrar-General, as the case may be, shall supply a copy of the entry made pursuant to the last preceding subsection in lieu of a copy of the original entry *unless the applicant certifies that the particulars recorded in the original entry are material for the purpose for which the copy is required.*

(5) Nothing in this section shall be deemed to dispense with the obligation to register the birth of any child in the manner prescribed by the principal Act.

(6) The foregoing provisions of this section, relating to the registration of particulars as to adopted children, shall apply in the case of children in respect of whom orders of adoption under Part III of the Infants Act 1908, or the corresponding provisions of any former Act *were made before the eleventh day of October, nineteen hundred and fifteen (being the date of the passing of the Births and Deaths Registration Amendment Act, 1915)*, if the Registrar-General is satisfied, by certificate made under the hand of the Clerk of the Court or otherwise, as to the truth of the particulars required to be registered.” Births & Deaths Registration Act 1924 No.13 s27

Note This s27 replaces the Births & Deaths Registration Amendment Act 1915 s8. The words in italics (other than in the Form subs(2)) are the wording changed from Births & Deaths Registration Amendment Act 1915 s8(1-6).

Nil debate on above adoption related clauses. *Repealed by Births & Deaths Registration Act 1951 No.22 s53.1/12/1951.*

Child Welfare Act 1925

Statute No.22 1/10/1925. **s42 Change of name of adopted child** Section twenty-one of the Infants Act 1908, is hereby amended by omitting from subsection one the words “in addition to the proper name of the child”, and substituting the words “with such proper or Christian name as the Judge, on the application of the adopting parent, may fix”. Third schedule Repealed s24 of Infants Act 1908. That part referring to Adoption by Institutions.

Statute Amendment Act 1939

Statute No.39 1710/1939 **s34 Amendment of definition of “child” in respect of adoption of children**

XXX

(1) Section fifteen of the Infants Act, 1908, is hereby amended by omitting from the definition of the term “child” the words “boy or girl under the age of fifteen years”, and substituting the words “person under the age of twenty-one years”.

(2) Section eighteen of the Infants Act, 1908, is hereby amended by omitting from paragraph (c) of subsection one the words “twenty-one years”. *Repealed by Adoption Act 1955.*

Statutes Amendment Act 1941

Statute No.26 17/10/1941 “**s36 Service of application for adoption order on mentally defective person** In any case where a mentally defective person is a parent or guardian of a child in respect of whom an application for an order of adoption has been made under Part III of the Infants Act, 1908, service of notice of the application on the committee of the parent or guardian, if one has been appointed, or on the person who whom the parent or guardian resides or under whose care he is shall, unless a Magistrate otherwise orders, be deemed sufficient service thereof for the purposes of section twenty-three of that Act”. *Repealed by Adoption Act 1955.*

Explanation in Bill “Difficulty arises where a parent of the child is in a mental hospital and consequently cannot give consent to the child's adoption or be served with notice of the application. This clause will enable the parent's consent to be dispensed with and an adoption order to be made in such a case if in all the circumstances the Magistrate thinks fit to made an order.”

Statutes Amendment Act 1942

Statute No.18 26/10/1942 “**s14 Infants** This section and the next three succeeding sections shall be read together with the Infants Act, 1908 (in those sections referred to as the principal Act), and shall be deemed to form part of Part III of that Act.

15. When consent of infant to adoption may be dispensed with Notwithstanding anything to the contrary in section eighteen of the principal Act, if the Judge making an order of adoption of any child over the age of twelve years is satisfied that it would not be desirable to require the consent of the child to the adoption, he may, if he thinks fit, dispense with the consent of the child.

16 Form of order of adoption of illegitimate child (1) No order of adoption made after the passing of this Act shall state whether or not the child therein referred to is an illegitimate child.

(2) Not withstanding anything to the contrary in the principal Act or in nay rules made thereunder, no order of adoption shall be deemed to be or to have been invalid by reason only that it failed to state whether the child therein referred to was legitimate or illegitimate.

17 As to adoption of children by unmarried persons less than forty years older than child Notwithstanding the provisions of paragraph (d) of section sixteen of paragraph (d) of section seventeen of the principal Act an order of adoption may be made in any case to which

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either of those paragraphs relates where the applicant is less than forty years older than the child sought to be adopted if the Judge hearing the application considers that such an order should be made. *Repealed by Adoption Act 1955.*

Explanation in Bill

“Clause 15...In certain circumstances it may, in the child’s own interests, be undesirable to have to discuss the adoption proceedings with the child. This clause will authorize the Magistrate, if he thinks fit, to make an adoption order in such a case without obtaining the consent of the child. c16...The purpose of this clause is to settle doubts which have been raised (in view of the wording of certain rules under the Infants Act, 1908), as to the validity of the practice of omitting the reference to legitimacy provided for in the form of adoption order used for some years past. c17...The purpose of this clause is to give the Judge hearing the application a discretion in the matter.”

Debate

The only debate on s14-17 took place in the Legislative Council 21/10/1942. In a lively debate Hon Mr Bloodworth (Auckland) demanded an explanation why the older adoptee, now up to 20 years old should not be consulted and consent to the adoption. He also felt that discretion might be right with a Judge but had doubts about Magistrates. Hon Mr Archer (Canterbury) also agreed and raised questions about adoption older children without their knowledge, and name changes without them knowing. Hon Mr Wilson (Wellington) took a contra view- that it may not be in the interests of an illegitimate child to be told the truth, ignorance of their illegitimacy and adoption may be in the interests of older child who has not been told by the parents. NZPD Vol.261.pp847,850-856

Statutes Amendment Act 1943

Statute No.20 26/8/1943 Births & Deaths Registration.

s2 Registration of birth of child adopted in N.Z when birth not in N.Z.

(1) This section shall be read together with and deemed part of the Births and Deaths Registration Act, 1924 (in this section referred to as the principal Act).

(2) In any case where an order of adoption is made under Part III of the Infants Act, 1908, in respect of a child whose birth is not registered in New Zealand, the Registrar-General, upon being satisfied as to the correctness of the particulars necessary for the proper registration of the birth of the child, shall send to the Registrar at Wellington a copy of the notice received by him from the Clerk of the Court under section twenty-seven of the principal Act; and that Registrar shall register, in duplicate, particulars as to the birth of the child, stating the name by adoption instead of the natural name of the child, and stating particulars as to the adopting parent or parents instead of particulars as to the natural parents; and shall transmit the duplicate of the entry to the Registrar-General as if it were a duplicate of an entry made by him pursuant to section twelve of the principal Act.

XXX

(3) The Registrar-General may if he thinks fit direct registration to be effected in accordance with the provisions of the last preceding subsection in any case where an adoption order has been made before the passing of this Act under Part III of the Infants Act, 1908, of the corresponding provisions of any former Act, in respect of a child whose birth is not registered in New Zealand.” *S2 repealed by Births & Deaths Registration Act 1951 s53.*

Statutes Amendment Act 1947

Statute No.60 27/11/1947 “s26 Modifying provisions as to consent to adoption of child

(1) For the purposes of section eighteen of the Infants Act, 1908 (which relates to the consents required before the adoption of a child), the term “parents” (a) In the case of an illegitimate child, shall be deemed not to include the natural father of the child: (b) In the case of a child that has previously been adopted by an adoption order which is still in force, shall be deemed to mean the adoptive parent or parents of the child for the time being, and not to include the natural parents of the child or his adoptive parents under any previous adoption that is not for the time being in force.

(2) Notwithstanding anything in subsection one of this section, the Judge may in any case require the consent of any such natural father, natural parent, or adoptive parent if in his opinion it is expedient in the special circumstances of the case so to do.

(3) Where a second or subsequent adoption order is made in respect of the same child the second or subsequent adoption order shall be deemed to vacate any previous order.

(4) No adoption order made before the passing of this section in respect of a child shall be invalid because a previous order in respect of that child had not been discharged. *Nil Debate. Repealed by Adoption Act 1955.*

Child Welfare Amendment Act 1948

Statute No.48 19/11/1948 “s10 Superintendent may consent to adoption of refugee child Notwithstanding the provisions of section eighteen of the Infants Act, 1908, a Judge, before making an order of adoption of a refugee child, shall not, if the Superintendent is for the time being the guardian of the child under this Part of this Act, be required to ascertain whether either of the parents of the child is living, and while he remains the guardian of the child the Superintendent shall be deemed to be the only person whose consent to the adoption of the child is required under that section. *Nil debate. Repealed by Adoption Act 1955.*

Statutes Amendment Act 1949

Statute No.51 21/10/1949 “s27 Legal status of adopted child

(1) The Infants Act, 1908, is hereby amended by repealing section twenty-one (as amended by section forty-two of the Child Welfare Act, 1925), and substituting the following new section:-

“s21 (1) Every order of adoption shall confer the name of the adopting parent on the adopted child, with such proper or Christian name as the Judge, on the application of the adopting parent, may fix.

“(2) Upon an order of adoption being made the following provisions shall have effect for all purposes whether civil, criminal, or otherwise, namely:-

(a) The adopted child shall be deemed to become the child of the adopting parent, and the adopting 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 this paragraph shall not apply for the purposes of any deed, instrument, will, or intestacy where the order of adoption 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:

(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: Provided that the provisions of this paragraph shall not apply for the purposes of any enactment relating to forbidden marriages or to the crime of incest: Provided also that this paragraph shall not effect any vested or contingent right of the adopted child or nay other person under any deed or instrument executed before the date of the order of adoption or under the will or intestacy of any person who has died before that date, unless, in the case of a deed, instrument, or will, express provision is made to that effect:

(c) The relationship to one another of all persons (whether the adopted child, the adopting parent, the existing parents, or any other persons) shall be determined in accordance with the foregoing provisions of this section so far as they are applicable.”

(2) Section forty-two of the Child Welfare Act, 1925, and subsection five of section four and section twelve of the Destitute Persons Act, 1910, are hereby consequentially repealed.

(3) This section shall come into force on the first day of January, nineteen hundred and fifty. *Nil debate. In Force 1/1/1950. Repealed by Infant Amendment Act 1950 No.18*

Infants Amendment Act 1950

Statute No.18. 4/9/1950

1 Short Title This Act may be cited as the Infants Amendment Act, 1950, and shall be read together with and deemed part of the Infants Act, 1908 (hereinafter referred to as the principal Act).

2 Legal status of adopted child The principal Act is hereby amended by repealing section twenty-one (as substituted by section twenty-seven of the Statutes Amendment Act, 1949), and substituting the following new sections:-

“21(1) Every order of adoption shall confer the name of the adopting parent on the adopted child, with such proper or Christian name as the Judge, on the application of the adopting parent, may fix.

“(2) Upon an order of adoption 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 adopting parent, and the adopting parent shall be deemed to become the parent of the child, as if the child had been born to that parent in lawful wedlock:

(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: Provided that, where the existing parents are the natural parents, the provisions of this paragraph shall not apply for the purpose of any enactment relating to forbidden marriages or to the crime of incest:

(c) The relationship to one another of all persons (whether the adopted child, the adopting parent, the existing parents, or any other persons) shall be determined in accordance with the foregoing provisions of this section so far as they are applicable:

(d) The foregoing provisions of this subsection shall not apply for the proposes 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 order of adoption 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) The order of adoption shall not effect the nationality or citizenship of the adopted child.

“(3) This section shall be deemed to have come into force on the first day of January, nineteen hundred and fifty, and shall apply with respect to all orders of adoption, whether made before or after that date: Provided that, for the purposes of any deed or instrument (other than a will) made before that date, or of the will or intestacy of any testator or intestate who died before that date, 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 section twenty-seven of the Statutes Amendment Act, 1949, shall be deemed not to have been passed.’

3 Repeals

(1) Section twenty-seven of the Statutes Amendment Act, 1949, is hereby consequentially repealed as from the commencement thereof.

(2) Section twenty of the Death Duties Act, 1921, and subsection seven of section twenty-one of the Finance Act, 1947, are hereby repealed.

4 Discharge of adoption order Section twenty-two of the Principal Act is hereby amended by repealing subsection two, and substituting the following subsections:-

“(2) Where a Judge discharges any order of adoption as aforesaid he may confer on the person to whom the order

related such name with such proper or Christian name as the Judge thinks fit; but, if he does not do so, the names of the child shall not be affected by the discharge of the order

“(3) Where an order of adoption is discharged after the commencement of this subsection, the relationship to one another of all persons (whether the adopted child, the adoptive parents, the natural parents, or any other persons) shall be determined as if the order of adoption had not been made: Provided that the discharge of the order shall not affect anything lawfully done or the consequence of anything lawfully done while the order was in force; Provided also that, for the purpose of any deed or instrument (other than a will) made while the order was in force, or of the will or intestacy of any testator or intestate who died while the order 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 shall be deemed to continue in force.

“(4) Where an order of adoption has been discharged before the commencement of this subsection, the effect of the discharge shall be determined by reference to the law existing on the date of the discharge.’

Explanation in Bill The Amendments were over come doubts re application of Statutes Amendment Act 1949 s27 in application to orders made before commencement date 1/1/1950. (3)(b) has extra safeguards re existing documents and rights. (3)(c) Note re forbidden marriage relationships and incest is to apply only where the existing parents are the natural parents.

Debate And extensive detailed informative debate took place when the Bill was committed following the Statute Revision Committee report. Contains material on prohibited marriage relationship issue and nationality issues re adoptees. see NZPD 11/8/1950 House Vol.290 pp.1633-1642. Council pp.1997-2002.

Statutes Amendment Act 1950

Statute No.91 1/12/1950 Births and Deaths Registration. “s4 Consequences of variation, reversal, or discharge of adoption order:

(1) Subsection four of section twenty-seven of the Births and Deaths Registration Act, 1924, is hereby amended by omitting the words “this section relates” and substituting the words “the foregoing provisions of this section relate”.

(2) Section twenty-seven of the Births and Deaths Registration Act, 1924, is hereby amended by inserting, after subsection five, the following subsections:-

“(5A) Whenever an order is made varying, reversing, or discharging any adoption order, the Registrar of the Court in which the order is made as aforesaid shall forthwith send a copy of the order to the Registrar-General, who shall cause a memorial of the order of variation, reversal, or discharge to be made on- (a) The original entry of birth relating to the child to whom the order relates, and the duplicate of that entry; and (b) The entry of re-registration in respect of that child made under subsection three of this section, and the duplicate of that entry.

“(5B) In the case of the variation of an order of adoption,

the Registrar-General may, if he considered it expedient so to do, cause the particulars as to the birth of the child as so varied to be re-registered in the manner provided by subsection three of this section.

“(5C) Whenever a certified copy of the entry of birth of any child in respect of whom an adoption order has been reversed or discharged is required for any purpose, and no other adoption order is for the time being in force in respect of that child, The Registrar or Registrar-General, as the case may be, shall supply a certified copy of the original entry of birth omitting the memorial mentioned in subsection two of this section and also omitting the memorial of the reversal or discharge of the adoption order; and every such certified copy, if otherwise correct, shall be deemed to be a true copy of the entry: Provided that, in any case where the applicant certifies and the Registrar-General is satisfied that the memorials on the original entry of birth are material for the purpose for which the certified copy is required, the Registrar or Registrar-General may issue the certified copy of that entry including the memorials: Provided also that, in any case where the applicant certifies and the Registrar-General is satisfied that the re-registration entry made under subsection three of this section is material for the purpose for which the certified copy is required, the Registrar or the Registrar-General may issue a copy of that entry including the memorial.”

Births and Deaths Registration Act 1951

Statute No.22. 1/12/1951

Part III Registration of Adoptions

“s21.(1) Where an order of adoption is made under Part III of the Infants Act 1908, the Registrar of the Court by which such order was made shall forthwith to send to the Registrar-General notice, setting forth the following particulars so far as they are known to the Court:-

(a) The full name of the child as before the making of the order;

(b) The date and place of birth of the child;

(c) The sex of the child;

(d) The names of the natural or last preceding adopting parents of the child;

(e) The name or names and the occupation and address of the adopting parent or adopting parents.

(f) The name of the Magistrate by whom the order of adoption was made, and the date of the order;

(g) Such other particulars as may be required by the Registrar-General.

(2) On receipt of the particulars referred to in subsection one of this section the Registrar-General shall, if the duplicate of the entry as to the birth of the child has been transmitted to him pursuant to section eight of this Act, forthwith note and sign on the duplicate a memorial in the form No.3 in the First Schedule to this Act.

(3) The Registrar-General shall in every case forthwith send to the Registrar by whom the birth was registered a copy of the notice received by him from the Registrar of the Court; and the Registrar by whom the birth was registered shall forthwith note and sign on the original entry and on any subsequent re-registration entry as to the birth of the

child, and on the duplicate of any such entry in cases where the duplicate has not been transmitted to the Registrar-General, a memorial in the form referred to in subsection two of this section; and shall also re-register, in duplicate, particulars as to the birth of the child, substituting the name conferred by adoption for the name of the child prior to the adoption, and recording the name, address, and description of each adopting parent in substitution for the particulars as to the natural or last adopting parents.

(4) The duplicate of the re-registration entry shall be transmitted to the Registrar-General as if it were a duplicate of an entry made pursuant to section seven of this Act.

(5) In any case where the birth of the adopted child has not been registered in New Zealand, the Registrar-General, upon being satisfied as to the correctness of the information supplied to him as to the date and place of birth of the child, shall send a copy of the notice received by him under subsection one of this section to the Registrar at Wellington, who shall register particulars as to the birth of the child in accordance with subsection three of this section.

(6) Where a copy of the entry as to the birth of any child to which this section relates is required for any purpose the Registrar-General or the Registrar, as the case may be, shall supply a copy of the last entry made pursuant to subsection three of this section instead of a copy of any former entry, unless the applicant certifies, and the Registrar-General or the Registrar is satisfied, that the particulars recorded in the original entry are material for the purpose for which the copy is required.

(7) No person shall be permitted to inspect any such original or former entry, unless that person certifies, and the Registrar-General or the Registrar is satisfied, that the particulars recorded in the original entry are material for the purpose for which the copy is required.

22 Adoption of Maori Children

(1) Where an adoption order is made under Part III of the Infants Act 1908 for the adoption of a Maori child, the re-registration of the birth of the child shall be effected in accordance with section twenty-one of this Act, and the provisions of that section, as far as they are applicable and with the necessary modification, shall apply to in all respects as if the child were a child born of European parents.

(2) Where an adoption order is made pursuant to Part IX of the Native Land Act 1931 in respect of a child of Maori descent who is not a Maori, re-registration of the birth of the child shall be effected in accordance with regulations under this Act for the time being in force relating to the registration of adoptions of Maoris adopted under the Native Land Act 1931, and the provisions of any such regulations, as far as they are applicable and with the necessary modifications, shall apply as if the child were a Maori.

23 Consequences of variation, reversal, or discharge of adoption order

(1) Where an order is made varying, reversing, or discharging any adoption order, the Registrar of the Court in which the order is made as aforesaid shall forthwith send a copy of the order to the Registrar-General, who shall

cause a memorial of the order of variation, reversal, or discharge to be made on-

(a) The original entry of birth relating to the child to whom the order relates, and the duplicate of that entry; and

(b) The entry of re-registration in respect of that child made under subsection three of section twenty-one of this Act, and the duplicate of that entry.

(2) In the case of the variation of an order of adoption, the Registrar-General may, if he considered it expedient so to do, cause the particulars as to the birth of the child as so varied to be re-registered in the manner provided by the said subsection three.

(3) Where a certified copy of the entry of birth of any child in respect of whom an adoption order has been reversed or discharged is required for any purpose, and no other adoption order is for the time being in force in respect of that child, The Registrar-General or Registrar, as the case may be, shall supply a certified copy of the original entry of birth omitting the memorial mentioned in subsection two of section twenty-one of this Act and also omitting the memorial of the reversal or discharge of the adoption order; and every such certified copy, if otherwise correct, shall be deemed to be a true copy of the entry: Provided that, in any case where the applicant certifies and the Registrar-General or the Registrar is satisfied that the memorials on the original entry of birth are material for the purpose for which the certified copy is required, the Registrar-General or Registrar may issue the certified copy of that entry including the memorials: Provided also that, in any case where the applicant certifies and the Registrar-General or the Registrar is satisfied that the re-registration entry made under subsection three of section twenty-one of this Act is material for the purpose for which the certified copy is required, the Registrar or the Registrar-General of the Registrar may issue a copy of that entry including the memorial."

24 Provisions of this Part to apply to adoptions prior to commencement of Act The forgoing provisions of this Part of this Act relating to the registration of particulars as to adopted children shall apply in the case of children in respect of whom orders of adoption under Part III of the Infants Act 1908, or under the Native Land Act 1931, or the corresponding provisions of any former Acts, were made at any time before the commencement of this Act, if the Registrar-General is satisfied as to the truth of the particulars required to be registered.

First schedule 1951 Form No 3. Births and Deaths Registration Act 1951 No.22 Ref s21.

Memorial of adoption to be endorsed on birth entry.

Order of adoption of *[Name of child]*, dated the...day of ...19...made by *[Name of Magistrate]*, in favour of *[Name or names, address, and occupation of adopting parent or adopting parents]*. Name conferred by Order.

Statute Amendment Act 1951**Statute No.81. 6/12/1951 s15**

(1) Consents required before adoption: Section eighteen of the Infants Act 1908 is hereby amended by adding to paragraph (e) of subsection one the following proviso:- "Provided that the Judge may dispense with the consent required as aforesaid under this paragraph in any case where the Superintendent of the Child Welfare Division of Education consents to the adoption, and (i) Each parent of the child is dead or unknown or missing or of unsound mind and the child has no legal guardian who is living and of sound mind; or (ii) A licence has been granted in respect of the child under section forty 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."

(2) Section seventeen of the Statutes Amendment Act 1943 is hereby consequentially repealed." *Repealed by Adoption Act 1955.*

Infants Amendment Act 1957**Statute No.55. 24/10/1957**

1 Short Title This Act may be cited as the Infants Amendment Act 1957, and shall be read together with and deemed part of the Infants Act 1908 (hereinafter referred to as the principal Act).

2 Unauthorised person not to receive infant Section forty-one of the principal Act, as amended by subsection one of section forty-three of the Child Welfare Act 1925, is hereby further amended by repealing subsection one, and substituting the following subsection:

(1) It shall not be lawful for any person to receive or retain in his care or charge any infant for the purpose of nursing or maintaining it apart from its parents or guardians for a longer period than seven consecutive days, unless (a) The person is licensed under this Part of this Act as a foster parent; or (b) The infant is lawfully in the home of the person for the purpose of adoption and the requirements of section six of the Adoption Act 1955 are being complied with.

(2) Subsection one of section forty-three of the Child Welfare Act 1925 is hereby consequentially repealed."

Note Neither the original Infants Act 1908 s41 or its amendment by Child Welfare Act 1925 s43(1) make any reference to adoption as in s2(1)(b) of the Infants Amendment Act 1957 above.

Infants Act 1908 Repeal Act 1989

Statute No.145. 19/12/1989 An Act to repeal the Infants Act 1908.

1 Short Title This Act may be cited as the Infants Act Repeal Act 1989.

2 Repeal of Infants Act 1908 and amendments The following enactments are hereby repealed: (a) The Infants Act 1908 (b) The Infants Amendment Act 1908 (c) So much of the Second Schedule to the Adoption Act 1955 as relates to the Infants Act 1908...(j) Section 22 of the

Department of Social Welfare Act 1971"

No debate on Infants Act 1908

It is important to note that the Infants Act 1908 was only a consolidation of existing Infant legislation as at 1908. Hence there was debate of the Infant Act 1908 in Parliament. Researches will have to examine the original debates of the constitute legislation used to access the Parliamentary reasons behind the Infants Act 1908. Debates however will be found on amendments to the Infants Act 1908. See introduction paragraph to Infants Act 1908 p506 this book for detail of the consolidation. There was a major consolidation of many statutes in 1908.

MAORI ADOPTION STATUTES

1852 New Zealand Constitution Act s71

“Whereas it may be expedient that the laws, customs and usages of the aboriginal or Maori inhabitants of New Zealand, so far as they are not repugnant to the general principles of humanity, should for the present be maintained for the government of themselves, in all their relations to any dealings with each other...” Enacted in England. [The Act prepared for the introduction of self-government in New Zealand. The law recognised the status of ‘tamariki whangai’ and validity of customary Maori adoption by *implication* of this Act that recognised and gave status to Maori customs]

RULES RELATING TO CUSTOMARY ADOPTION AND SUCCESSION 1895

G1 Complete adoption would be where the child was taken in early infancy, and lived with its adopting parent up to marriage or manhood.

G2 Where the adoption was not of the complete character above mentioned, the surrounding circumstances would have to be taken into consideration in determining the rights, if any, of the adopted child.

G3 It does not appear that any special ceremonies or formalities were observed upon the adoption being made. It would be sufficient that the adopted child be generally recognised as such.

G4 The adopted child would almost invariably be a relative by blood of the adopting parent.

G5 If the adoption were made with the consent of the “hapu” or tribe, and the adopted child remained with such tribe or hapu, it would be entitled to share the tribal or hapu lands.

G6 Under such conditions (as above mentioned) the adopted child would be entitled to succeed to the whole of the interest of the adopting parent.

G7 If there were no near relatives, and the adopted child had duly cared for the adopting parent in his old age, he would succeed to the whole of the interest of the adopting parent.

G8 If there were near relatives, the adopted child would share in the succession.

G9 The adopted child would lose his rights if he neglected his adopting parent in his old age, or ceased to act with, or as a member of, the hapu, or tribe.

G10 The rights of adopted children, as above set out, might be modified if the adopting parent made an “ohaki” (or verbal Maori will).

Source Guidelines laid down in judgments of Native Land Court by Judges Edgar and Mair, Aperahana to Kume and Hemi Erueti in certain judgments delivered in Hastings June 19, 1895. See description in [1907] 14 AJHR G5.

NATIVE LAND CLAIMS ADJUSTMENT AND LAWS AMENDMENT ACT 1901

S50 Land Claims

Statute No.65 8/11/1901

“s50 Rights of adopted children to succeed No claim by adoption to the estate of any Native dying after the thirty-first day of March, one thousand nine hundred and two, shall be recognised or given effect to unless such adoption shall have been registered in the Native Land Court in accordance with regulations to be made as hereinafter provided. Every revocation of an adoption registered as aforesaid shall be registered in like manner, and proof of such registration shall be sufficient evidence of the fact of such adoption or revocation, as the case may be. The Governor in Council is hereby empowered to make such regulations as to the form and manner of such registration, and the fees to be payable thereof, as he may deem necessary or expedient.”

Debate

No debate on s50. Land issues were the main focus of debate. The Maori Land Bills were long and complex due to the complexity and controversial nature of the issues. In the context of such debates adoption issues tended to be given minor consideration.

Adoption Regulations

Native Land Claim Amendment 1901 4/12/1901 Regulations under Section 50 of “The Native Land Claims Adjustment and Laws Amendment Act, 1901.” Ranfurly, Governor, Order in Council. At Government Buildings, at Wellington, this fourth day of December, 1901. Whereas it is expedient to make rules and regulations for the purpose of giving effect to the provisions of section fifty of “The Native Land Claims Adjustment and Laws Amendment Act, 1901,” relating to the adoption of children by Natives according to Maori custom:

1 Any persons desiring to register an adoption under the provisions of the said section shall lodge with the Registrar of the Native Land Court for the district in which the adopting party is resident a notice in the Form A in the Schedule hereto. Such notice shall be signed by the adopting party in the presence of, and be attested by, two witnesses, one of whom shall be a Stipendiary Magistrate, Judge, Registrar or Clerk of the Native Land Court, Justice of the Peace, Solicitor of the Supreme Court, licensed interpreter, or Postmaster.

2 Any persons desiring to register the revocation of an adoption shall lodge with the said Registrar a notice in Form B in the Schedule hereto. Such notice shall be signed and attested in the same manner as is hereinbefore provided with regard to a notice in Form A.

3 On receipt of any notice as aforesaid, the Registrar shall indorse thereon the date of reception thereof; and such notice, when so indorsed and verified by the signature of the Registrar and the seal of the Native Land Court, shall be deemed to be duly filed and registered. Provided that, except by leave of the Chief Judge, no notice of adoption shall be registered unless lodged within two months from the date thereof.

4 Every such notice, unless in the Maori language, shall have indorsed thereon a certificate by a licensed interpreter of the first grade that the contents thereof have been explained by him to the party signing the same, and that he appeared to fully understand the meaning thereof.

5 It shall be the duty of the Registrar to notify in the *Gazette* and *Kahiti*, as soon as may be after the registration thereof, particulars of every adoption registered under the said Act, and to post a notice thereof by registered letter to the person by whom the notice of adoption purports to have been given.

6 The fee payable for registering any adoption, or revocation of any adoption, shall be ten shillings, payable by fee-stamp affixed to the notice.

Schedule 1901 Form A Notice of Maori adoption

To the Registrar of the Native Land Court...District.I...of... hereby give notice that I taken...a child of...and...to be my adopted child **according to Maori custom**, and I request that such adoption be registered under the provisions of s50 of the Native Land Claims Adjustment and Laws Amendment Act, 1901. As witness my hand, this...day of ...19... Signed by the said...in presence of...

Form B Notice revocation of Maori adoption To the Registrar of the Native Land Court... District. Whereas... is registered as my adopted child under the provisions of section 50 of "The Native Land Claims Adjustment and Laws Amendment Act 1901": And whereas I am desirous of putting an end to the said adoption: Now, therefore, I hereby revoke the authority heretofore given for registration thereof, and request that this notice may be registered under the provisions of the said Act. As witness my hand, this...day of...19...Signed by the said...in the presence of ... The Forms are printed in both English & Maori. Note Regulation No.5 also requires the Registrar of the Native Land Court after registration of such notice to gazette the same in the Government *Gazette* and *Kahiti* Maori *Gazette*. Regulations Gazette 12/12/1901 Vol.2 p2352

NATIVE LAND ACT 1909 PART IX

Statute No.15 24/12/1909

s161(1) No future adoption according to Native custom No Native shall, after the commencement of this Act, be capable of adopting a child in accordance with Native custom, whether the adoption is registered in the Native Land Court or not; and, save as hereinafter in this section provided, no adoption in accordance with Native custom, whether made before or after the commencement of this Act, shall be of any force or effect, whether in respect of intestate succession to Native land or otherwise.

(2) Any adoption so made and registered before the commencement of this Act, and subsisting at the commencement of this Act, shall, as from the commencement of this Act, have the same force and effect as if lawfully made by an order of adoption under this Part of this Act.

(3) It shall not be lawful for any Magistrate to make an order under the Infants Act, 1908, for the adoption of a child by a Native.

162 Orders of adoption by Natives to be made by Native Land Court The Native Land Court shall have jurisdiction to make and order under this Part of this Act for the adoption of a child by a Native.

163 Applications for orders of adoption

(1) No such order shall be made except on the application of the adopting parent made in the form and manner prescribed by Rules of Court.

(2) Any such application may be made jointly by a husband and wife, and in any such case the order of adoption may be made in favour of both or either of the applicants.

164 Native children only to be adopted under this Act No person other than a Native or a descendant of a Native shall be capable of being adopted by a Native.

165 Matters as to which court is to be satisfied before making order

No order of adoption shall be made unless the Court is satisfied- (a) That the child to be adopted is under the age of fifteen years: (b) That the adopting parent (if unmarried) is at least thirty years older than the child: (c) That the child, if, in the opinion of the Court, above the age of twelve years, consents to the adoption: (d) That the adopting parent is a fit and proper person to have the care and custody of the child and of sufficient ability to maintain the child, and that the adoption will not be contrary to the welfare and interests of the child.

166 Natural parents to consent to proposed order

No order of adoption shall be made without the consent of the parents, or the surviving parent (if any) of the child, whether that child is legitimate or illegitimate: Provided that no such consent shall be required in the case of any parent as to whom the Court is satisfied (a) That he has deserted the child; or (b) That he is for any reason unfit to have custody and care of the child.

167 One order only in respect of any adopted child No child adopted by any adopting parent shall, in the lifetime of that parent, and while the order of adoption remains in force, be adopted by any other person save the husband or wife of that parent.

168 Effect - adoption order

Subject to the rules of Native custom as to intestate succession to Native land, an order of adoption under this Part of this Act shall for all purposes have the same force and effect as an order of adoption lawfully made under Part III of the Infants Act 1908.

169 Annulment of orders of adoption by Native Land Court

(1) An adoption made under this part of this Act and any adoption made before the commencement of this Act in accordance with Native custom and registered in the Native Land Court may at any time be annulled by the Native Land Court, on any grounds which the Court thinks sufficient, on the application of the adopting parent or of the adopted child.

(2) In any such case, subject to the conditions (if any) set forth in the order of annulment, the child and his natural parents shall as from the date of that order be restored to the

same position *inter se* as if no such adoption had been effected.

170 Appeals to Appellate Court

Subject to the express provisions of this Part of this Act, the jurisdiction thereby conferred upon the Court in respect of adoption shall be discretionary, but an appeal from any order made under this Part of this Act shall lie to the Appellate Court on the same conditions and in the same manner as in the case of other orders of the Court at the suit of any person interested in the making of that order.

Debate

The only mention of adoption provisions in the debate is found in NZPD Vol.158 p.1101 15/12/1909. "Hon Carroll: (Gisborne). Referring to adoption, the law and practice has up to the present in respect to this matter been unsatisfactory. It is proposed to assimilate this as nearly as possible to the Infants Act. An important amendment prevents the adoption by a Native of a European child. This has been rendered necessary by gross abuses in the past, when there was no restriction." As normally happened in debates on the Native Land Bills, the major issue of Land relegated the issue of adoption to a minor one in the debate.

Adoption Regulations 1910 Native Land Act Part IX 1909 14/4/1910 Adoption of Children

57 An application for the adoption of a child under Part IX of the Act shall be in the Form No.23 and shall be signed by the adopting parent or parents.

58 The consent of the parents or parent of the child proposed to be adopted may be given either in writing or in open Court, and if in writing shall be in Form No.24 and shall be executed in the manner provided by section 420 of the Act in the case of instruments by way of security. The consent in writing may be lodged with the Registrar at any time up to the date of the sitting of the Court at which the application is to be dealt with, and thereafter as the Court may direct; but notwithstanding the lodging of such consent the Court may require the personal attendance of such parent or parents.

59 The applicant or applicants and the child proposed to be adopted shall attend personally before the Court on the hearing of the application; but the Court may, in its direction, dispense with such personal attendance.

60 The order of adoption shall be in the Form No.25.

61 An application under section 169 for the annulment of an order of adoption shall be in the form No.26 and shall set forth the grounds upon which the annulment is sought.

62 The order of annulment shall be in the Form No.27

63 The Registrar shall cause a minute of every order made under Part IX of the Act to be Gazetted.

Form 23 Application for adoption per Rule 57 The Native Land Act 1909. I/We...Native within the meaning of "The Native Land Act, 1909," hereby apply to the Native Land Court for an order for the adoption by me [or us] of...a male [female] child under the age of fifteen years, being a Native or the descendant of a Native. The said child

is the son [daughter] of...and...of...Applicant.

Form 24 Consent to adoption per Rule 58 The Native Land Act 1909. We...the parents [or surviving parent] of...a child under the age of fifteen years, do hereby consent to an order for his [or her] adoption being made, in terms of the said Act, in favour of... Dated at...this... day of...19... Signed by...and...in the presence of - A Solicitor of the Supreme Court. Justice of the Peace, Stipendiary Magistrate, Judge, Registrar, or Commissioner of the Native Land Court. A European Member of the Maori Land Board. A Postmaster.

(Where Native understands English, attesting witness signs following certificate) I Hereby certify that each Native signing the above consent has a sufficient knowledge of the English language to enable each of them to understand, and that each of them did understand, the effect of this instrument.)

(Where Native does not understand English, a licensed interpreter of first grade must also attest signature and sign following certificate.) I certify that I explained the effect of this instrument to the persons signing the same, and that each of them understood the effect thereof.)

Form 25 Adoption order per Rule 60 In the matter of "The Native Land Act 1909"; and in the matter of an application by... for an order of adoption in respect of...a child under the age of fifteen years. Whereas at a sitting of the Court held at...this day of...19...before... Esquire, a Judge of the said Court, upon hearing of the application of...for the adoption of...the...child of...and ...which said child is now aged...and is a Native or the descendant of a Native, the Court was satisfied as to the several matters of which the said Act is required to be satisfied, and that all the conditions and requirements of the said Act and the rules of the Court made thereunder had been duly complied with and fulfilled: Now, therefore, the Court doth hereby order and adjudge that the said child, named...may be and is hereby adopted by the said ...under the said Act as from the date hereof as witness the hand of the Judge and the seal of the Court, the...day of... 19...Judge. Fees charged

Form 26 Application for annulment of adoption per Rule 61 In the matter of "The Native Land Act, 1909"; and in the matter of the adoption of...by...I...of...hereby apply to the Native Land Court to annul the above-mentioned adoption upon the grounds following, that is to say:- Dated this...day of...19...Applicant.

Form 27 Order annulling adoption per Rule 62 In the matter of "The Native Land Act 1909"; and in the matter of the adoption of...by... and in the matter of the application of...for the annulment of the said adoption. At a sitting of the Court held at...on the...day of...19... before...Esquire, a Judge of the said Court, upon hearing the application of the said...aforesaid for the annulment of the said adoption, and upon hearing the parties interested in the matter of the said application and the evidence adduced before the Court, and being satisfied that the said adoption should be annulled, the Court doth hereby order that the adoption of...the...of... and...by...and the order dated the...day of...19...effecting the same, shall be and the

same are hereby annulled as from the date hereof. As witness the hand of the Judge and seal of the Court... Judge Fees charged... Regulations 14/4/1910 Supplement to NZ Gazette No.34 1910 p1193

Adoption Regulations 1914 under Native Land Act Part IX 1909 These Regulations revoke and replace the 1910 Regulations. Only significant difference is re-numbering of clauses and forms in the adoption section. The Act is a very large one with corresponding lengthy rules. Hence when clauses are deleted or added the renumbering flows through the adoption section Clause numbers and Form numbers have changed but content remains the same as the 1910 Regulations. *Gazette 27/8/1914 Vol.II p3243* Revoked by Maori Land Court Rules 1958

NATIVE LAND COURT ACT 1931 PART IX

Statute No.31 11/11/1931 **s202 Adoption of children by Natives**

(1) No future adoption according to Native custom

No Native shall, after the commencement of this Act, be capable of adopting a child in accordance with Native custom, and, save as hereinafter in this section provided, no adoption in accordance with Native custom, whether made before or after the commencement of this Act, shall be of any force or effect, whether in respect of intestate succession to Native land or otherwise.

(2) Any adoption so made and registered before the thirty-first day of March, nineteen hundred and ten, and subsisting at the commencement of this Act, shall have the same force and effect as if lawfully made by an order of adoption under this Part of this Act.

(3) It shall not be lawful for any Magistrate to make an order under the Infants Act, 1908, for the adoption of a child by a Native.

203 Orders of adoption by Natives to be made by Native Land Court

The Native Land Court shall have jurisdiction to make an order under this Part of this Act for the adoption of a child by a Native.

204 Applications for orders of adoption

(1) No such order shall be made except on the application of the adopting parent made in the form and manner prescribed by Rules of Court.

(2) Any such application may be made jointly by a husband and wife, and in any such case the order of adoption may be made in favour of both or either of the applicants. [Ref SR1947/35 Duty of Registrar to notify Registrar General of adoption orders.]

205 Native children only to be adopted under this Act No person other than a Native or a descendant of a Native shall be capable of being adopted by a Native.

206 Matters as to which Court is to be satisfied before making order

No order of adoption shall be made unless the Court is satisfied-

(a) That the child to be adopted is under the age of fifteen years.

(b) That the adopting parent (if unmarried) is at least thirty years older than the child:

(c) That the child, if, in the opinion of the Court, above the age of twelve years, consents to the adoption:

(d) That the adopting parent is a fit and proper person to have the care and custody of the child and of sufficient ability to maintain the child, and that the adoption will not be contrary to the welfare and interests of the child.

207 Natural parents to consent to proposed order

No order of adoption shall be made without the consent of the parents, or the surviving parent (if any) of the child, whether that child is legitimate or illegitimate: Provided that no such consent shall be required in the case of any parent as to whom the Court is satisfied- (a) That he has deserted the child; or (b) That he is for any reason unfit to have custody and care of the child.

208 One order only in respect of any adopted child

No child adopted by any adopting parent shall, in the lifetime of that parent, and while the order of adoption remains in force, be adopted by any other person save the husband or wife of that parent.

209 Effect of order of adoption

Subject to the rules of Native custom as to intestate succession to Native land, an order of adoption under this Part of this Act shall for all purposes have the same force and effect as an order of adoption lawfully made under Part III of the Infants Act, 1908.

210 Annulment of orders of adoption by Native Land Court

(1) An adoption made under this Act or any Act hereby repealed and any adoption made before the commencement of this Act in accordance with Native custom and registered in the Native Land Court may at any time be annulled by the Native Land Court, on any grounds which the Court thinks sufficient, on the application of the adopting parent or of the adopted child, or some person on his behalf.

(2) In any such case, subject to the conditions (if any) set forth in the order of annulment, the child and his natural parents shall as from the date of that order be restored to the same position *inter se* as if no such adoption had been effected.

211 Appeals to Appellate Court

Subject to the express provisions of this Part of this Act, the jurisdiction thereby conferred upon the Court in respect of adoption shall be discretionary, but an appeal from any order made under this Part of this Act shall lie to the Appellate Court on the same conditions and in the same manner as in the other orders of the Court at the suit of any person interested in the making of that order.

Refer 1940 s3 Native Purposes Act 1940 Adoption by Natives married in accordance with Native Custom.

Refer 1941 s3 Native Purpose Act 1941 Adoption orders in favour of husband and wife one spouse European

Refer 1947 Regulations SR 1947/35 Duty of Registrar to notify Registrar-General of adoption orders.

NATIVE PURPOSES ACT 1940

Statute No 25 Part 1 Amendment of Laws

3(1) Adoptions by Natives married in accordance with Native custom For the purposes of Part IX of the principal Act and of Part IX of the Native Land Act, 1909, every marriage of Natives in accordance with Native custom shall be deemed to be and to have been a valid marriage so long as it subsists or subsisted.

(2) Every order of adoption made before the passing of this Act, whether under Part IX of the principal Act or under Part IX of the Native Land Act, 1909, which by virtue of this section would have been valid and lawful if this section had been in force when it was made shall, be deemed to have been as validly and lawfully made as if this section had then been in force. s3 repealed by Maori Affairs Act 1953 s473 19

NATIVE PURPOSES ACT 1941

Statute No. 22 13/10/1941 Part 1. Amendment Laws

3(1) Adoption order in favour of husband and wife where one spouse is a European In any case where a Native is married to a European the husband and wife may jointly make an application for an order of adoption under Part IX of the principal Act, and the Court may make an order of adoption in favour of the husband and the wife jointly.

(2) In any case where a child has, whether before or after the coming into force of this section, been adopted by a Native, the Court may, in the lifetime of the adopting parent and while the order of adoption remains in force, make an order of adoption in accordance with the said Part IX in favour of the European husband or wife of that parent.

(3) This section shall be deemed to have come into force on the first day of January, nineteen hundred and forty-one. [*Note was backdated to 1/1/1941*]

MAORI AFFAIRS ACT 1953 PART IX

Statute No.94 26/11/1953 **Adoption of Children by Maoris s80**

(1) Adoptions according to Maori custom not operative No Maori 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 two hereof, no adoption in accordance with Native custom shall be of any force or effect, whether in respect of intestate succession to Native land or otherwise.

(2) Any adoption in accordance with Maori custom that was made and registered in the Maori Land Court before the thirty-first day of March, nineteen hundred and ten, (being the date of 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 it had been lawfully made by an order of adoption under Part IX of the Native Land Act 1909.

81(1) Jurisdiction of Court with respect to adoption of children The Court shall have jurisdiction to

make orders for adoption in accordance with this Part of this Act and It shall not be lawful for any Magistrate to make an order under the Infants Act, 1908, for the adoption of any child by a Maori

(2) An order of adoption may be made under this Part of this Act in respect of any child being a Maori or the descendant of a Maori, but shall not be made in respect of any other child. The decision of the Court that any child is capable of being adopted under this part of this Act shall not be questioned in any Court.

(3) An order of adoption under this Act may be made-

(a) In favour of an unmarried Maori, whether male or female:

(b) In favour of a married Maori, whether the spouse of the adopting parent is a Maori or a European:

(c) In favour jointly of a husband and wife, being Maoris, or in favour jointly of husband and wife if one of the spouses is a Maori:

(4) Where a child has, whether before or after the commencement of this Act, been adopted by a Maori, the Court may in the lifetime of the adopting parent make an order of adoption jointly in favour of the adopting parent and his wife or her husband, as the case may be, whether or not the spouse of the adopting parent is a Maori. [Jurisdiction re adoption of children. 1931 No.31 s203. 1940 No.25 s3(1) 1941 No.22 s3. 1941 No.15 s3 1951 No.75 s8(4). See 1957 Reprint of Statutes Vol iii p1069]

83 Applications for orders of adoption

(1) No order of adoption under this Part of this Act shall be made except on the application of the adopting parent made in the form and manner prescribed by Rules of Court.

(2) Any such application may be made jointly by a husband and wife, and in any such case the order of adoption may be made in favour of both or either of the applicants, but no such order shall be made in favour of a European to the exclusion of a Maori spouse.

82 Matters as to which Court is to be satisfied before making order

No order of adoption shall be made unless the Court is satisfied

(a) That the child to be adopted is under the age of fifteen years.

(b) That the adopting parent (if unmarried) is at least thirty years older than the child:

(c) That if in the opinion of the Court the child proposed to be adopted is twelve years of age or upwards, the child consents to the adoption.

(d) That the adopting parent is a fit and proper person to have the care and custody of the child and is of sufficient ability to maintain the child, and that the adoption will not be contrary to the welfare and interests of the child.

84 Necessity for consent of natural parents

No order of adoption shall be made without the consent of the parents, or the surviving parent (if any) of the child, whether that child is legitimate or illegitimate: Provided that the consent of the father of an illegitimate child shall not be required unless he has, with the concurrence of the mother, admitted paternity or unless he has been adjudged to be the father of the child on a complaint made under Part

II of the Destitute Persons Act 1910: Provided also that the consent to the adoption of a child shall not be required in the case of any parent as to whom the Court is satisfied- (a) That he or she has deserted the child; or (b) That he or she is for any reason unfit to have custody and care of the child. [see 1957 Reprint of Statutes Vol ii p896]

85 One order only in respect of adopted child

No child adopted under this Part of this Act shall in the lifetime of the adopting parent, and while the order of adoption remains in force, be adopted by any other person except the husband or wife of the adopting parent.

86 Effect of order of adoption

An order of adoption made under this Part of this Act or under the corresponding provisions of any former Act shall for all purposes have the same force and effect as an order of adoption lawfully made under Part III of the Infants Act, 1908: Provided that an order of adoption made before the commencement of this Act shall not effect the operation of any rule or Maori custom as to intestate succession to Native land. See 1957 Reprint of Statutes Vol iii p1073]

87 Name of adopted child

In any order of adoption under this Part of this Act the Court may confer the name of the adopting parent or of either of the adopting parents on the adopted child, with such proper or Christian name or names as the Judge on the application of the adopting parent or parents may fix.

88 Annulment of orders of adoption

(1) An any time before an adopted child has attained the age of twenty-one years the order of adoption may, on the application of the adopting parent or the adopted child, or on the application of some person on behalf of the adopted child, be annulled by the Court on any ground which the Court thinks sufficient.

(2) In any such case, subject to the conditions (if any) set forth in the order of annulment, the child and his natural parents shall as from the date of that order be restored to the same position *inter se* as if no such adoption had been effected.

89 Appeals to Appellate Court

Subject to the express provisions of this Part of this Act, the jurisdiction thereby conferred upon the Court in respect of adoption shall be discretionary, but an appeal from any order made under this Part of this Act shall lie to the Appellate Court on the same conditions and in the same manner as in the case of other orders of the Court at the suit of any person interested in the making of that order.

90 Particulars as to adoptions to be furnished to Registrar-General

The Registrar of the Court shall from time to time furnish to the Registrar-General appointed under the Births and Deaths Registration Act 1951 such particulars as may be lawfully required with respect to orders of adoption made under this Part of this Act. [cf 1951 No.22] Repealed: This Part IX of 1953 No.94 Maori Affairs Act was repealed by the Adoption Act 1955 No.93 s30(1). See new provisions of that Act.

ADOPTION ACT 1955

Statue No 93. 22/10/1955. The separate Maori legislation on adoption was repealed, and incorporated in one Act for both European and Maori. The Maori Land Court continued jurisdiction of Maori adoptions until 1962, its Rules were issued in 17/11/1958 See Adoption Act 1955 pp518-540

MAORI LAND COURT RULES 1958

Part V Jurisdiction under miscellaneous Acts

121 Application for adoption order-

(1) An application to the Court for an adoption order under the Adoption Act 1955 shall be in form 277 and shall be signed by the adopting parent or parents.

(2) The applicant shall file with every such application the following: (a) A copy of the full birth certificate of the child: (b) A copy of the marriage certificate of the adopting parents where the proposed adoption is by a husband and wife (c) A statement in form 278 signed by one of the adopting parents.

122 Consents to adoption

(1) The consent of every person whose consent is required shall be filed in the Court before the hearing unless any such consent is dispensed with by the Court.

(2) Excepting where it is given by the Superintendent of Child Welfare, any such consent shall be in form 279 or form 280 and shall be attested as required by subsection (8) of section 7 of the Adoption Act 1955.

(3) Notwithstanding the filing of any such consent, the Court may require the attendance at the hearing of any person whose consent has been filed. No such consent shall be witnessed by the solicitor acting for the applicants.

123 Report by child welfare officer

(1) Upon receipt of an application under rule 121 hereof, excepting 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, the Registrar shall procure a report upon the same by a Child Welfare Officer within the meaning of the Adoption Act 1955 upon the character, living conditions, financial, family and other relevant circumstances of the adopting parents.

(2) Any such report shall be in form 281.

(3) An approval by a Child Welfare Officer under paragraph (a) of subsection (1) of section 6 of the Adoption Act 1955 shall be in form 282.

124 Consents where conditions as to religion

Where any consent is given subject to any conditions as to religion as provided for in subsection (4) or subsection (6) of section 7 of the Adoption Act 1955, the adopting parents shall, before the making of an interim order, or where no interim order is made, an adoption order, sign an undertaking in respect of any such conditions in form 283.

125 Hearing of application

(1) Upon the hearing of the application the adopting parents and the child shall attend personally in Court: Provided that the Court may, in its discretion, dispense

with the personal attendance of any such person.

(2) An interim order shall be in form 284.

(3) On the making of the interim order the Registrar shall send to the applicants a notice in form 285, and, unless the Child Welfare Officer was present at the hearing, shall notify him of the particulars of the order.

(4) An application for the issue of an adoption order when an interim order has been made shall be in form 286.

126 Duties of registrar

Upon the filing of an application to the Court for an adoption order the Registrar shall take the following action:

(a) If no further hearing is required, he shall forthwith put the application before the Court for the making of an adoption order:

(b) If a further hearing is required, the Registrar shall put the application before the Court in order that the Court, as required by subsection (4) of section 13 of the Adoption Act 1955, may- (i) Require a Welfare Officer to furnish a report on the application; (ii) Appoint a time and place for the hearing of the application; (iii) Give notice of the hearing to the Welfare Officer, and the Registrar shall give notice to the applicants of the time and place appointed for the hearing.

127 Forms

(1) An application for the revocation of an interim order shall be in form 287.

(2) An application for the issue of an adoption order in favour of the original applicant and his or her spouse shall be in form 288.

(3) An adoption order shall be in form 289. The adopting parents shall be entitled to receive a sealed copy of the order, but no other copy of the same shall issue out of the Court except as provided by section 23 of the Adoption Act 1955.

(4) Notice of the making of the adoption order shall be given by the Registrar to the adopting parents, and the Child Welfare Officer concerned.

(5) A copy of any application for the variation or discharge of an adoption order shall be served upon such persons as the Court shall direct.

(6) An order varying an adoption order shall be in form 290.

(7) An order discharging an adoption order shall be in form 291.

(8) Upon the making of an adoption order, the Registrar shall furnish to the Registrar-General the particulars relating to the adoption required by him under the Maori Births and Deaths Regulations 1935, Amendment No.1 *SR1947/35.

First Schedule

Form 277 Application for adoption order re R121(1)

The Adoption Act 1955 Section 3 and 21. In the Maori Land Court of New Zealand...District. We...of...being a Maori (or a European within the meaning of the Maori Affairs Act 1953), and...of...wife of the said...being a Maori (or a European within the meaning of the said Act), hereby apply for an order for the adoption by us jointly of...a male (or female) child under the age of twenty-one

years being a Maori within the meaning of the said Act. The said child is the son (or daughter) of...and...of...and was born at...on the...day of...19...And we hereby further apply that upon the making of the order the said child shall be named ...Dated the...day of...19...Applicants...Address ...Fee: 1 Pound

Form 278 Statement of particulars upon application for adoption re R121(2)(c)

In the Maori Land Court of New Zealand...District. In the matter of an application for adoption of...by...and...I...one of the applicants under the above-mentioned application, hereby declare that, to the best of my knowledge and belief, the following particulars relating thereto are true and correct:

(1) **Child to be adopted...**(a) Full name of child as before the making of the order...(b) Date of birth of child...(c) Place of birth of child...(d) Sex of child...(e) Full name to be conferred on the child by the order...(f) Length of time during which the child has been living with the adopting parents...(g) Relationship, if any, between the child and the adopting parents...

(2) **Adopting parents** Husband: Name...Age... Residence... Tribe...Description: Maori of full blood, or half or more than half Maori blood, or less than half Maori blood, or European. Wife: Name...Age ...Tribe...Description: Maori of full blood, or half or more than half Maori blood, or less than half Maori blood, or European.

(3) **Natural parents** Father: Name...Age... Residence... Tribe... Description: Maori of full blood, or half or more than half Maori blood, or less than half Maori blood, or European. Mother: Name...Age...Tribe...Description: Maori of full blood, or half or more than half Maori blood, or less than half Maori blood, or European. (4) **The marriage certificate** of the adopting parents is filed herewith.

(5) **The birth certificate** of the child is filed herewith. Dated...day of...19...One of the Applicants.

Form 279 Consent to adoption order re R122(2)

(General Form) In the Maori Land Court of New Zealand... District. In the matter of an application for adoption of...by...and...We/I...of...and...of...the parents (or the mother or the father) of...a male (or female) child born at...on the...day of...19...hereby consent to an order being made for his (or her) adoption by... of...and...of...Dated the...day of...19...Signed by the said ...and...in the presence of...A Judge or Commissioner or Registrar of the Maori Land Court. A Stipendiary Magistrate. A solicitor of the Supreme Court. A Registrar of the Supreme Court or Magistrate's Court.

Certificate by Witness. I hereby certify that before the said...signed the forgoing consent I fully explained to him, her, or them the effect of the making of an adoption order as set out in the Adoption Act 1955 and that he, she, or they appeared fully to understand the same.

Effect of an adoption order

Upon the making of an adoption order the adopted child ceases to be the child of his existing parents (whether his natural parents, or adoptive parents under a previous adoption) and the existing parents cease to be his parents. He becomes for all purposes the child of his adopting

parents as if he had been born to them in marriage. He loses the right to succeed to the land or other property of his existing parents upon their death intestate. The relatives of the child's new parents become the child's relatives, in place of the relatives of his existing parents. Any person appointed a guardian ceases to be a guardian. The relationship of the child to his natural parents remains, however, for the purpose of the crime of incest, and the law as to forbidden marriages. Any affiliation order or maintenance order or agreement providing for maintenance of the child, made before the adoption order, ceases to have any effect as soon as the order is made, except as to arrears owing and except where the child is adopted by his mother (or his mother and her husband). Where the child is adopted by his mother (or his mother and her husband) the adoption does not prevent the making of an affiliation order or maintenance order which could previously have been made or prevent the mother making an application for an affiliation order or maintenance order.

Subject to any special provision in the document giving the right, an adoption order does not transfer to the adopted child from anyone else or take away from the child any property right acquired before the adoption.

An adoption order does not affect the race, nationality, or citizenship of the adopted child but it changes his domicile to that of his adoptive parents. His new domicile becomes his domicile of origin if he is under three at the time of the adoption but otherwise his domicile of origin is not changed.

Form 280 Consent to adoption order (Where identity of applicants is not disclosed re R122(2))

In the Maori Land Court of New Zealand... District. In the matter of an application for adoption of... We/ I...of...and...of...the parents (or the mother or the father) of...a male (or female) child born at...on the...day of...19...hereby consent to an order being made for his (or her) adoption by the persons (whose names are unknown to us ((or me)) who have made application to the Court for an order of adoption by them of the said child. This consent is subject to the following conditions [*Here set out any conditions as provided for by section 7(6) of the Adoption Act or delete if no conditions*] Dated the...day of...19...Signed by the said...and...in the presence of...A Judge or Commissioner or Registrar of the Maori Land Court. A Stipendiary Magistrate. A solicitor of the Supreme Court. A Registrar of the Supreme Court or Magistrate's Court.

The Maori Welfare Officer...Please supply a report in connection with the under-mentioned application for adoption...Registrar..././..

Form 281 Report of Maori welfare officer re R123(2)

Adoption of:..Age...Date of birth...Sex...Adopting parents: Husband (name)...Relationship to child...Age...Religion...Wife (name)...maiden name...Relationship to child...Age...Religion...Address...Place and date of marriage...Degree of Maori blood Husband...Wife...Occupation...Name of employer...Income (all sources):.. Other children or dependants (state relationship):..Description of present accommodation (S. rental house, own house, flat, etc., number

of rooms):..Personal aspect...Other comments...I consider that the proposed adoption would (or would not) be in the interests of the child. Maori/ District Welfare Officer...

Form 282 Approval of child welfare officer under s6(1)(a) of Adoption Act 1955 re R123(3)

I...of...a Child Welfare Officer within the meaning of the Adoption Act 1955, do hereby approve of...a child under the age of fifteen years, being placed and kept in the house of...and...of...for the purpose of adoption by the said...and... Dated the...day of...19...

Form 283 Undertaking by adopting parents as to conditions prescribed in consent to adoption R124

In the Maori Land Court of New Zealand...District. In the matter of an application for adoption of...by...and...We... and...of...the applicants under an application for an order of adoption by us of...the male (or female) child of...and ...do hereby declare that we are members of the... religious denomination and we hereby undertake that upon the making of an adoption order as applied for we will comply with the conditions set out in the consent to adoption given by...and...the said conditions being as follows:..Dated the...day of...19...Signed by the said...in the presence of...Signed by the said...in the presence of...

Form 284 Interim order upon application for adoption order re R125(2)

In the Maori Land Court of New Zealand ...District. In the matter of an application for adoption of...by...and...At a sitting of the Maori Land Court held at...on the... day of...19...before... Esquire, Judge. Upon hearing the application of...and... his wife for the adoption of...the child of...and...which child is now aged...years and is a Maori within the meaning of the Adoption Act 1955, the Court being satisfied as to the several matters as to which it is required by the said Act to be satisfied, and that all conditions and requirements of the said Act and the Rules of Court made thereunder as to the making of an interim order had been duly complied with and fulfilled: Now therefore, it is hereby ordered that and interim order is hereby made in favour of the said applicants upon the said application; and it is hereby further ordered- *(a) That an adoption order shall not be issued upon the said application without a further hearing: *(b) That upon the making of an adoption order the name of the said child shall be changed to...*(c) The following terms as to the custody of the said child are hereby imposed, namely...As witness the hand of the Judge and the seal of the Court...Judge. *Delete where not required.

Form 285 Notice to applicants for adoption re R125(3)

In the Maori Land Court of New Zealand...District. To... of...and...of...his wife. On...19... the Court made an interim order in relation to your application to adopt... This interim order is NOT an adoption order. An adoption order can not be made until a further application has been made to the Court. Such application cannot be made until after...19...If the child is under the age of fifteen years the application cannot be made unless the child has been continuously in your care for not less than...since...19...The interim order will come to an end unless the adoption order is made

by...19...so that it is necessary for you to make the application in time to have the adoption order made before that date. If the adoption order is not made by that date the child may be taken away from you, unless you have a right to keep it irrespective of the proposed adoption. While the interim order remains in force the following conditions apply: (a) You are entitled to the custody of the child* on the following terms: (b) Any Maori Welfare Officer may, at all reasonable times, enter the house in which the child is living; (c) The child is not to be taken out of New Zealand without leave of the Court. (d) You must give to a Maori Welfare Officer at least seven days' notice before changing your residence: Provided that where an emergency makes any immediate change necessary it will be sufficient if you give notice within forty-eight hours after leaving your previous residence. Dated the...day of...19... Registrar. *Delete if not applicable.

Form 286 Application for adoption order where Interim order made re R125(4)

In the Maori Land Court of New Zealand...District. We/I...and...hereby apply for the issue of an adoption order for the adoption by us jointly of...upon the grounds (1) That an interim order was made in our favour on the...day of...19...and has continued in force for a period of six months (or for the period of...months (or weeks) specified in the said interim order): (2) That the said child is under the age of fifteen years, and has been continually in our (or my) care for a period of...months (or weeks) since (a) The adoption was first approved by the Child Welfare Officer; or (b) Since the said interim order was made: (3) (i) That the Child Welfare Officer has filed a report recommending that an adoption order be issued;* (ii) That the said interim order did not require this application to be dealt with by the Court: and* (iii) That no proceedings for revocation of the said interim order have been commenced.* Dated the...day of...19...Applicants... Fee 1 Pound. * Delete if not applicable.

Form 287 Application to revoke interim order re R127(1)

In the Maori Land Court of New Zealand...District. In the matter of an application for adoption of...by...and...I...of... hereby apply to the Court for an order revoking the interim order made upon the above-mentioned application on the...day of...19...upon the following grounds. [Set out grounds] Dated the...day of...19...Fee 1 Pound...Applicant.

Form 288 Application for the issue of adoption order in favour of original applicant and his or her spouse re R127(2)

In the Maori Land Court of New Zealand...District. In the matter of an application for adoption of...by... Whereas upon the above mentioned application an interim order has been made in favour of the applicant: We...the said applicant and...his wife (or her husband), hereby apply for the issue of the adoption order upon the said application in favour of us jointly. Dated the...day of...19... applicants. Fee 1 Pound.

Form 289 Adoption order re R127(3)

In the Maori Land Court of New Zealand...District. In the matter of an application for adoption of... by...and... At a

sitting of the Maori Land Court held at... on the...day of...19...before... Esquire, Judge. Upon hearing the application of...and...his wife, for the adoption of...the child of...and...which child is now aged...years and is a Maori within the meaning of the Adoption Act 1955, the Court being satisfied as to the several matters as to which it is required by the said Act to be satisfied, and that all conditions and requirements of the said Act and the Rules of Court made thereunder as to the making of an interim order have been duly complied with and fulfilled: Now therefore, it is hereby ordered that the said child named...be and is hereby adopted by the said...and... jointly under the said Act as from the date hereof; and it is hereby further ordered that as from the making of this order the said child shall be named...As witness the hand of the Judge and the seal of the Court...Judge.

Form 290 Order varying adoption order re R127(6)

The Adoption Act 1955 s20. In the Maori Land Court of New Zealand...District. In the matter of an application for adoption of...by...and...At a sitting of the Maori Land Court held at...on the...day of...19...before...Esquire, Judge. Upon hearing the application of...for variation of an adoption order made at...on the...day of...19...for the adoption of...by...and...it is hereby ordered that the said adoption order be and the same is hereby varied in the following manner:...As witness the hand of the Judge and the seal of the Court...Judge.

Form 291 Order discharging adoption order R127(7)

The Adoption Act 1955 s20. In the Maori Land Court of New Zealand...District. In the matter of an application for adoption of...by...and...At a sitting of the Maori Land Court held at...on the...day of...19...before...Esquire, Judge. Whereas application, with the prior approval of the Attorney-General, has been made by...for an order discharging the adoption order made at...on the...day of...19...for the adoption of...by...and...And whereas, upon hearing the said application, the Court is satisfied that the said adoption order was made by mistake as to a material fact (or Consequence of a material misrepresentation); Now, therefore, it is hereby ordered that the said adoption order be and the same is hereby discharged; and the Court doth hereby confer upon the said ...(who was named in the said adoption order as...) the surname of...and the first or Christian names...As witness the hand of the Judge and the seal of the Court...Judge.

End of prescribed forms relative to Adoption Provisions SR 1958/162 Maori Land Court Rules 1958 re Adoption. Dated 17/11/1958. *Gazette* 27/11/1958 Came into force 1/1/1959. Repealed R12-128 by R11(1) of SR1969/144.

SOCIAL WORKERS REPORTS - STATUTES

The Adoption Act 1955 s2

Definition of 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 a Community Officer appointed under s4 of the Maori Welfare Act 1962.

(b) In relation to any other application or proposed appli-

cation for an adoption order, means a social worker under the Department of Social Welfare Act 1971; and includes where the Court so directs, a Community Officer appointed under section 4 of the Maori Welfare Act 1962. [Amendment 1971: Term 'Child Welfare Officer' replaced by 'Social Worker' "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 a Social Worker appointed under section 4 of the Maori Welfare Act 1962:

(b) In relation to any other application for an adoption order, means a Social Worker under the Department of Social Welfare Act 1971; and includes, where the Court so directs, a social worker appointed under section 4 of the Maori Welfare Act 1962]

[Amendment 1974: 'Social Worker' changed to 'Community Officer' by s8(1) of the Maori Purposes Act 1974.]

[Amendment Act 1990: made by Social Welfare (Transitional Provisions) 1990 s36 (1)(b). Reads "(b) In relation to any other application or proposed application for an adoption order, means a Social Worker employed as such under Part V of the State Sector Act 1988 in the Department of Social Welfare, and includes, where the Court so directs, a Community Officer appointed under section 4 of the Maori Welfare Act 1962." In force 1/4/1990]

Maori adoption workers (Case Law)

1989 Inglis DCJ QC Wellington *FC T v S (No.1)* "It turns out that the adopting father is of Maori lineage, belongs to the Whanau-a-Apaunui people, who are linked by genealogy with the Tuhoe. Accordingly it is perfectly clear that the 'Social Worker' who was engaged to report to the Court in the present case ought to have been a 'Community Officer' appointed under s4 of the Maori Welfare Act 1962. In fact s4 of the Maori Welfare Act 1962 provided for the appointment of "Welfare Officers". The title of the Maori Welfare Act was changed by s19(2) of the Maori Purposes Act 1979 to 'Maori Community Development Act 1962', and the title 'Welfare Officer' was changed to 'Community Officer' by s8(1) of the Maori Purposes Act 1974. By s6 of the Maori Community Development Act 1962 the functions of 'Community Officers' are to advise and assist the Maori people in respect of their general welfare and, in particular, in respect of their health, housing, education, vocational training, and employment. The requirement in terms of s10 that the 'Social Worker' who reports on the application by a Maori to adopt a Maori child should be a 'Community Officer' originates in s21, which was repealed by the Adoption Amendment Act 1962. Section 21 "**Court to which application for adoption order shall be made** Where the applicant, or (in the case of a joint application) one of the applicants, is a Maori and the child is a Maori, the application for an adoption order shall be made to and considered by the Maori Land Court; but every other application shall be made to and considered by a Magistrate's Court of civil jurisdiction. Provided that no adoption order shall be invalid by reason of the fact that it was made in the wrong Court."

Section 10 in its original form required a 'Child Welfare Officer' to report: the original definition of 'Child Welfare

Officer' appointed under s4 of the Maori Social and Economic Advancement Act 1945, but only in relation to an application to the Maori Land Court. 'Social Worker' was substituted for 'Child Welfare Officer' in 1971, and when the definition provisions were amended in 1962 to conform with the repeal of s21 it was plainly intended that applications which would previously have been dealt with in the Maori Land Court should be reported upon by a person who would have reported had s21 not been repealed. Since the repeal of s21 meant that all adoptions were to be dealt with in the one Court, now the Family Court, Parliament plainly saw no need to preserve the proviso to s21 which had obviously been inserted to avoid any claim of lack of jurisdiction in a case which had got into the wrong Court.

Section 10 in its original form required a 'Child Welfare Officer' to report; the original definition of 'Child Welfare Officer' in s2 included a 'Welfare Officer' appointed under s4 of the Maori Social and Economic Advancement Act 1945, but only in relation to an application to the Maori Land Court. 'Social Worker' was substituted for 'Child Welfare Officer' in 1971, and when the definition provisions were amended in 1962 to conform with the repeal of s21 it was plainly intended that application which would previously had been dealt with in the Maori Land Court should be reported upon by a person who would have reported had s21 not been repealed. Since the repeal of s21 meant that all adoptions were to be dealt with in the one Court, now the family Court, Parliament plainly saw no need to preserve the proviso to s21 which had obviously been inserted to avoid any claim of lack of jurisdiction in a case which had gone into the wrong Court. By s2 of the Adoption Act 1955 'Maori' is defined as a 'person who is a Maori within the meaning of the Maori Affairs Act 1953', and by s2(1) of that Act the definition of 'Maori' (as amended in 1974) is a 'person of Maori race of New Zealand: and includes any descendant of such a person'. Since not all people who can claim Maori descent are aware of their lineage, the reason for the proviso to s21 of the Adoption Act 1955 is obvious. *T v S (No.1)* [1990] NZFLR 411 at 417-8 // *Re Adoption 17/88* 5FRNZ 360

Appointment of Maori Social Workers Adoption Amendment Act 1995

Statute No.4 23/3/1995 1 Short Title This Act may be cited as the Adoption Amendment Act 1995, and shall be read together with and deemed part of the Adoption Act 1955 (hereinafter referred to as the principle Act).

2 Interpretation (1) Section 2 of the principal Act is hereby amended by omitting from the definition of the term "Maori" the words "the Maori Affairs Act 1953", and substituting the words "Te Ture Whenua Maori Act 1993" (2) Section 2 of the principal Act is hereby further amended by repealing the definition of the term "Social Worker" (as inserted by section 23(1) of the Department of Social Welfare Act 1971 and amended by section 36(1)(b) of the Social Welfare (Transitional Provisions Act 1990), and substituting the following definition:

"'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 V of the State Sector Act 1988 in the Department of Social Welfare; or (ii) Any member of the Maori community nominated, after consultation with the Maori community, by the Director-General 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 V of the State Sector Act 1988 in the Department of Social Welfare; or (ii) If the Court so directs, any member of the Maori community nominated, after consultation with the Maori community, by the Director-General to carry out the duties of Social Worker under this Act in respect of the adoption.”

3 Appointment of Community Officers not to be questioned—No acts done under the principal Act by any person acting as a Community Officer appointed under section 4 of the Maori Community Development Act 1962 shall in any proceedings be questioned on the grounds that the person was not validly so appointed.”

ADOPTION ACT 1955

Statute No.93 27/10/1955 Original 1955 Text with annotations after each subsection updated to 2/6/1995

Title An Act to consolidate and amend certain enactments of the General Assembly relating to the adoption of children. BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

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 by a Magistrate's Court or the Maori Land Court under this Act; and does not include an interim order:

[**Amendment 1962** Words “or the Maori Land Court” omitted. Now reads: ‘*Adoption Order*’ means an adoption order made under this Act and does not include an interim order”. Adoption Amendment Act 1962 s2(a)]

[**Amendment 1965** Words “by a Magistrate's Court” omitted. Adoption Amendment Act 1965 s5(2)]

“*Child*” means a person who is under the age of twenty-one years; and includes any person in respect of whom an interim order is in force, notwithstanding that the person has attained that age:

[**Amendment 1970** “20” substituted for word “twenty one” Age of Majority Act 1970 s6]

“*Child Welfare Officer*”, (a) In relation to any application or proposed application to the Maori Land Court, means a Welfare Officer appointed under section four of the Maori Social and Economic Advancement Act 1945; and includes, where that Court so directs, a Child Welfare Officer appointed under the Child Welfare Act 1925; and (b) In relation to any application or proposed application to the Magistrate's Court for an adoption order, means a Child Welfare Officer appointed under the Child Welfare Act 1925; and includes, where the Court so directs, a Welfare Officer appointed under section four of the Maori Social and Economic Advancement Act 1945; and (c) In any other case, includes a Child Welfare Officer appointed under the Child Welfare Act 1925, and a Welfare Officer appointed under section four of the Maori Social and Economic Advancement Act 1945:

[**Amendment 1962** Adoption Amendment Act 1962 s2(b) repealed the definition of the term “Child Welfare Officer” and substituting the following definitions “*Child Welfare Officer*’.- (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 a

Welfare Officer appointed under section 4 of the Maori Welfare Act 1962; and “(b) In relation to any other application or proposed application for an adoption order, means a Child Welfare Officer appointed under the Child Welfare Act 1925; and includes, where the Court so directs, a Welfare Officer appointed under section 4 of the Maori Welfare Act 1962:” Adoption Amendment Act 1962 No.134 s2(b)]

[**Amendment 1971** “Child Welfare Officer” The above definition of this term was repealed and a definition of the term “Social Worker” was substituted and inserted in the appropriate alphabetical place. Department of Social Welfare Act 1971 s23(1) In force 1/4/1972 See SR1972/37. See [“Social Worker”] inserted into this interpretation list below.]

“*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, Charge’ d’Affaires, Consular Officer, Trade Commissioner, or Tourist Commissioner of the 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 Charge’ d’Affaires:

“*Court*” means (a) The Maori Land Court where the term is used in relation to any application for an adoption order which is required by section twenty-one of this Act to be made to that Court, or where the term is used in relation to any application in respect of an adoption order made by that Court: (b) A Magistrate's Court of civil jurisdiction in any other case:

[**Amendment 1962** Definition repealed and substituted “‘Court’, means a Magistrate's Court of civil jurisdiction” Adoption Amendment Act 1962 No.134 s2(c) 1/4/1963]

[**Amendment 1965** Definition ‘Court’ repealed and substituted “‘Court’ means a Magistrate's Court of civil jurisdiction; and includes the Supreme Court acting in its jurisdiction on appeal under this Act:” Adoption Amendment Act 1965 s2(1)]

[**Note 1979** also “Magistrate’s” becomes “District” in consequence of District Court Amendment Act 1979. And “Supreme” becomes “High” in consequence of the Judicature Amendment Act 1979.

[**Amendment 1980** Definition “Court” repealed and substituted by, “Court” means a Family Court or a District Court of civil jurisdiction; and includes the high Court actin in its jurisdiction on appeal under this Act.” Family Courts Act No.161 s17(1). In force 1/10/1981.

[**Note 1981 Family Courts** given jurisdiction concerning adoption Act 1955, in force 1/10/1981. Family Courts Act 1980 No.161 s11, 17(1).

[“*Director-General*”] see Superintendent of Child Welfare in this list.

“*Father*”, in relation to an illegitimate child, means the natural father:

[Repeal 1969] The definition “*Father*” was repealed by Status of Children Act 1969 No.18 s12(2)]

“*Interim order*” means an interim order made under this Act:

“*Maori*” means a person who is a Maori within the meaning of the Maori Affairs Act 1953.

[Amendment 1995] now reads, “*Maori*” means a person who is a Maori within the meaning of [Te Ture Whenua Maori Act 1993];” Amended by Births, Deaths, and Marriages Registration Act 1955 No.4. s1(2) In force 1/9/1995]

“*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:

[Amendment 1965] In the definition of this term the words “and includes any Deputy Registrar” were added as from the commencement of the principal Act. Adoption Amendment Act 1965 s2(2)]

“*Relative*”, in relation to any child, means a grandparent, brother, sister, uncle, or aunt, whether of full blood, of the half blood, or by affinity; and includes, where the child is illegitimate, any person who would be a relative of the child within the meaning of this definition if the child were the legitimate child of his mother and father:

[Amendment 1969] The definition of this term was repealed and substituted. Now reads, “‘Relative’, in relation to any child, means a grandparent, brother, sister, uncle, or aunt, whether of full blood, of the half blood, or by affinity.” Status of Children Act 1969 s12(2).]

[“*Social Worker*”] **[Amendments 1971]** “Child Welfare Officer” was repealed and a definition of the term “Social Worker” was substituted and inserted in the appropriate alphabetical place. Department of Social Welfare Act 1971 s23(1), into force 1/4/1972 See SR1972/37. Now reads “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 a Social Worker appointed under section 4 of the Maori Welfare Act 1962: (b) In relation to any other Application for an adoption order, means a Social Workers under the Department of Social Welfare Act 1971; and includes, where the Court so directs, a social worker appointed under section 4 of the Maori Welfare Act 1962.”]

[Amendment 1974] Social Worker changed to “Community Officer” Maori Purposes Act 1974 s8(1)]

[Amendment 1990] Now reads “(b) In relation to any other application or proposed application for an adoption order, means a Social Worker employed as such under Part V of the State Sector Act 1988 in the Department of Social Welfare, and includes, where the Court so directs, a Community Officer appointed under section 4 of the Maori

Welfare Act 1962.” Social Welfare (Transitional Provisions) 1990 s36 (1)(b). In force 1/4/1990]

[Amendment 1995] Definition “Social Worker” repealed and substituted by, “*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 V of the State Sector Act 1988 in the Department of Social Welfare: or (ii) Any member of the Maori community nominated, after consultation with the Maori community, by the Director-General to carry out the duties of a Social Worker under this Act in respect of the adoption: (b) In relation to any other application for an adoption order, means- (i) Any person employed as a Social Worker under Part V of the State Sector Act 1988 in the Department of Social Welfare: or (ii) If the Court so directs, any member of the Maori Community, by the Director-General to carry out the duties of a Social Worker under this Act in respect of the adoption:”. Amended by Births, Deaths, and Marriages Registration Act 1955 No.4. s2(2) In force 1/9/1995]

“*Superintendent of Child Welfare*” means the Superintendent of the Child Welfare Division of the Department of Education.

[Amendment 1971] Definition of this term repealed and a definition of term “Director-General” substituted and inserted in the appropriate alphabetical place. Now reads, “Director-General” means the Director-General of Social Welfare under the Department of Social Welfare Act 1971. Department of Social Welfare Act 1971 s23(2) In force 1/4/1972. See SR 1972/37]

[Amendment 1990] Definition “Director-General” repealed and substituted by, “*Director-General*”, means the Director-General of Social Welfare, being the chief executive of the Department of Social Welfare appointed under section 35 of the State Sector Act 1988: No.20.” Social Welfare (Transitional Provisions) 1990 No.26 s36(1)(a)]

Making of Adoption Orders

3(1) Power to make adoption orders 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 application order in respect of any child, whether domiciled in New Zealand or not.

(2) An adoption order may be made on the application of two 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.

4(1) Restrictions on making adoption orders Except in special circumstances, and adoption order shall not be made in respect of a child unless the applicant or, in the case of a joint application, one of the applicants- (a) Has attained the age of twenty-five years and is at least twenty-one* years older than the child; or (b) Has attained the age of twenty-one* 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 two of section three of this Act, and adoption order shall not be made providing for the adoption of a child by more than one person.

(4) And adoption order made in contravention of this section shall be valid, but may be discharged by the Court under section twenty 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 Supreme 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 custody, maintenance, and education of the child.

[*Amendment 1970 “20” was substituted for the word “twenty one”. by s6 Age of Majority Act 1970 s6]

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 of 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.

[Note 1974 As to conversion by statute of an interim order into a final order see Macdonald Adoption Act 1974]

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 fifteen years in the home of any person for the purpose of adoption, unless- (a) Prior approval has been given by a Child Welfare Officer*, 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 Child Welfare Officer* 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 Child Welfare Officer* has refused to grant an approval under this section.

(4) This section shall not apply in any case where the child is- (a) Already in the home for care under a licence or warrant of exemption granted under section forty-one of the Infants Act 1908; or (b) Otherwise lawfully in the home.

Amendment 1971 * “Child Welfare Officer” changed to “Social Worker”. Department of Social Welfare Act 1971

s23(4)(b). In Force 1/4/1972 see SR1972/37]

[Amendment 1974 In subs (4)(a) The words “section forty-one of the Infants Act 1908” have been repealed and replaced by “s73 of the Children and Young Persons Act 1974 as the corresponding enactment in force. cf s73(1)(c).

[Amendment 1989 S6(4) repealed and substituted as from 1/11/89 by- “(4) This section shall not apply in any case where- (a) The child is in the home pursuant to any provisions of the Children, Young Persons, and Their Families Act 1989 or to an order made pursuant of that Act; or (b) The Child is in the home pursuant to an order made pursuant to the Guardianship Act 1968; 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.” Children Young Persons, and Their Families Act 1989 No.24 s450(1)]

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 that are dispensed with by the Court under section eight of this Act, shall be- (a) The parents and guardians of the child as provided in subsections three to five 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 eight of this Act, shall be- (a) If the child is legitimate and there is no adoption order in force in respect of the child, the surviving parents or parent and the surviving guardians or guardian appointed by any deceased parent: (b) If the child is illegitimate and there is no adoption order in force in respect of the child, the mother, or (if she is dead) the surviving guardians or guardian appointed by her: Provided that the Court may in any case require the consent of the father if in the opinion of the Court it is expedient to do so:

[Amendment 1969 s3(a) and (b) replaced by new s3(a) and (b). Now reads as “ (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 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) 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:” Status of Children Act 1969 No.18 s12(2)

(c) If there is an adoption order in force in respect of the child, the surviving adoptive parents or parent and the

surviving guardians or guardian appointed by any deceased adoptive parent.

(4) Subject to the prior consent of the *Superintendent of Child Welfare, and parent who desires to have his or her child adopted may in writing appoint the *Superintendent of Child Welfare 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 in which the applicants or applicant intend to bring up the child; and the *Superintendent, when so appointed 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 a least ten 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 *Superintendent of Child Welfare, 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.

[Amendment 1974 [Reference to a “refuge child” was repealed by Children and Young Persons Act 1974 s109. There is no reference to such children in that 1974 Act.]

(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 ten days old at the date of the execution of the document.

(8) Except where it is given by the *Superintendent of Child Welfare, a document signifying consent to an adoption shall not be admissible unless,- (a) If given in New Zealand, it is witnessed by a Magistrate, a Registrar of the Supreme Court or of a Magistrate's Court, or a Solicitor, or a Judge or Commissioner or Registrar of the Maori Land Court:

[Amendment 1962 Addition 8(aa) Insert “(aa) If given in the Cook Islands, it is witnessed by a Resident Commissioner, a Deputy Resident Commissioner, a Resident Agent, a Judge of the High Court of the Cook Islands, a Registrar or Deputy Registrar of the High Court of the Cook Islands, or a solicitor of the Supreme Court of New Zealand: Adoption Amendment Act 1962 No.134 s3.”]

[Note 1966 The definition of term “Resident Commissioner” in the Cook Islands Act 1915, was repealed. Cook Islands Amendment Act 1966 s2(1)]

(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.

[Amendment 1987 s7(8)(aa) repealed and substituted by “(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 Supreme Court of the Cook Islands or the High Court of Niue (as the case requires) or the High Court New Zealand:” Adoption Amendment Act 1987 No.91 s2(1)]

(9) Except where it is given by the *Superintendent of Child Welfare, 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.

[Amendment 1971 *Superintendent of Child Welfare now “Director-General” Department of Social Welfare Act 1971 s23(2) In force 1/4/1972,. See SR 1972/37. “Director-General” means the Director-General of Social Welfare. under the Department of Social Welfare Act 1971.

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 of care or 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 forty 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 *Superintendent of Child Welfare, or some other person.

Amendment 1971 * “Child Welfare Officer” changed to “Social Worker”. Department of Social Welfare Act 1971 s23(4)(b). In Force 1/4/1972 see SR1972/37]

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(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 six 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 defective person is a parent or guardian of a child in respect to whom an application for an adoption order has been made, service of notice of the application on the committee 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.

[Amendment 1965 Addition 5A “(5a) In any case where a Magistrate's 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 Supreme Court against the refusal; and the Supreme Court may dispense with the consent if it thinks fit.” Adoption Amendment Act 1965 s3]

[Amendment 1969 Reference to “mentally defective person” changed to “mentally disordered person”. Mental Health Act 1969 s129(4).]

(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 Supreme Court *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*; and the Court to which the application is so made may in its discretion revoke any such order.

[Amendment 1962 The words in *italics* were repealed by the Adoption Amendment Act 1962 s4(1)]

(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 making of the order dispensing with consent, make application for the revocation of that order and the discharge of the adoption order to the Supreme Court *if the order or orders were made to the Supreme Court 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*; and the Court to which the application is so made may in its discretion discharge any such order. All the provisions of section twenty 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.

[Amendment 1962 The words in *italics* were repealed by the Adoption Amendment Act 1962 s4(2)]

(8) In any case where the Supreme Court *or the Maori Appellate Court* revokes any interim order or discharges and 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 judgment of the Court which made the order in favour of the person to whom the money has to be repaid.

[Amendment 1962 The words in *italics* were repealed by the Adoption Amendment Act 1962 s4(3).]

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 *Superintendent of Child Welfare, the consent shall not be withdrawn at any time while an application 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 one of this section, any consent to an adoption, and any appointment of the *Superintendent of Child Welfare as the guardian of a child under subsection four of section seven 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 *Superintendent of Child Welfare is so withdrawn, and consent given by him shall lapse.

[Amendment *Changed to “Director-General” Social Welfare Act 1971.s23(4)a In force 1/4/1972. SR1972/37.]

10. Child Welfare Officer to report

(1) Before the Court makes an interim order, or makes any adoption order without first making an interim order,-

(a) The Registrar of the Court shall require a *Child Welfare Officer to furnish a report on the application.

(b) Reasonable time shall be allowed to allow the *Child Welfare Officer to furnish a report, and the Court shall consider any report which the *Child Welfare Officer may furnish; and

(c) The Registrar shall give the *Child Welfare Officer 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 *Child Welfare Officer shall be entitled to appear at the hearing of the application, and to cross-examine, call evidence, and address the Court.

[Amendment 1971 * “Child Welfare Officer” changed to “Social Worker”. Department of Social Welfare Act 1971 s23(4)(b). In Force 1/4/1972 see SR1972/37]

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 custody of 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.

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.

[Amendment 1965 Section (1) Inserted. "(1A) Where on the application of any person a Magistrate's 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 Supreme Court against the refusal; and the Supreme Court may in its discretion make any order which the Magistrate's 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 Supreme Court against the revocation or against the terms of the revocation; and the Supreme Court may, if it thinks fit, cancel the revocation or vary the terms thereof." Adoption Amendment Act 1965 s6.] (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.

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 two of this section; and (b) In any case where the child is under the age of fifteen 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 Child Welfare Officer or the interim order was made, whichever first occurred.

(2) The prescribed period mentioned in subsection one of this section shall be six months, or such shorter period as may in special circumstances be specified in the interim order in any case.

(3) Where an application is duly made to a Magistrate's Court under subsection one of this section the Registrar shall issue the adoption order without any further hearing, or where an application is duly made to the Maori Land

Court under subsection one of this section that Court shall issue the adoption order without any further hearing, if in either case-

(a) *A Child Welfare Officer 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; and

(c) No proceedings for the revocation of the interim order have been commenced; 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 Maori Land Court or the Registrar of the Magistrate's Court, as the case may be, shall require a *Child Welfare Officer to furnish a report on the application:

(b) The Maori Land Court or the Registrar of the Magistrate's Court, as the case may be, shall appoint a time and place for the hearing of the application, and in so doing shall allow reasonable time to enable the Child Welfare Officer to furnish his report as aforesaid.

(c) The Court shall consider any report which the Child Welfare Officer may furnish:

(d) The Maori Land Court or the Registrar of the Magistrate's Court, as the case may be, shall give the Child Welfare Officer reasonable notice of the hearing of the application, and the *Child Welfare Officer shall be entitled to appear at the hearing of the application, and to cross-examine, call evidence, and address the Court.

[Amendment 1962 Adoption Amendment Act 1962 s5 Section 13 of the principal Act is hereby amended by repealing subsections (2), (3), and (4), and substituting the following subsections: "(2) The prescribed period mentioned in subsection (1) of this section shall be six 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 *Child Welfare Officer 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; and **[Amendment 1965:** Word "and" removed by Adoption Amendment Act 1965 s5(3).]

(c) No proceedings for the revocation of the interim order have been commenced, - but the adoption order shall not be issued without further hearing in any other case.

[Amendment 1965 of (3)(c) above: The Adoption Amendment Act 1965s(5)(4) repealed (3)(c) above and inserted new (c) and (d) as follows: "(c) No proceedings for

the revocation of the interim order are pending in a Magistrate's Court or on an appeal to the Supreme Court; and (d) A Magistrate's Court has not, within the immediately preceding month, refused to revoke the interim order.”]

“(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 *Child Welfare Officer 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 *Child Welfare Officer to furnish his report as aforesaid:

(c) The Court shall consider any report which the *Child Welfare Officer may furnish:

(d) The Registrar shall give the *Child Welfare Officer reasonable notice of the hearing of the application, and the Child Welfare Officer shall be entitled to appear, cross-examine, call evidence, and address the Court.” The Adoption Amendment Act 1965 s(5)(4)]

(5) In any case where an adoption 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.

[Amendment 1965 Additional “s13A Appeal against refusal to make interim order or adoption order- In any case where a Magistrate’s 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 Supreme Court against the decision; and the Supreme Court may, if it thinks fit, grant the order that is sought.” Adoption Amendment Act 1965, s1]

[*Amendment 1971 * “Child Welfare Officer” changed to “Social Worker”. Department of Social Welfare Act 1971 s23(4)(b). In Force 1/4/1972 see SR1972/37]

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 and 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.

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 on 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 adult 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 shall be entitled to the custody of the child; and shall comply with such terms, if any, as may be specified in the order in respect of the custody of the child;

(b) And *Child Welfare Officer 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 *Child Welfare Officer at least 7 days notice before changing his, her, or their residence: Provided that where an immediate change of residency 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.”

[*Amendment 1971 All references to “Child Welfare Officer” changed to “Social Worker” by Department of Social Welfare Act 1971 s23(4)(b). In Force 1/4/1972]

16 Effect of adoption order

(1) Every adoption order shall confer the surname of the adoptive parents on the adopted child, with such first or Christian names as the Court, on the application of the person who is applying the adoption order, may fix.

[Amendment 1995 16s(1) repealed and substituted. “(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.” Amended by Births, Deaths, and Marriages Registration Act 1955 No.4. s95 In force 1/9/1995]

(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:

(a) The adopted child shall be deemed to become the child of the adoptive parent, and the adopted 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 twenty 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 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 effect 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) The adoption order shall not effect the race, nationality, or citizenship of the adopted child.

[Amendment 1977 New 16(2)(e) substituted. “(e) Subject to the Citizenship Act 1977, the adoption order shall not effect the race, nationality, or citizenship of the adopted child:” Citizenship Act 1977 No.61 s30(2)]

(f) The adopted child shall acquire the domicile of his adoptive parent or adopting 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: Provided that nothing in this paragraph shall affect the domicile of origin of the child: *[see note end of (g)]*

(g) In any case where the adoption order was made before the adopted child attained the age of 3 years, the child’s domicile of origin shall be deemed to be the domicile which he first acquired under paragraph (f) of this subsection upon the making of the adoption order, but nothing in this Act shall effect the domicile of origin of an adopted child in any other case:

[Amendment 1976 [In subs 16(2) the proviso to para (f) and para (g) repealed from a date to be fixed. Domicile Act 1976 No.17 s14(2) see s1(2)]

(h) Any existing appointment as guardian of the adopted child shall cease to have effect. (i) And 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 adoptions 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 or 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. cf Infants Amendment Act 1950 No.18 s2.

[Note As to application subs (1) and (2) to an adoption order made in the Cook Islands, see Cook Islands Act 1915 s573F reprinted 1976 Vol.4 and to an adoption order made in Niue, see Niue Amendment Act (No.2) 1968 s99, as reprinted 1976 Vol.5]

[Note 1974 As to cessation of effect of a guardianship order under the Children and Young Persons Act 1974 when the child or young person is adopted by a person other than his parent, see s49(7)(b) of that Act]

[Amendment 1991 new addition inserts 3 new subclauses to Sec 16:- “**(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.” Child Support Act 1991 No.142 s243 from 1/7/92]

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 one 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 custody of the person; and

(c) Either- (i) The adoption order was made by an order of any Court 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

[Amendment 1965 (i) repealed and substituted by new s(6)(1). "(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 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 sub-paragraph; or," Adoption Amendment Act 1965 s(6)(1)]

[Note 1968 As to extension of subs (2)(c)(i) to include Austria, Denmark, Finland, Netherlands, Norway, see SR1967/68]

(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 that 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.

[Amendment 1965 New section 2A inserted. "(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 the 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. Adoption Amendment Act 1965 No.32 s(6)(2).

[Note As to registration of adoptions made overseas and

to which this section applies, see s21A of the Births and Deaths Registration Act 1951, as inserted by s5 of the Birth and Deaths Registration Amendment Act 1961]

18 Application of Act to Maoris An adoption order may be made under this Act on the application of any person, whether Maori or not, in respect of any child, whether 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 two of this section, 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 thirty-first day of March, nineteen hundred and ten (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 IX of the Native Land Act 1909.

20 Adoption order may be varied or discharged

(1) The Court may in its direction 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 two of section nineteen 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,-

(a) Appeal to the Supreme Court against any decision of a Magistrates Court under this section:

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(b) Appeal to the Maori Appellate Court against any decision of the Maori Land Court under this section.

[Amendment 1962 Subs (5) replaced by new subs s6(5)]

“(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 Supreme Court against the decision.” Adoption Amendment Act 1962 No.134 s6.]

(6) Upon an adoption order, or an adoption to which subsection one of section seventeen of this Act applies, or an adoption to which two of section nineteen 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 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 effect 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 custody of 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 two of section sixteen 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 will) made while the order of adoption was in force, or of a 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 of adoption shall be deemed to continue in force.

[Note 1968 As to application of subs (6) to the discharge of an adoption order in Niue. Niue Amendment Act No.2 1968 s100(5) reprinted 1976 Vol.5]

(7) Upon the discharge of any adoption made in any place outside New Zealand, not being an adoption to which subsection one of section seventeen 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 effect as if it was made in that place:

(b) If at the date of 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.

[Note As to adoption orders discharged by statute, see Thomson Adoption Discharge Act 1958, Thomas Adoption Discharge Act 1961, and Liddle Adoption Discharge Act 1963]

21 Court to which application for adoption order shall be made

Where the applicant, or (in the case of a joint application) one of the applicants, is a Maori and the child is a Maori, the application for an adoption order shall be made to and considered by the Maori Land Court; but every other application for an adoption order shall be made to and considered by a Magistrate's Court of civil jurisdiction: Provided that no adoption order shall be invalid by reason of the fact that it was made in the wrong Court.

[Repeal 1962 Section 21 was repealed by Adoption Amendment Act 1962 s7.] “7 Repeal- Section 21 of the principal Act is hereby repealed.

8 Transitional provisions

(1) All applications, matters, and proceedings relating to any adoption in respect of which the Maori Land Court had jurisdiction under section 21 of the principal Act and pending or in progress at the commencement of this Act shall be continued and completed in all respects as if this Act were not in force.

(2) Any right of appeal from a decision of the Maori Land Court existing at the commencement of this Act shall continue to exist and be exercised in all respects as if the Act were not in force.” Amendment Act 1962 No.134 s7-8. Enacted 14/12/1962 In Force 1/4/1963

22 Applications not 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 Adoption records not open for inspection

(1) Adoption records shall not be available for production or open to inspection except on the order of the Court or of the Supreme Court: Provided that the adoption order itself shall be open to inspection by an executor or administrator or trustee who requires to inspect it for some purpose in connection with the administration of an estate or trust: Provided also that the adoption records shall be open to inspection by any Registrar of Marriages or *officiating Minister** under the Marriage Act 1908 for the purpose of investigating forbidden degrees of relationships under the Act.

(2) Any such order may be made- (a) For the purpose of a prosecution for making a false statement; or (b) In the event of any question as to the validity or effect of an interim order or an adoption order; or (c) On any other special ground.

[**Amendment 1976** In subs (1) “Officiating minister” replaced by “marriage celebrant” by Marriage Amendment Act 1976 s2(2) and the Marriage Act 1955 being the corresponding enactment in force. 1908.]

[**Amendment 1985 New Sec 23** Old s23 repealed and substituted by Adult Adoption Information Act 1985 s15.

“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 shall be open to inspection by any Registrar of Marriages or marriage celebrant under the Marriage Act 1955 for the purposes of investigating forbidden degrees of relationship under the Act.

“(3) Adoption records shall not be available for production or open to inspection except- (a) To the extent authorised by subsection (1) or subsection (2) 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. Adult Adoption Information Act 1985 No.127 s15. In force 1/3/1986.]

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 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 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.

[**Amendment 1957** New additional Proviso added. “Provided that this section shall not apply to the payment of the hospital and medical expenses of the confinement of the mother of a child in any licensed hospital or separate institution within the meaning of separate institution that is under the control of any society or body of persons caring for the welfare of children, if-

(a) The payment is made by an applicant for an adoption order in respect of the child direct to the society or body of persons that controls the licensed hospital or separate institution; and

(b) The amount paid has been approved by the Director -

General of Health in the particular instance, or is in accordance with a scale approved generally by the Director-General of Health.” Adoption Amendment Act 1957 No.10 s2 Enacted 4/10/1957]

[**Note 1970** The references to a separate institution are now obsolete as Part IV of the Hospitals Amendment Act 1970]

26 Restriction upon advertisements It shall not be lawful for any person, other than the *Superintendent of Child Welfare or a **Child Welfare Officer, to publish any advertisement indicating-

(a) That a 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 *Superintendent of Child Welfare may in his discretion approve in particular cases of advertisements published by an group or society caring for the welfare of children.

[**Amendment 1971** *Superintendent of Child Welfare now becomes Director-General “Director-General” Department of Social Welfare Act 1971 No.60 s23(2) In force 1/4/1972 See SR1972/37]

[**Amendment 1971** “**Child Welfare Officer” becomes “Social Worker”. Social Welfare Act 1971 No.60 s23(4)(b). In force 1/4/1972. See SR1972/37]

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 six of this Act:

(b) Takes out of New Zealand without leave of the Court any child of 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 two of section fifteen of this Act:

(d) Gives or receives or agrees to give or receive any payment in contravention of section twenty-five of this Act:

(e) Publishes any advertisement in contravention of section twenty-six of this Act:

(f) Makes any false statement for the purpose of obtaining or opposing an interim order of 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 Magistrate to imprisonment for a term not exceeding three months or to a fine not exceeding fifty pounds or to both.

[**Amendment 1964** “\$100” substituted for “fifty pounds” by Decimal Currency Act 1964. s7]

(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.

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) All regulations made under this section shall be laid before Parliament within twenty-eight days after the date of the making thereof if Parliament is then in session and, if not, shall be laid before Parliament within twenty-eight days after the date of the commencement of the next ensuing session. SR1959/109

[Amendment 1989 Sec.28(2) Repealed by Regulations (Disallowance) Act 1989 s11. As from 19/12/89.]

29 Consequential amendments The enactments specified in the First Schedule to this Act are hereby amended in the manner indicated in that Schedule.

30 Repeals and savings

(1) The enactments specified in the Second Schedule 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 effect any document made of 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.

First schedule 1955 consequential amendments

Section 29 [As per 1979 Reprint. The enactments specified in this Schedule have been repealed by: s134(1) of the Domestic Proceedings Act 1969 (implied). s4(3) of the Birth and Deaths Registration Amendment Act 1961. s204(1) of the Education Act 1964. s12(2) of the Status of Children Act 1969.

Second schedule 1955 s30 enactments repealed

1908 No.86 The Infants Act 1908 Part III, and section 56. (Reprint of Statutes, Vol. III p1069)

1925 No.22 The Child Welfare Act 1925 so much of the Third Schedule as relates to section 24 of the Infants Act 1908. (Reprint of Statutes, Vol. III p.1113)

1939 No.39 The Statutes Amendment Act 1939 s34.

1941 No.26 The Statutes Amendment Act 1941 s36.

1942 No.18 The Statutes Amendment Act 1942 s14 to 17.

1947 No.60 The Statutes Amendment Act 1947 s26

1948 No 48 The Child Welfare Amendment Act 1948 s10

1950 No.18 The Infants Amendment Act 1950

1951 No.81 The Statutes Amendment Act 1951 s15

1953 No.94 The Maori Affairs Act 1953 Part IX

[Amendment Refer as from 19/12/89 to Infants Act Repeal Act 1989 s2(c). This Schedule has been amended by omitting so much as relates to the Infants Act 1908]

Debate

1st Reading 29/9/1954 Bill No.117-1 This Bill was made available for public comment during the recess, over six months for comment and preparation of a new Bill.

1st Reading 4/5/1955 New Bill No.21-1. p746. Hon Mr Marshall (Attorney General) "The Bill to be referred to a Committee of the Whole House...The Bill was introduced at the end of the last session and read a first time with the idea of giving people interested in this matter an opportunity to study it and make suggestions for its improvement. A number of suggestions were received and have been considered, and some of them are included in this second draft of the Bill. It is proposed that the Bill would be read a first time and then, at a later date, be referred to the Statutes Revision Committee." p746

2nd Reading 6/5/1955 Bill read a second time *pro forma*, and referred to the Statutes Revision Committee. p929

Report of statutes revision committee 20/9/1955 Mr Harker (Hawkes Bay) Presented Statutes Revision Committee Report to House. Moved the report do lie upon the table. Comment was made of the wide range of quality submission made. And the hope that "we will have gone as far as possible to wipe out, for all practical purposes, any distinction between the adopted child and the child of the ordinary marriage." pp2531-2532.

Committed, third reading. 26/10/1955 pp3346-3359

Hon Mr Marshall (Attorney General) Outlined the thorough preparation of the Bill. Work began by 1952 Interdepartmental Committee. The first Bill was introduced September 1954. Tabled for study and suggestions over the recess. Then to Statutes Revision Committee-report tabled 20/9/1955 and now after a month the final debate.

Mr Marshall outlined the major provisions of the Bill in particular extra protection measures. **(a)** Thorough investigation of adoptive parents and their home before a child could be placed with them. **(b)** Probationary Interim Order system. **(c)** Birth parent consent procedure clarified. Ten day period after birth before a consent can be signed. (Submissions received ranged from 0 to 6 weeks) The reason for not extending beyond ten days was some birth mothers left hospital and could not be located to obtain the consents. Consents cannot be withdrawn while adoption pending. **(d)** Adoptive parents and adopt without knowing the name of the birth mother "That is highly desirable in most cases" **(e)** Dispensing with birth parents consents - Three conditions laid down, no appeal against Court decision. **(f)** Very difficult to revoke Adoption Order, Court

must obtain the consent of the Attorney-General. (g) Safeguard religious wishes of birth parents.

Maori support Hon Mr Tirikatene: Spoke with approval and found no difficulty with its application to Maori.

The non registration of Adoption Societies was debated but decided to effectively end private adoption societies.

The Amendments made by the Statutes Revision Committee were read into the Bill and it was read a third time.

Comment “Amendments since the passing of the Adoption of Children Act 1881 have codified the original provisions in response to contemporary concerns and overseas developments. The Adoption Act 1955 still shows evidence of the ‘paste and scissors’ approach. It does not reflect any coherent overall philosophy and many provisions are clumsy or confusing. Its overhaul is urgently needed.” R. Lubrook 1995.

“Both the English and the Australian methods of reconciling the interest of the parent and the other parties are flawed, by their capacity to treat highly vulnerable persons with intolerable harshness. The reconciliation is achieved simply by giving overwhelming weight to one interest or the others...Unfortunately, the adoption legislation in New Zealand has proceeded on this very basis; prior to 1955, maximum protection was given to the mother; now it is the interests of the adopters which are resolutely safeguarded.” Robert Lubrook 1995.

The Adoption Act 1955 is administered by the Department of Justice.

Adoption Act 1955 Regulations SR 1956/169

16/10/1956

1 Title and commencement

(1) These regulations may be cited as the Adoption Regulations 1956.

(2) These regulations come into force on the 14th day after the date of their notification in the Gazette.

2 Interpretation in these regulations, unless the context otherwise requires- “Applicants” includes a sole applicant “Court” means a Magistrate’s Court.

3 Application These regulations shall apply only to applications made to a Magistrate’s Court.

4 Records

(1) The Registrar of every Magistrate’s Court shall keep an Adoptions Register in which shall be entered a record of all applications made in that Court under the Adoption Act 1955 and a minute of all decisions given and all orders made or issued in consequence of any such application.

(2) A minute of any decision given or of the making or issuing of any such order shall also be made on the relative file and shall be signed by the Magistrate or Registrar by whom the decision was given or the order was made or issued.

5 Transfer of court records

(1) The Minister of Justice may from time to time direct in writing that any specified adoption records in any Court or Courts shall be transferred for custody to the office of the Registrar-General appointed under the Births and Deaths Registration Act 1951; and the person having custody of any such specified records shall upon receipt of the direction forthwith deliver the records to the said Registrar-General.

(2) The said Registrar-General shall be deemed to be the officer having the proper custody of any records entrusted to him in pursuance of any such direction.

6 Application for adoption order Every application for an adoption order shall be in form No.1. in the First Schedule to these regulations.

7 Report as to character of applications Before furnishing the report required under section 10(1) of the Adoption Act 1955, a Child Welfare Officer shall make inquiries of the Police as to whether anything is known to them about the character of the applicants.

8 Affidavit by applicants

(1) At any time before the date of hearing of an application for an adoption order there shall be filed in the Court an affidavit by the applicants-

(a) Stating their ages;

(b) Giving information as to their state of health;

(c) Giving particulars of their financial circumstances;

(d) Stating the sex, age, and state of health of any child of the applicants or either applicant;

(e) Where there are two applicants or where the applicant is married, showing the likelihood of any children being

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born to the applicants or applicant in the future:

(f) Showing the relationship (if any) of the child to be adopted to the applicants or either applicant.

(g) Stating the period (if any) that the child has been living with the applicants or either applicant:

(h) Stating that, with the exception of any payment or reward for which the Court's consent has been obtained or is being asked, no payment or reward in consideration of the adoption or of the making of arrangements for the adoption has been or is to be made to or by the applicants or either of them or (to the knowledge of the applicants or either of the applicants) to or by any other person:

(i) Containing a statement or undertaking, as the case may be, in relation to any religious condition imposed by any parent or guardian under subsection (4) or subsection (6) of section (7) of the Adoption Act 1955:

(j) Unless such evidence has been or is to be given by anyone else, providing any evidence that is necessary to show that no consent required by the Adoption Act 1955 is lacking:

(k) Stating whether the applicants or either of them has ever been refused an order on an application for adoption.

(2) A certified copy of the entry relating to the birth of the child proposed to be adopted and, where there are two applicants, a certified copy of the entry relating to their marriage shall be lodged in the Court before the hearing of the application: Provided that the production of either the birth certificate or the marriage certificate or both of them may be excused by the Court if in its opinion there are sufficient grounds for doing so.

9 Consent to adoption

(1) Except where it is given by the Superintendent of Child Welfare, the consent of every parent or guardian of the child proposed to be adopted shall be in the form No.2. or form No.3. in the First Schedule to these regulations. Where the consent is given in form No.3. and does not give the Court number of the application, evidence shall be furnished identifying the applicants as the persons to whose adoption of the child the consent has been given.

(2) A consent required by the Act shall not be witnessed by the solicitor acting for the applicants.

10 Attendance of parties Unless the Court directs otherwise, the applicants and the child proposed to be adopted shall attend personally before the Court at any hearing of the application for adoption or at any hearing by the Court of the application for the issue of an adoption order.

11 Notice of making of interim order- On the making of an interim order the Registrar shall send to the applicants a notice in the form No.4 in the First Schedule to these regulations; and, unless the Child Welfare Officer was present at the hearing, shall notify him of the particulars of the order.

12 Application for issue of adoption order- Every application for the issue of an adoption order shall be in the form No.5 in the First Schedule to these regulations.

13 Adoption order An adoption order shall be drawn up by the Registrar in the form No.6 in the First Schedule in

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these regulations. The order shall be filed in the Court except as provided in section 23 of the Adoption Act 1955. Notice of the making or issue of that adoption order shall be given to the Child Welfare Officer concerned.

14 Application for variation or discharge of adoption order A copy of any application for variation or discharge of an adoption order shall be served on such persons as the Court directs.

15 Fee The only fee to be taken in proceedings under these regulations shall be a fee of 1 pound for each child proposed to be adopted, the fee to be paid on the filing of the application for an adoption order.

16 Forms Where any form in the First Schedule hereto is prescribed or authorised to be used, such variations may be made therein as the circumstances of any particular case may require.

17 Revocations and savings

(1) The Rules specified in the Second Schedule to these regulations are hereby revoked.

(2) Without limiting the provisions of the Acts Interpretation Act 1924, it is hereby declared that the revocation of any provisions by these regulations shall not affect any document made or any thing whatsoever done under the provision so revoked 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 revocation and could have been made or done under these regulations, shall continue and have effect as if it had been done under the corresponding provisions of these regulations and as if that provisions had been in force when the document was made or the thing was done.

First schedule SR1956/169.

Form 1 Application for adoption order Reg 6. In the Magistrate's Court held at... Adoption No...In the matter of the Adoption Act 1955 and In the matter of an application by...to adopt a child. (We) (I), [Full name or names], of [Address, occupation], will apply to the Magistrate's Court at...on [To be filled in by the Registrar] day, the... day of...19...at...am., to adopt *[Full name] a [Sex] child, born at...on the...day of...19...We desire that on the making of the adoption order the names of the child shall be ...Dated at...this...day of...19...Signature...

[Note: This Form 1 replaced by SR1959/109 23/7/1959]

Forms 2,3,4,5,6,7,8 are same as Regulations SR1959/109 printed on following pages. However these is additional Form 6 Notices of Adoption Order in SR1959/109. This means 1956/169 Rules Form 6 is the Adoption Order where issued by the Registrar R13. Form 7 is the Adoption Order where dealt with by the Court R13.

Second schedule SR1956/169 Rules revoked Gazette 1912. Vol. p.8226. Gazette 1916 Vol.III p3139 SR1937/170 SR1940/270 SR1956/169 Dated 16/10/1956 Gazette 18/10/1956 These SR1956/169 rules were revoked and replaced by Adoption Regulations SR1959/109. Gazette 9/7/1959.

Regulations SR1959/109 Adoption Act 1955

1 Title and commencement (1) These regulations may be cited as the Adoption Regulations 1959. **(2)** These regulations come into force on the 14th day after the date of their notification in the Gazette.

2 Interpretation in these regulations, unless the context otherwise requires- “Applicants” includes a sole applicant “Court” means a Magistrate’s Court.

3 Application These regulations shall apply only to application made to a Magistrate’s Court.

4 Records

(1) The Registrar of every Magistrate’s Court shall keep an adoptions register in which shall be entered a record of all applications made in that Court under the Adoption Act 1955 and a minute of all decisions given and all orders made or issued in consequence of any such application.

(2) A minute of any decision given or of the making or issuing of any such order shall also be made on the relative file and shall be signed by the Magistrate or Registrar by whom the decision was given or the order was made or issued.

5 Transfer of Court records

(1) The Minister of Justice may from time to time direct in writing that any specified adoption records in any Court or Courts shall be transferred for custody to the office of the Registrar-General appointed under the Births and Deaths Registration Act 1951; and the person having custody of any such specified records shall upon receipt of the direction forthwith deliver the records to the said Registrar-General.

(2) The said Registrar-General shall be deemed to be the officer having the proper custody of any records entrusted to him in pursuance of any such direction.

6 Application for adoption order Every application for an adoption order shall be in form No.1. in the Schedule to these regulations. Where the child is not named in the application, evidence shall be furnished at or before the hearing of the identity of the child in respect of whom the application is made. [Note Adoption Regs 1959 Amendment No.1. SR 1962/91 New Application Form]

7 Report as to character of applications Before furnishing the report required under section 10(1) of the Adoption Act 1955, a Child Welfare Officer shall make inquiries of the Police as to whether anything is known to them about the character of the applicants, and shall make known to the Court the results of his inquiries.

8 Affidavit by applicants

(1) At any time before the date of hearing of an application for an adoption order there shall be filed in the Court an affidavit by the applicants-

- (a)** Stating their ages;
- (b)** Giving information as to their state of health;
- (c)** Giving particulars of their financial circumstances;
- (d)** Stating the sex, age, and state of health of any child of the applicants or either applicant;
- (e)** Giving the reasons for wanting to adopt the child:

(f) Stating the period (if any) that the child has been living with the applicants or either applicant;

(g) Stating that, with the exception of any payments or reward for which the Court’s consent has been obtained or is being asked or any payment to which by virtue of the proviso in section 25 of the Adoption Act 1955, that section does not apply, no payment or reward in consideration of the adoption or of the making of arrangements for the adoption has been or is to be made to or by the applicants or either of them or (to the knowledge of the applicants or either of the applicants) to or by any other person: **(h)** Containing a statement or undertaking, as the case may be, in relation to any religious condition imposed by any parent or guardian under subsection (4) or subsection (6) of section (7) of the Adoption Act 1955: **(i)** If either applicant is a parent of the child, stating that fact: **(j)** Stating whether the applicants or either of them has ever been refused an order on an application for adoption.

(2) Before the hearing of the application the following documents shall be lodged in the Court:

(a) A certified copy of the entry in the register of births relating to the child proposed to be adopted, which copy shall be annexed to either the parent’s consent if such a consent is given, and otherwise shall be verified by the affidavit of some person who has knowledge of the facts:

(b) Where there are two applicants, a certified copy of the entry relating to their marriage: Provided that the production of either the birth certificate or the marriage certificate or both of them may be excused by the Court if in its opinion there are sufficient grounds for doing so.

9 Consent to adoption

(1) Except where it is given by the Superintendent of Child Welfare, the consent of every parent or guardian of the child proposed to be adopted shall be in form No.2. or form No.3. in the Schedule to these regulations. Where the consent is given in form No.3. and does not give the Court number of the application, evidence shall be furnished at or before the hearing identifying the applicants as the person to whose adoption of the child the consent has been given.

(2) A consent required by the Act shall not be witnessed by the solicitor acting for the applicants.

10 Attendance of parties Unless the Court directs otherwise the applicants and the child proposed to be adopted shall attend personally before the Court at any hearing of the application for adoption or at any hearing by the Court of the application for the issue of an adoption order.

11 Notice of making of interim order On the making of an interim order the Registrar shall send to the applicants a notice in form No.4 in the Schedule to these regulations; and shall give written notification to the Child Welfare Officer of the particulars of the order.

12 Application for issue of adoption order Every application for the issue of an adoption order shall be in form No.5 in the Schedule to these regulations.

13 Adoption order

(1) On an adoption order being issued or made the Regis-

trar shall send to the applicants or their solicitor notice of the issue or making thereof in form No.6 in the Schedule in these regulations.

(2) An adoption order shall be drawn up in form No.7 or form No.8 in the Schedule to these regulations. The order shall be filed in the Court, and no copy shall issue out of the Court except by order of the Court or of the Supreme Court made on special grounds. Notice of the making or issue of the adoption order shall be given to the Child Welfare Officer.

14 Application for variation or discharge of adoption order A copy of any application for variation or discharge of an adoption order shall be served on such persons as the Court directs.

15 Fees The only fee to be taken in proceedings under these regulations shall be a fee of 1 pound for each child proposed to be adopted, the fee to be paid on the filing of the application for an adoption order.

16 Forms Where any form in the Schedule hereto is prescribed or authorised to be used, such variations may be made therein as the circumstances of any particular case may require.

17 Revocations and savings

(1) The Adoption Regulations 1956 are hereby revoked.

(2) Without limiting the provisions of the Acts Interpretation Act 1924, it is hereby declared that the revocation of any provisions by these regulations shall not affect any document made or any thing whatsoever done under the provision so revoked 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 revocation and could have been made or done under these regulations, shall continue and have effect as if it had been done under the corresponding provisions of these regulations and as if that provisions had been in force when the document was made or the thing was done. SR1959/109 Dated 8/7/1959 Gazette. 9/7/59 In force 23/7/1959. Revoked SR1956/169

Notes- Compared with earlier affidavit regulations 1956/169 Under the new regulations applicants are required to give reasons for wanting to adopt the child and state the period, if any, that the child has been living with them. Instead of being required to show relationship, if any, of the child to the applicants or either applicant, they are now required, if either applicant is a parent of the child, to state that fact.

Fertility question removed 1956/169 Clause (e) "Where there are two applicants or where the applicant is married, showing the likelihood of any children being born to the applicants or applicant in the future:" now replaced by 1959/109 (e) "Giving the reasons for wanting to adopt the child:" No longer have to provide evidence to show no required consent is lacking. Clause (g) dealing with payment or reward is modified to take account of the proviso added to s25 by the *Adoption Amendment Act 1957*. Refers to hospital and medical expenses, Director General of Health may authorise payments.

Schedule SR1959/109

Form 1 Application for adoption order Reg 6 In the Magistrate's Court held at...Adoption No...In the matter of the Adoption Act 1955 and In the matter of an application by...to adopt a child. (We) (I), [Full name or names], of [Address, occupation], will apply to the Magistrate's Court at...on [To be filled in by the Registrar] day, the... day of...19...at ... am., to adopt *[Full name] a [Sex] child, born at ...on the...day of...19 ...*Name may be omitted if applicants so wish. We desire that on the making of the adoption order the names of the child shall be...Dated at ...this...day of...19...Signature...

[Note] This Form 1 replaced by SR1962/91 on 19/7/1962]

Form 2 Consent to Adoption Order Reg 9 (General Form) In the Magistrate's Court held at...Adoption No... In the matter of the Adoption Act 1955 and In the matter of an application to adopt...(We) (I), [Full name or names], of [Address, occupation], the parents (or the mother or the father or the guardian) of [Full name], a [Sex] child, born at...on the...day of...19...hereby consent to an order being made for the adoption of the said child by [Full name], of [Address, occupation], * and [Full name], his wife. [Where appropriate in accordance with regulation 8(2)(a) of the Adoption Regulations 1959 add] A copy of the entry in the register of births relating to the said child is hereto annexed. We/I have read the explanation set out below of the effect of an order. Signed by the said...on the...day of... of...19...in the presence of # A.B. [Occupation and address] Signed by the said ...on the... day of...of...19...in the presence of # A.B. [Occupation and address] *Delete if applicable. # Witness must be one of the persons specified in section 7(8) of the Adoption Act 1955, but not the solicitor acting for the applicants. See reg 9(2) of the Adoption Regulations 1959.

Summary of Effects of Adoption Order As printed on back of birth mother consent form "Upon the making of an adoption order:-

(a) The child is deemed for all purposes and as regards all relationships to become a legitimate child of the adoptive parents.

(b) Rights of guardianship and existing relationships in respect of the child cease except for the very special purpose of determining forbidden relationships in connection with marriage and with the crime of incest.

(c) Rights in respect of property and succession to property are determined according to the relationships created by the adoption, but property rights acquired before the adoption are not affected.

(d) Any affiliation order or maintenance order or agreement which provides for maintenance of the child, if made before the adoption order, ceases to have any effect except as to arrears owing and except where the child is adopted by the mother or by the mother and her husband. Provided that, where the child is adopted by the mother or by the mother and her husband, the adoption does not prevent the making of any affiliation order or maintenance order which could previously have been made or prevent the mother from making an application for an affiliation order or a maintenance order.

(e) The domicile of the child is changed to that of the adoptive parents, but the child's race, nationality and citizenship are not effected." [See amendments and addition to "Effects" section by SR1980/93]

Certificate by Witness I hereby certify that before the said...signed the foregoing consent I fully explained to him (or her or them) the effect of the making of an adoption order as set out in the Adoption Act 1955, and that he (or she or then) appeared fully to understand the same. *Signature...*

Form 3 Consent to adoption order Reg 9 (Where identity of applicants is not known) (Title as in Form No.2.) (We) (I), [Full name or names], of [Address, occupation], the parents (or the mother or the father or the guardian) of [Full name], a [Sex] child, born at...on the ...day of...19...hereby consent to an order being made for the adoption of the said child by the applicant or applicants named in Application No...(or the person(s) who are (or is) entitled to receive the said child for adoption in accordance with an approval which was given on...by... a Child Welfare Officer), *subject to the following conditions with respect to the religious denomination and practice of the applicants or any applicant or as to the religious denomination in which the applicant or applicants intend to bring up the child:..[Where appropriate in accordance with regulation 8(2)(a) of the Adoption Regulations 1959 add] A copy of the entry in the register of births relating to the said child is hereto annexed. We/I have read the explanation set out below of the effect of an order. Signed by the said...on the...day of...of...19... in the presence of # A.B. [Occupation and address] Signed by the said...on the...day of...of...19...in the presence of # A.B. [Occupation and address]

*Delete if applicable. # Witness must be one of the persons specified in section 7(8) of the Adoption Act 1955, but not the solicitor acting for the applicants. See reg 9(2) of the Adoption Regulations 1959. [Effects and Witness is as printed on back of Form 2]

Form 4 Notice of interim order Reg 11 (Title as in Form No.1) To:..[Full name], of..[Address], # and [Full name], his wife. # Delete in inapplicable. On...19...the Court made an order in relation to your application to adopt a child. The order was an interim order only as required by the Adoption Act 1955, and while it remains in force the following conditions apply: (a) You are entitled to the custody of the child * on the following terms: (b) Any Child Welfare Officer may, at all reasonable times, visit and enter the residence in which the child is living: (c) The child is not to be taken out of New Zealand without leave of the Court. (d) You must give to a Child Welfare Officer at least seven days' notice before changing your residence: Provided that where an emergency makes any immediate change necessary it will be sufficient if you give notice within forty-eight hours after leaving your previous residence. The interim order is not an adoption order. An adoption order cannot be obtained until after a further application has been made to the Court after an interval of...The application to the Court for the issued of the adoption order may be made after...19... * if the child has

been continuously in your care for not less than... since the date on which the interim order was made or since such earlier date (if any) as the placing or receiving or keeping of the child in your home for the purpose of adoption was approved by a Child Welfare Officer. The application to the Court for the adoption order must be made before... 19...The interim order will lapse on that day. If you do not apply in time you may lose the custody of the child. ...Registrar. *Delete if applicable.

Form 5 Application for issue of an adoption order after and interim order has been made Reg 12 Title as in Form No.1 The applicants hereby apply for the issue of an adoption order and state as follows: (1) The interim order is in force and has continued in force for not less than [Set out the prescribed period fixed by or in accordance with section 13 of the Adoption Act 1955]. (2) [Where the child is under that age of fifteen years state facts to show that paragraph (b) of section 13(1) of the Adoption Act 1955 has been complied with.] Dated at...the...day of...19... Signatures:..To the Registrar, Magistrate's Court...

Form 6 Notice of adoption order Reg 13(1) Title as in Form No.1 To:..An adoption order was issued [or made] in respect of...[State name of child following adoption] on ...19... Registrar...

Form 7 Adoption order Reg 13(2) (where issued by Registrar) (Title as in Form No.1) Whereas on the application of [Name, address, and occupation], * and [Name], his wife, an interim order was made by...Esquire, Stipendiary Magistrate, for the adoption of [Full name], a [Sex] child, born at...on the...day of...19...and the order specified that after the adoption order the child's name would be...Now it is ordered that the said...be and he/she is hereby adopted by the said...and shall henceforth bear the name of ... Dated at...this ...day of...19... ...Registrar* Delete if inapplicable.

Form 8 Adoption order Reg 13(2) (Where dealt with finally by the Court) (Title as in Form No.1) Upon the application of [Name, address, and occupation], * and [Name], his wife, it is ordered by... Esquire, Stipendiary Magistrate, that [Full name], a [Sex] child, born at...on the...day of...19...be and he/she is hereby adopted by the said...and shall henceforth bear the name of...Dated at...this...day of...19... ...Registrar * Delete if inapplicable. **Seal**

Note These regulations consolidate the Adoption Regulations 1956 with minor amendments. There is a new form of application which will allow the applicants to omit the child's name if they wish. Provision is also made for notice to be given to the applicants when an adoption order is issued or made." Adoption Regulations SR1959/109 for Adoption Act 1955 Dated 8/7/1959 Gazette 9/7/1959 in force 23/7/1959

[Amendment 1962 SR1962/91 Revoked Form No.1. 19/7/62 and replaced it as follows:- Amended Rule Adoption Act 1955 1.

(1) These regulations may be cited as the Adoption Regulations 1959, Amendment Regulations 1959* (hereafter

1955 ADOPTION ACT RULES

referred to as the principal regulations)

(2) These regulations shall come into force on the 28th day after the date of their notification in the Gazette.

2. The Schedule to the principal regulations is hereby amended by revoking form No.1, and substituting form No.1 set out in the Schedule to these regulations.]

Schedule SR1962/91 Form 1 Application for adoption order Reg 6

In the Magistrate's Court held at...Adoption No...In the matter of the Adoption Act 1955 and In the matter of an application by...to adopt a child. (We) (I), [*Full name or names*], of [*Address, occupation*], will apply to the Magistrate's Court at...on [*To be filled in by the Registrar*] day, the...day of...19...at...am., to adopt **[Full name]* a [*Sex*] child, born at...on the...day of...19 ...*Name may be omitted if applicants so wish. We desire that on the making of the adoption order the names of the child shall be...The following information is submitted for the purpose of re-registration of the birth: Age of male applicant *at date of child's birth*...Birthplace of male applicant...Age of female applicant *at date of child's birth*...Birthplace of female applicant... # We (do not) desire that the words "adoptive parent(s) appear on the face of any certified copy of the entry of birth of the child after the birth has been re-registered. # Need not be completed when applicant is an unmarried woman. Dated at...this...day of...19...Signature...

Note These regulations amend the form of application for an adoption order so as to require the applicant to disclose additional information which (under section 21 of the Births and Deaths Registration Act 1951, as substituted by section 4 of the Birth and Deaths Registration Act 1961) is necessary for the purpose of the re-registration of the birth of the child that is being adopted. SR1962/91 Dated 20/6/1962. Gazette 21/6/1962 In force 19/7/1962

1967/68 Additional order Adoption Act 1955

1 This order may be cited as the Overseas Adoption Order 1967.

2 It is hereby directed that Austria, Denmark, Netherlands, Norway, and Sweden shall be deemed to be referred to in subparagraph (i) of paragraph (c) of subsection (2) of section 17 of the Adoption Act 1955, which subparagraph was substituted by section 6(1) of the Adoption Amendment Act 1965. SR1967/68 Dated 3/4/1967 Gazette 6/4/1967

1980/93 Additional Rule Adoption Act 1955

1 Title and commencement

(1) These regulations may be cited as the Adoption Regulations 1959, Amendment No.2, and shall be read together with and deemed part of the Adoption Regulations 1959* (hereinafter referred to as the principal regulations). [*SR1959/109 Amendment No.1. SR 1962/91.]

(2) These regulations shall come into force on the 14th day after the date of their notification in the *Gazette*.

XXX

2 General form of consent to adoption order-

(1) Form No.2 in the Schedule to the principal regulations is hereby amended-

(a) By omitting from paragraph (a) the word "legitimate":

(b) By omitting from paragraph

(d) the words "affiliation order" wherever they occur, and substituting in each case the words "paternity order". (c)

By omitting from paragraph (e) the words "race, nationality, and citizenship", and substituting the words "race and nationality". (2) The said Form No.2 is hereby further amended by inserting, after paragraph (e), the following paragraph: "(f) The child is deemed to be a New Zealand citizen if at least one of the adoptive parents is a New Zealand citizen."

3 Form of consent to adoption order where identity of applicants not known

(1) Form No.3. in the Schedule to the principal regulations is hereby amended-

(a) By omitting from paragraph (a) the word "legitimate":

(b) By omitting from paragraph (d) the words "affiliation order" wherever they occur, and substituting in each case the words "paternity order".

(c) By omitting from paragraph (e) the words "race, nationality, and citizenship", and substituting the words "race and nationality".

(2) The said Form No.2 is hereby further amended by inserting, after paragraph (e), the following paragraph: "(f) The child is deemed to be a New Zealand citizen if at least one of the adoptive parents is a New Zealand citizen."

Note These regulations are made pursuant to section 28 of the Adoption Act 1955, and amend the Adoption Regulations 1959. Regulation 1 relates to the Title and commencement. Regulation 2 makes a number of amendments to the general form of consent to the making of an adoption order. The first amendment is consequential upon the Status of Children Act 1970, the second upon the Domestic Proceedings Act 1960, and the third and fourth upon the Citizenship Act 1977. Regulation 3 makes the same amendments to the form of consent where the identity of the applicants is not known. SR1980/93 Dated 28/4/1980 Gazette 1/5/1980 In Force 15/5/1980

SR1981/206 Amended Rule Adoption Act 1955

1 Title and commencement

(1) These regulations may be cited as the Adoption Regulations 1959, Amendment No.3, and shall be read together with an deemed part of the Adoption Regulations 1959 (hereinafter referred to as the principal regulations).

(2) These regulations shall come into force on the 17th day of August 1981.

2 **Fee** Regulation 15 of the principal regulations (as amended by section 7 of the Decimal Currency Act 1964) is hereby amended by omitting the expression "\$2", and substituting the expression "\$5".

Note Increases from \$2 to \$5 the fee payable for proceedings for the adoption of a child. Dated 3/8/1981. Gazette. 6/8/1981. In force 17/8/1981. Repealed SR1984/309

SR1984/309 Amended Rule Adoption Act 1955**1 Title and commencement**

(1) These regulations may be cited as the Adoption Regulations 1959, Amendment No.4, and shall be read together with an deemed part of the Adoption Regulations 1959 (hereinafter referred to as the principal regulations).

(2) These regulations shall come into force on the 1st day of January 1984.

2 Fee Regulation 15 of the principal regulations (as amended by regulation 2 of the Adoption Regulations 1959, Amendment No.3) is hereby amended by omitting the expression "\$5", and substituting the expression "\$20".

3 Revocation The Adoption Regulations 1959, Amendment No.3 are hereby consequentially revoked

Note: Increases \$5 to \$20 fee payable for proceedings for the adoption of child. Dated 26/11/1984. In force 1/1/1985. Repealed SR1987/48

SR1987/48 Amended Rule Adoption Act 1955**1 Title and commencement**

(1) These regulations may be cited as the Adoption Regulations 1959, Amendment No.5, and shall be read together with an deemed part of the Adoption Regulations 1959 (hereinafter referred to as the principal regulations).

(2) These regulations shall come into force on the 1st day of April 1987.

2 Fee Regulation 15 of the principal regulations (as amended by regulation 2 of the Adoption Regulations 1959, Amendment No.4) is hereby amended by omitting the expression "\$20", and substituting the expression "\$75".

Note Increases from \$20 to \$75 the fee payable for proceedings for the adoption of a child. Dated 16/3/1987 Gazette 19/3/1987. In force 1/4/1987 Repealed by SR1991/191.

SR1991/191 Amended Rule Adoption Act 1955**1 Title and commencement**

(1) These regulations may be cited as the Adoption Regulations 1959, Amendment No.6 and shall be read together with an deemed part of the Adoption Regulations 1959 (hereinafter referred to as the principal regulations).

(2) These regulations shall come into force on the 8th day of October 1991.

2 Fee Regulation 15 of the principal regulations (as amended by regulation 2 of the Adoption Regulations 1959, Amendment No.5) is hereby amended by omitting the expression "\$75", and substituting the expression "\$80"

3 Goods and Services tax included The fee prescribed by these regulations is inclusive of goods and services tax under the Goods and Services Tax Act 1985

4 Revocations

(1) The Adoption Regulations 1959 Amendment No.5 are hereby revoked.

(2) The Fees Regulation 1987 are hereby amended by revoking so much of the Schedule as relates to the Adoption Regulations 1959, Amendment No.5.

Note These regulations, which come into force on 8 October 1991, increase from \$75 to \$80 the fee payable on the filing of an application for an adoption order. The fee is inclusive of goods and services tax. Dated 2/9/1991 Gazette. 5/9/1991 In force 8/10/1991 Revoked by SR1992/142

SR1992/142 Amended Rule Adoption Act 1955**1 Title and commencement**

(1) These regulations may be cited as the Adoption Regulations 1959, **Amendment No.7**, and shall be read together with an deemed part of the Adoption Regulations 1959 (hereinafter referred to as the principal regulations).

(2) These regulations shall come into force on the 1st day of July 1992.

2 Fee Regulation 15 of the principal regulations (as amended by regulation 2 of the Adoption Regulations 1959, Amendment No.6) is hereby amended by omitting the expression "\$80", and substituting the expression "\$85"

3 Goods and Services tax included The fee prescribed by these regulations is inclusive of goods and services tax under the Goods and Services Tax Act 1985

4 Revocations (1) The Adoption Regulations 1959 Amendment No.6 are hereby revoked.

Note These regulations, which come into force on 8 October 1991, increase from \$75 to \$80 the fee payable on the filing of an application for an adoption order. The fee is inclusive of goods and services tax. Dated 2/6/1992 Gazette. 4/6/1992. In force 1/7/1992. Revoked ...

Adoption Amendment Act 1957

Statute No.10. 4/10/1957 BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1 Short Title This Act may be cited as the Adoption Amendment Act 1957, and shall be read together with and deemed part of the Adoption Act 1955 (hereinafter referred to as the principal Act).

2 Payments in consideration of adoption Section twenty five of the principal Act is hereby amended by adding the following proviso: Provided that this section shall not apply to the payment of the hospital and medical expenses of the confinement of the mother of a child in any licensed hospital or separate institution within the meaning of the Hospitals Act 1926, being a licensed hospital or separate institution that is under the control of any society or body of persons caring for the welfare of children, if-

(a) The payment is made by an applicant for an adoption order in respect of the child direct to the society or body of persons that controls the licensed hospital or separate institution; and

(b) The amount paid has been approved by the Director - General of Health in the particular instance, or is in accordance with a scale approved generally by the Director-General of Health."

Note "Section 25 of the Adoption Act 1955 provides that, except with the consent of the Court, it shall not be lawful of any person 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. This Adoption Amendment Act 1957 provides that the said provisions does not prevent the payment of the hospital and medical expenses of the confinement of the mother of a child in any licensed hospital or separate institution within the meaning of the Hospitals Act 1926, being a licensed hospital or separate institution that is under the control of any society or body of persons caring for the welfare of children if conditions as set out in the Amendment 2(a) and (b)." Explanation Note on Bill.

Debate

First Reading Vol 313 p1727 15/8/1957

Second Reading Vol 313 pp2144-45 30/8/1957

Third Reading Vol 313 p2796 3/10/1957

2nd Reading Hon Mr Marshall (Attorney-General) "Section 25 of the Adoption Act 1955 provides that, except with the consent of the Court, payments in consideration of an adoption or the making of an arrangements for an adoption are unlawful. That is necessary to prevent what might popularly be called baby farming or the sale of babies for adoption which the House would agree, I am sure, would be an undesirable practice..." The amendment was fully supported by both sides of the House. A rather wordy debate may be summarised as follows:- Quite a few birth mothers choose to go to private hospitals or institutions to have their child away from the exposure of the public (free) hospitals. Often the payment of expenses at such hospitals

was an embarrassment. In most cases the adoptive parents were prepared to pay something, but Courts tended to be over cautious or inconsistent. The safeguard of simply granting Court discretion was not working effectively. Hence the amendment, enabling payment of confinement expenses without requirement of Court approval. There were four safeguards—

(a) money must be only for specified expenses- the confinement,

(b) Scale of charges must be within those approved by the Director-General of Health.

(c) The money must be paid direct to the Hospital or Institution- not to the birth mother.

(d) The Hospital or Institution had to be licensed.

Adoption Amendment Act 1962

Statute No.134 14/12/1962 In Force 1/4/1963 BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1 Short Title and commencement

(1) This Act may be cited as the Adoption Amendment Act 1962, and shall be read together with and deemed part of the Adoption Act 1955 (hereinafter referred to as the principal Act).

(2) Sections 2,4,5,6,7, and 8 of this Act shall come into force on the first day of April, nineteen hundred and sixty three.

2 Interpretation Section 2 of the principal Act is hereby amended as follows: (a) By omitting from the definition of the term "adoption order", the words "or the Maori Land Court": (b) By repealing the definition of the term "Child Welfare Officer" and substituting the following definitions "Child Welfare Officer". (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 a Welfare Officer appointed under section 4 of the Maori Welfare Act 1962; and (b) In relation to any other application or proposed application for an adoption order, means a Child Welfare Officer appointed under the Child Welfare Act 1925; and includes, where the Court so directs, a Welfare Officer appointed under section 4 of the Maori Welfare Act 1962:" (c) By repealing the definition of the term "Court", and substituting the following definition: "'Court' means a Magistrate's Court of civil jurisdiction:'

3 Witnessing of consents Subsection (8) of section 7 of the principal Act is hereby amended by inserting, after paragraph (a), the following paragraph: "(aa) If given in the Cook Islands, it is witnessed by a Resident Commissioner, a Deputy Resident Commissioner, a Resident Agent, a Judge of the High Court of the Cook Islands, a Registrar or Deputy Registrar of the High Court of the Cook Islands, or a solicitor of the Supreme Court of New Zealand:"

4 Jurisdiction of Maori Appellate Court (1) Subsection (6) of section 8 of the principal Act is hereby amended 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.” (2) Subsection (7) of section 8 of the principal Act is hereby amended 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 Court.” (3) Subsection (8) of section 8 of the principal Act is hereby amended by omitting the words “of the Maori Appellate Court.”

5 Issue of adoption order where interim order has been made Section 13 of the principal Act is hereby amended by repealing subsections (2), (3), and (4), and substituting the following subsections:

(2) The prescribed period mentioned in subsection (1) of this section shall be six 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 Child Welfare Officer 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; and (c) No proceedings for the revocation of the interim order have been commenced,- but the adoption order shall not be issued without 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 Child Welfare Officer 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 Child Welfare Officer to furnish his report as aforesaid:

(c) The Court shall consider any report which the Child Welfare Officer may furnish:

(d) The Registrar shall give the Child Welfare Officer reasonable notice of the hearing of the application, and the Child Welfare Officer shall be entitled to appear, cross-examine, call evidence, and address the Court.”

6 Appeals from certain decisions of Court Section 20 of the principal Act is hereby amended by repealing subsection (5) and substituting the following subsection: “(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 Supreme Court against the decision.”

7 Repeal Section 21 of the principal Act is hereby repealed.

8 Transitional provisions

(1) All applications, matters, and proceedings relating to any adoption in respect of which the Maori Land Court had

jurisdiction under section 21 of the principal Act and pending or in progress at the commencement of this Act shall be continued and completed in all respects as if this Act were not in force.

(2) Any right of appeal from a decision of the Maori Land Court existing at the commencement of this Act shall continue to exist and be exercised in all respects as if the Act were not in force. Enacted 14/12/1962 In Force 1/4/1963

Note The main purpose of this Act is to remove distinctions in the law relating to adoptions is so far as it affects Maoris and Europeans. The Bill makes textual amendments to the Adoption Act 1955 necessary to give effect to the aforesaid purpose. Prior to this amendment where the applicant for an adoption order was a Maori and the child a Maori, the application was made to the Maori Land Court, and any appeals in respect of any such application were made the Maori Appellate Court. The amendment now requires that all applications will be made to the Magistrate’s Court and appeals will be the Supreme Court. The only provision remaining which distinguishes between Maoris and Europeans is that Maori Welfare Officers appointed under the Maori Welfare Act 1962 may be used in relation to any application or proposed application by a Maori whether jointly or singly, for an adoption order respect of a Maori child.” The above provision is provisions re Cook Island adoptions.

Debate

First and second reading *pro forma* NZPD Vol 330. 14/6/1962 p117. Referred to the Maori Affairs Committee. Urgency Vol 333 pp.3347-3348. Committed pp.3350-51 In Committee and third reading Vol 333 13/12/1962 p3411.

First reading “Hon J.R. Hanan (Attorney-General)- Sir, the main purpose of this Bill is to do away with one more of the provisions that differentiate between Maoris and other New Zealanders. In 1909, when Maoris births and marriages were not subject to the legal obligations in regard to registration that applied to Europeans, and when the Maori people were less familiar with legal requirements than they are today, the adoption of or by a Maori was placed under the jurisdiction of the Maori Land Court, which was very much more familiar than were the ordinary Courts of the land with the Maori people and their attitudes. Until the passing of the Adoption Act 1955 there was a special code for Maori adoptions, the former concept of adoptions among Maoris being somewhat different from the practice in regard to Europeans. The Act of 1955 introduced a uniform code for all adoptions, the only distinction between Maori adoptions and others being that the Maori cases were dealt with by the Maori Land Court, instead of by the Magistrate’s Court, and Maori welfare officers functioned in the Maori Land Court, whereas child welfare officers functioned in the Magistrates Court. Now that the Maori people are, I think, better equipped to deal with the normal Courts and their attitude towards adoption has come more closely into line with that of the rest of the community, the time has arrived for the whole jurisdiction of adoption to be transferred to the Magistrate’s Court... This measure concerns the Maori people, and we have a practice that Bills affecting the Maori people should be

referred to the Maori Affairs Committee. As the measure is one of a legal nature, however I think it should really go to the Statutes Revision Committee, which committee should invite the Maori members to appear before it...Hon Walter Nash suggested it be sent to the Maori Affairs Committee. Hon Hanan concurred and moved accordingly. Bill read a second time pro forma and referred to the Maori Affairs Committee."

13/12/1962 Hon J.R.Hanan Moved that the *Bill be committed*. ... "I understand the Maori members of Parliament are in general support of this measure, as amended by the Maori Affairs Committee. The National Council of Tribal Executives strongly supported the Bill, although it was not unanimous. Two major objections were raised to transferring the adoption of Maori children to the jurisdiction of the Magistrate's Court. The First was that Maoris, because of unfamiliarity with a Magistrate's Court, would be reluctant to go there, and consequently there would be an outbreak of adoptions by Maori custom, from which no legal results would flow. The second objection was that Maoris would be obliged to employ counsel at a cost of 15 pounds or more, whereas at present they receive the assistance of the Maori welfare officer in proceedings before the Maori Land Court and so are not involved in legal costs."...Hon Hanan answered the two objections pointing out that it was in the best interests of the child to have the matter settled in a common court, and that Maoris were quite familiar with Magistrate's Courts.

Mrs Ratana (Western Maori)... "It is very common, for example for Maori grandparents to adopt and bring up a child. Maoris have been dealing with the Maori Land Court for a century, and they have complete confidence in and understanding of that Court. The Judges of the Maori Land Court have always shown great patience and understanding, and usually conduct cases without too much formality. Maoris are quite accustomed to appearing before the Maori Land Court in person, and therefore have no fear of that Court...The Maori Land Court is regarded as a friend, but unfortunately many Maoris do not have the same happy association with the Magistrate's Court... Provided Maoris still have the assistance of the Maori welfare officer in the Magistrate's Court, I support this proposal to transfer jurisdiction for adoptions from the Maori Land Court to the Magistrate's Court." The Hon Mason- pointed out one advantage was that Magistrate's Courts sat much more frequently in more locations than the Maori Land Court, this would give easier access. Bill in Committee. The amendments made by the Maori Affairs Committee were read into the Bill. Bill reported with amendment. Next day, *Third reading*, nil debate.

Adoption Amendment Act 1965

Statute No.32. 24/9/1965 BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1 Short Title This Act may be cited as the Adoption Amendment Act 1965, and shall be read together with and deemed part of the adoption Act 1955 (Hereinafter re-

ferred to as the principal Act).

2 Interpretation

(1) Section 2 of the principal Act is hereby amended by repealing the definition of the term "Court" (as inserted by paragraph (c) of section 2 of the Adoption Amendment Act 1962), and substituting the following definition: "'Court' means a Magistrate's Court of civil jurisdiction; and includes the Supreme Court acting in its jurisdiction on appeal under this Act: '

(2) Section 2 of the principal Act is hereby amended as from the commencement of that Act by adding to the definition of the term "Registrar" the words "and includes any Deputy Registrar."

(3) Paragraph (c) of section 2 of the Adoption Amendment Act 1962 is hereby consequentially repealed.

3 Appeal against refusal to dispense with consent

Section 8 of the principal Act is hereby amended by inserting, after subsection (5), the following subsection. "(5A) In any case where a Magistrate's 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 Supreme Court against the refusal; and the Supreme Court may dispense with the consent if it thinks fit."

4 Appeal in respect of revocation of interim order

Section 12 of the principal Act is hereby amended by inserting, after subsection (1), the following subsections:

(1A) Where on the application of any person a Magistrate's 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 Supreme Court against the refusal; and the Supreme Court may in its discretion make any order which the Magistrate's 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 Supreme Court against the revocation or against the terms of the revocation; and the Supreme Court may, if it thinks fit, cancel the revocation or vary the terms thereof."

5 Appeal against refusal to make interim order or adoption order

(1) The principal Act is hereby amended by inserting, after section 13, the following section:

" 13A In any case where a Magistrate's 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 Supreme Court against the decision; and the Supreme Court may, if it thinks fit, grant the order that is sought."

(2) Section 2 of the principal Act is hereby amended by omitting from the definition of the term "adoption order" the words "by a Magistrate's Court."

(3) Section 13 of the principal Act, as amended by section 5 of the Adoption Amendment Act 1962, is hereby further

amended by omitting from paragraph (b) of subsection (3) the word “and.”

(4) Section 13 of the principal Act, as so amended, is hereby further amended by repealing paragraph (c) of subsection (3), and substituting the following paragraphs: “(c) No proceedings for the revocation of the interim order are pending in a Magistrate’s Court or on an appeal to the Supreme Court; and “(d) A Magistrate’s Court has not, within the immediately preceding month, refused to revoke the interim order.”

6 Effect of overseas adoption

(1) Section 17 of the principal Act is hereby amended by repealing sub-paragraph (i) of paragraph (c) of subsection (2), and substituting the following sub-paragraph: “(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 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 sub-paragraph; or.”

(2) Section 17 of the principal Act is hereby further amended by inserting, after subsection (2), the following subsection: “(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 the place.

7 Procedure on appeals On any appeal to the Supreme Court under this Act, the provisions of section 72, subsections (2), (3), and (4) of section 73 and sections 75, 76, and 78 of the Magistrate’s Court Act 1947 shall apply so far as they are applicable and with any necessary modifications.

Status of Children Act 1969

Statute No. 18 22/8/1969. s3 “All children of equal status

(1) For all purposes of the law of New Zealand the relationship between every person and his father and mother shall be determined irrespective of whether the father or mother are or have been married to each other, and all other relationships shall be determined accordingly.

(2) The rule of construction whereby in any instrument words of relationship signify only legitimate relationship in the absence of a contrary expression of intention is abolished. . .

(4) This section shall apply in respect of every person, whether born before or after the commencement of this Act, and whether born in New Zealand or not, and whether or not his father or mother has ever been domiciled in New Zealand.” See Schedule s12 for list of Statues amended to remove of all discrimination of legitimate v illegitimate. In Force 1/1/1970.

Department of Social Welfare Act 1971

Statute No.60. 25/11/1971 s23 Amendment to Adoption Act 1955

(1) Section 2 of the Adoption Act 1955 is hereby amended by repealing the definition of the term “Child Welfare Officer” (as inserted by section 2(b) of the Adoption Amendment Act 1962), and by inserting, after the definition of the term “relative”, the following definition: “*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 a Social Worker appointed under section 4 of the Maori Welfare Act 1962: (b) In relation to any other Application for an adoption order, means a Social Workers under the Department of Social Welfare Act 1971; and includes, where the Court so directs, a social worker appointed under section 4 of the Maori Welfare Act 1962,.

(2) Section 2 of the Adoption Act 1955 is hereby further amended by repealing the definition of the term “Superintendent of Child Welfare”, any by inserting, after the definition of the term “Court”, the following definition: “Director-General’ means the Director-General of Social Welfare under the Department of Social Welfare Act 1971:”

(3) Section 2 of the Adoption Amendment Act 1962 is hereby consequentially amended by repealing paragraph (b).

(4) Subject to the foregoing provisions of this section, and unless the context otherwise requires, every reference in the Adoption Act 1955 and its amendments-

(a) To the Superintendent of Child Welfare shall hereafter be read as a reference to the Director-General:

(b) To a Child Welfare Officer shall hereafter be read as a reference to a Social Worker.

Children and Young Persons Act 1974

Statute No.72. 8/11/1974 s73 Unauthorised person not to receive infant

“(1) No person shall receive or retain in his care or charge any infant for the purpose of caring for or maintaining him apart from his parents or guardians for a longer continuous period of 40 days, unless-

(a) That person is a near relative of that infant; or

(b) That person is licensed under this Part of this Act as a foster parent; or

(c) The infant is lawfully in the home of that person for the purpose of adoption and the requirements of section 6 of the Adoption Act 1955 are being complied with;” - *other non adoptive situations are listed.*

Judicature Amendment Act 1979

Statute No.124. 13/12/1979 s12 References to Supreme Court deemed references to High Court

Every reference to the Supreme Court in any enactment passed before the date of the commencement of this section, or in any document executed before that date, shall

be deemed to be a reference to the High Court, and every such reference to a Judge of the Supreme Court shall be deemed for all purposes to be a reference to a Judge of the High Court.

District Courts Amendment 1979

Statute No.125. 14/12/1979 An Act to amend the District Courts Act 1947. **s2(3)** “Every reference in any enactment to any of the said Acts is hereby consequentially amended by omitting the word “Magistrates”, and substituting the word “District”. **s18 References to Magistrate’s Courts, etc., deemed reference to District Courts**

(1) Every reference to a Magistrate's Court in the principal Act or any other enactment specified in the First Schedule of this Act shall be deemed for all purposes to be a reference to a Court, and every such reference to a Magistrate of a Stripendiary Magistrate shall be deemed for all purposes to be a reference to a Judge.

(2) Every reference to a Magistrate's Court in any enactment (other than one to which subsection (1) of this section applies) passed before the date of the commencement of this section or in any document executed before that date, shall be deemed for all purposes to be a reference to a District Court, and every such reference to a Magistrate or a Stipendiary Magistrate shall be deemed for all purposes to be a reference to a District Court Judge. *In Force 1/4/1980.*

Family Court Act 1980

Statute No. 161. 21/1/1981 **s11 Jurisdiction of Family Courts**

(1) A family Court shall hear and determine all such proceedings as are to be heard and determined by such a Court under or by virtue of any provisions of - [*Gives List including*] (b) The Adoption Act 1955.

(2) Subject to subsection (3) of this section, any jurisdiction or power conferred on a Family Court under or by virtue of any enactment shall be exercised by a Family Court Judge.

(3) Nothing in this section shall prevent a District Court, or a District Court Judge who is not a Family Court Judge, from exercising any jurisdiction or power that is vested in it or him under or by virtue of any enactment to the extent and in the manner specified in that enactment. *In force 1/10/1981*

Adoption Amendment Act 1987

Statute No.19. 25/3/1987 An Act to amend the Adoption Act 1955 BE IT ENACTED by the Parliament of New Zealand as follow:

1 Short Title This Act may be cited as the Adoption Amendment Act 1987, and shall be read together with and deemed part of the Adoption Act 1955 (hereinafter referred to as the principal Act).

2 Consents to adoptions

(1) Section 7(8) of the principal Act is hereby amended by

repealing paragraph (aa) (as inserted by section 3 of the Adoption Amendment Act 1962), and substituting the following paragraph: “(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) of the High Court of New Zealand:”

(2) Section 3 of the Adoption Amendment Act 1962 is hereby consequentially repealed.

Children, Young Persons, and Their Families Act 1989

Statute No.24. 27/5/1989 **s450 Adoption Act 1955 amended**

(1) Section 6 of the Adoption Act 1955 is hereby amended by repealing subsection (4) and substituting the following subsection: “(4) This section shall not apply in any case where “(a) The child is in the home pursuant to any provisions 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 Guardianship Act 1968; 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).”

(2) Notwithstanding anything in subsection (1) of this section, where, immediately before the commencement of this section, any person has a child in that person’s home for care under a licence or warrant or exemption granted under section 73 of the Children and Young Persons Act 1974, nothing in section 6 of the Adoption Act 1955 shall apply, during the period of 6 months beginning on the date of the commencement of this section, to keeping of that child by that person.” *In Force 1/11/1989*

Social Welfare (Transitional Provisions) Act 1990

Statute No.26. 30/3/1990 **s36 Amendments to other Acts**

(1) Section 2 of the Adoption Act 1955 is hereby amended- (a) By repealing the definition of the term “Director-General”, and substituting the following definition: “‘Director-General’ means the Director-General of Social Welfare, being the chief executive of Social Welfare appointed under section 35 of the State Sector Act 1988:” (b) By omitting from paragraph (b) of the definition of the term “Social Worker” (as inserted by section 23(1) of the Department of Social Welfare Act 1971) the words “under the Department of Social Welfare Act 1971”, and substituting the words “employed as such under Part V of the State Sector Act 1988 in the Department of Social Welfare”.

(2) Section 2 of the Adult Adoption Information Act 1985

is hereby amended by omitting from the definition of the term “social worker” the words “appointed or deemed to be appointed in accordance with section 8 of the Department of Social Welfare Act 1971”, and substituting the words “employed as such under Part V of the State Sector Act 1988 in the Department of Social Welfare”.

Citizenship Amendment Act 1992

Statute No.104. 18/11/1992

s3 Special provisions relating to parentage Section 3 of the principal Act is hereby amended by repealing subsection (2), and substituting the following subsections:

“(2) For the purposes of this Act a person shall be deemed to be the child of a New Zealand citizen if—

(a) He or she has been adopted by that citizen, in New Zealand, by an adoption order within the meaning of and made under the Adoption Act 1955; or

(b) He or she has been adopted by that citizen, outside New Zealand, by an adoption to which section 17 of the Adoption Act 1955 applies, and either— (i) That adoption took place before the commencement of the Citizenship Amendment Act 1992; or (ii) At the time that adoption order was made he or she had not attained the age of 14 years,— and in any such case,—

(c) The terms ‘father’, ‘mother’, and ‘parent’, when used in this Act, shall be construed accordingly:

(d) The person shall be deemed to have been born when and where the adoption order was made: Provided that, on the discharge for any reason of the adoption order in accordance with section 20 of the Adoption Act 1955, the person shall cease to be deemed to be the child of that citizen.

(2A) Nothing in the Adoption Act 1955 shall confer on a person who has been adopted by a New Zealand citizen in circumstances other than those specified in subsection (2) of this section any greater right to New Zealand citizenship than that person would have had if that person had not been adopted.”

Births, Deaths, and Marriages Registration Act 1995 s23-27,63,73-76,86.

Statute No.16 31/3/1995 **s23 Registrar-General to be notified of New Zealand adoptions**—Forthwith after the making of an adoption order under the Adoption Act 1955, the Court concerned or its Registrar shall give the Registrar-General notice of the following matters (so far as they are known to the Court):

(a) The names (if any) of the adopted person immediately before the making of the order:

(b) The names conferred on the person by the order:

(c) The names of the persons who were the person’s parents immediately before the making of the order:

(d) Whether or not the adoptive parent or parents want the words ‘adoptive parent’ or ‘adoptive parents’ to appear on the face of birth certificates relating to the person:

(e) The date of the order:

(f) The name of the Court:

(g) Those matters required by the form prescribed for the purposes of section 11 of this Act (which relates to the notification of births) that would have been appropriate if the adopted person had been born to the adoptive parent or parents: (h) Any other matters prescribed.” Cf 1951 s21(1)

s24 Registration of New Zealand adoptions—

(1) On receiving—

(a) Notice under section 23 of this Act or section 21 of the Births and Deaths Registration Act 1951 relating to the adoption of; or

(b) Notice of the adoption under a former Adoption Act of a person whose birth has been registered, the Registrar-General shall forthwith cause the information it contains to be included in the registration.

(2) On receiving—

(a) Notice under section 23 of this Act or section 21 of the Births and Deaths Registration Act 1951 relating to the adoption of; or

(b) Notice of the adoption under former Adoption Act of a person whose birth has not been registered, the Registrar-General shall, if satisfied of the correctness or likely correctness of the information relating to the date and place of the person’s birth, forthwith record the information it contains as if the person’s birth is registered and the information is included in the registration.

(3) On the application of the adoptive parent or parents of an adopted person who has not attained the age of 18 years or earlier married (with the consent of the adopted person, in the case of an adopted person who has attained the age of 16 years), or the survivor of them, or on the application of an adopted person who has attained the age of 18 years or married, the Registrar-General shall cause to be included in the registration of the adopted persons’ birth (a) Notice of whether or not the words ‘adoptive parent’ or ‘adoptive parents’ should appear on the face of birth certificates relating to the adopted person; or (b) Subject to section 82 of this Act, additional information relating to the birth. Cf 1951 ss21- 24

s25 Registration of overseas adoptions If the Registrar-General (a) Is satisfied that section 17(1) of the Adoption Act 1955 applies to the adoption outside New Zealand of a person whose birth is registered; and (b) Has received any particulars the Registrar-General requires for the purpose, and is satisfied that they are or are likely to be correct, the Registrar-General may direct that section 24 of this Act should apply to the adoption; and in that case that section and section 27 of this Act, with any necessary modifications, shall apply as if the adoption had been effected by an adoption order under the Adoption Act 1955. Cf 1951 s2.

s26 Registrar-General may supply adoption information to registration authorities overseas if satisfied that

(a) An authority constituted in a state outside New Zealand has the function of recording information relating to births within the state; and

(b) A person who has been adopted in New Zealand was born in the state; and

(c) The authority has so requested, the Registrar-General

may supply to the authority any information relating to the adoption.

s27 Variation or discharge of adoption order

(1) Subject to subsection (2) of this section, forthwith after the variation or discharge of an adoption order under the Adoption Act 1955, the Registrar of the Court concerned shall send a copy of the order to the Registrar-General, who shall cause to be included in the registration of the birth of the person to whom the adoption order related particulars of the variation or discharge including (where appropriate) a name or names for the person.

(2) The Registrar-General may, if it seems expedient to do so, treat any order varying any adoption order as if it is a further adoption order; and in that case section 24 of this Act shall apply accordingly. Cf 1951 s23.

Part VIII s63 Birth certificates for adopted persons

(1) Except as provided in section 11(4)(a) of the Adult Adoption Information Act 1985, no birth certificate shall be provided in respect of an adopted person unless it has been requested- (a) By reference to the names most recently included in the registration of the person's birth under section 24 or section 25 of this Act, or under a corresponding provision of a former Act (not being names derived from an adoption that has been discharged); or (b) By reference to a name or names later recorded for the person under section 20 or section 21 of this Act, or a corresponding provision of a former Act.

(2) Except as provided in the Adult Adoption Information Act 1985, a birth certificate provided in respect of a person in respect of whom information (not being information derived from an adoption order that has been discharged) has been recorded under section 24 or section 25 of this Act, (a) Subject to paragraph (b) of this subsection, shall contain the information that such a certificate would contain if the adoptive parents by whom the person was most recently adopted (otherwise than under an adoption order that has been discharged) were the person's biological mother and father, and name of names recorded under that section had been recorded as information relating to the person's birth; and (b) Shall state that those adoptive parents are or are not adoptive parents according to the information in that behalf most recently recorded under section 24 of this Act or a corresponding provision of a former Act; and (c) Shall contain no other information... Cf 1951 s21(7)

s73 Searches of Registrars' records Subject to subsection 75 to 78 of this Act, upon request and upon payment of the prescribed fee or fees, a Registrar shall

(a) Cause a search to be made of all registered information that is recorded on a computer system accessible to the Registrar:

(b) Provide any person with a printout of any such information:

(c) Cause to be made a search of documents (other than indexes) held in the Registrar's office containing information at any time recorded under this Act or a former Act:

(d) Permit any person to inspect any such document: (c) Provide any person with a copy of any such document. Cf 1951 s38

s74 Registrar-General's indexes

(1) The Registrar-General shall maintain indexes of

(a) All registered information that is recorded on a computer system; and

(b) Documents containing information recorded under this Act or any former Act (including documents sent to the Chief Archivist).

(2) Upon request and payment of the prescribed fee or fees, the Registrar-General shall—

(a) Provide any person with a printout of all or any part of any index (other than an index relating to adoption, sexual assignment or reassignment in respect of which information has been recorded under this Act, or the names of people to whom section 65* of this Act applies or at any time applied) (i) Maintained on a computer system; or (ii) Maintained in documentary form under subsection (1) of this section or an equivalent provision of a former Act, and subsequently recorded on a computer system; or

(b) Provide any person with a copy of all or any part of any copy prepared by or under the control of the Registrar-General of an index, (other than an index relating to adoption, sexual assignment or reassignment in respect of which information has been recorded under this Act, or the names of people to whom section 65* of this Act applies or at any time applied) maintained in documentary form under subsection (1) of this section or an equivalent provision of a former Act. *Section 65 protection of certain witnesses etc.

s75 Searches to be made in respect of named persons only

(1) Except when acting under section 74(2) of this Act, no Registrar shall cause a search of any information or document to be made, or permit the inspection of any document, or provide any person with a printout of any information or a copy of any document, unless— (a) A request for that information has been made, in a manner for the time being approved by the Registrar-General, in respect of a named person; and (b) The prescribed fee has been paid; and (c) The information or document is or contains information relating to the registration of the named person's birth, death, or marriage, or references to such information.

(2) If satisfied in respect of a search otherwise forbidden by subsection (1) of this section that

(a) It will be conducted for a person acting on behalf of a Government agency or a body or person undertaking the gathering of statistics, or genuine health or demographic research; and

(b) Information relating to particular individuals is not sought and will not be retained; and

(c) It is in the public interest, the Registrar-General may in the Registrar-General's absolute discretion direct a Registrar to allow it.

(3) If satisfied that a search is desirable to verify (for the purposes of section 76(3)(d) of this Act) the death of any person,

(a) A Registrar may, on payment of the prescribed fee, cause it to be made in respect of that person's status as the adoptive or natural parent of a named adopted person; but

(b) The Registrar shall not permit the inspection of any

document relating to the person, or provide a printout of any information or copy of any document, except in accordance with subsection (1) of this section.

s76 Restrictions on searches relating to adopted persons

(1) This section applies to information if (a) It relates to an adopted person; and (b) It was recorded under section 24 or section 25 of this Act. or a corresponding provision of a former Act.

(2) No person other than the Registrar-General shall permit a person to inspect any document containing information to which this section applies, or provide any person with a printout or copy of any such document or a printout of any such information.

(3) The Registrar-General may permit a person to inspect any document containing information to which this section applies, or provide any person with a print-out or copy of any such document or a printout of any such information, if satisfied

(a) That

(i) The person wishes to inspect the document or have the printout or copy for a purpose in connection with the administration of an estate or trust; and

(ii) The person is executor, administrator, or trustee of the estate or trust; and

(iii) The information is material for the purpose or

(b) That (i) The person wishes to inspect the document or have a printout or copy for the purposes of investigating forbidden degrees of relationship under the Marriage Act 1955; and (ii) The person is a Registrar or celebrant; or

(c) That section 11(4)(b) of the Adult Adoption Information Act 1985 so authorises (but in that case shall permit it to the extent that the said section 11(4)(b) so authorises; or

(d) That the adopted person concerned, the adoptive parents, and such of the adopted person's natural parents as had information relating to them recorded under this Act or a former Act as part of the information relating to the adopted person's birth, are all dead; or

(e) That 120 years has passed since the birth of the adopted person concerned.

(4) Except as provided in subsection (3) of this section, the Registrar-General shall not permit a person to inspect any document containing information to which this section applies, or provide any person with a printout or copy of any such document or a printout of any such information, except on the order of a Family Court, District Court, of the High Court, made

(a) For the purposes of a prosecution for making a false statement; or

(b) In the event of any question of the validity or effect of any interim order or adoption order; or

(c) On any other special ground. Cf 1951 s21(8)(9)...

s86 Entries relating to illegitimate children

All entries in any register made pursuant to section 25 of the Births and Deaths Registration Act 1924 or the corresponding provisions of any former Act shall continue to be deemed to be expunged and deleted. cf 1951 No.22 s40 In Force 1/9/1995

ADULT ADOPTION INFORMATION ACT**Statute No.127** 13/9/1985.

An Act to provide for greater access to information relating to adoptions and to the parties to adoptions by adult adopted persons and their birth parents, and for other related matters. Be it enacted by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1 Short Title and commencement

(1) This Act may be cited as the Adult Adoption Information Act 1985. (2) Sections 4 to 6, 8, and 9 of this Act shall come into force on the 1st day of September 1986. (3) Subject to subsection (2) of this section, this Act shall come into force on the 1st day of March 1986.

2 Interpretation

In this Act, unless the context otherwise requires,-

Adopted person means a person in respect of whom an adoption order has at any time been made; and “adopted” has a corresponding meaning:

Adoption order means an adoption order made under the Adoption Act 1955 or any corresponding former enactment; and includes an instrument details of which have been registered under section 21A of the Births and Deaths Registration Act 1951:

Adoptive parent, in relation to any other person, means a person who has at any time, either alone or pursuant to an application made jointly with a spouse, adopted that other person under an adoption order; but no person shall be an adoptive parent by reason only of- **(a)** Having consented to an adoption by a spouse; or **(b)** Having become the spouse of an adoptive parent after the adoption concerned:

Adult as a noun means a person who has attained the age of 20 years; and as an adjective it has a corresponding meaning:

Approved organisation means an organisation for the time being approved under section 12(1) of this Act:

Approved person means a person for the time being approved under section 12(1) of this Act; and includes a person whose name is for the time being notified under section 12(2) of this Act:

Birth parent, in relation to any other person, means a person who is that other person’s biological mother or father:

Department means the Department of Social Welfare:

Director-General means the Director-General of Social Welfare:

Identifying information, in relation to any person, means the person’s name or address; and includes any information that is likely to enable any other person to ascertain that person’s name or address:

Original birth certificate, in relation to any person means a certificate under section 38 of the Births and Deaths Registration Act 1951 of the original entry of that person’s birth, endorsed on its face with the words ‘ISSUED FOR THE PURPOSES OF THE ADULT ADOPTION INFORMATION ACT

1985’; and includes any such certificate from which there have been omitted, in accordance with this Act, any details relating to either or both of that person’s birth parents:

[1995 Amendment

Original birth certificate definition repealed and substituted by following definition: *Original birth certificate* in relation to any person, means a birth certificate (within the meaning of the Births, Deaths, and Marriages Registration Act 1955) containing information recorded under that Act or a former Act (within the meaning of that Act) relating to the person’s birth, bearing on its face the words ‘ISSUED FOR THE PURPOSES OF THE ADULT ADOPTION INFORMATION ACT 1985’; and includes any such certificate from which there have been omitted, in accordance with this Act, any details relating to either or both of the person’s birth parents:” Births, Deaths, and Marriages Registration Act 1995 No.16 s95. First Schedule 31/3/1995 In force 1/9/1995]

Registrar-General means the Registrar-General appointed under the Births and Deaths Registration Act 1951

Social Worker means a social worker appointed or deemed to be appointed in accordance with section 8 of the Department of Social Welfare Act 1971; and, in relation to any matter undertaken by one social worker, includes any other social worker dealing with that matter.

[1990 Amendment.

Social Worker “Section 2 of the Adult Adoption Information Act 1985 is hereby amended by omitting from the definition of the term “social worker” the words “appointed or deemed to be appointed in accordance with section 8 of the Department of Social Welfare Act 1971”, and substituting the words “employed as such under Part V of the State Sector Act 1988 in the Department of Social Welfare”. Social Welfare (Transitional Provisions) Act 1990 No.26. s36(2) In force 1/4/1990]

3 Birth parent may restrict access to identifying information

(1) Either birth parent of a person adopted before the 1st day of March 1986 may at any time request the Registrar-General to have the original entry of the birth of that person endorsed to the effect that that person is not to have access to identifying information relating to the person making the request.

(2) The following provisions shall apply to every request under subsection (1) of this section:

(a) The Registrar-General shall inform the person making that request of the counselling available in the area in which that person lives, from social workers and approved persons and organisations.

(b) That person shall indicate to the Registrar-General whether or not that person desires counselling:

(c) If that person indicates that that person desires counselling, the Registrar-General shall take no further action until that person requests the Registrar-General to proceed with the original request:

(d) If that person **(i)** Indicates that that person does not desire counselling; or **(ii)** Under paragraph (c) of this subsection requests the Registrar-General to proceed with the

original request- the Registrar-General shall case the original entry of the birth of the adopted person concerned to be endorsed accordingly, and to be endorsed also with the date on which it was so endorsed.

(3) The fact that there is upon the original entry of the birth of any person one unexpired endorsement under subsection (2) of this section relating to any person shall not prevent a further endorsement under that subsection relating to that person.

(4) Subject to subsection (5) of this section, every endorsement under subsection (2) of this section shall continue in force until the expiration of 10 years from the date of its making, and shall then expire.

(5) A birth parent of an adopted person may at any time request the Registrar-General to have removed from the original entry of that person's birth all endorsements under subsection (2) of this section relating to that parent; and in that case the Registrar-General shall case that entry to be noted accordingly, and those endorsements shall then expire.

4 Adult adopted person may apply for original birth certificate

(1) Any adult may make a written application to the Registrar-General for an original birth certificate in relation to the applicant; and in that case the following provisions shall apply:

(a) Where it does not appear from the records of the Registrar-General that the applicant is adopted, the Registrar-General shall so notify the applicant in writing:

(b) Subject to subsection (2) of this section, where it appears from the records of the Registrar-General that the applicant was adopted before the 1st day of March 1986, and that- **(i)** Details relating to only one of the applicant's birth parents appear in the original entry of the applicant's birth and there is on that entry any unexpired endorsement under section 3(2) of this Act relating to that parent; or **(ii)** Details relating to both of the applicant's birth parents appear in the original entry of the applicant's birth, and there are on that entry unexpired endorsements under section 3 (2) of this Act relating to each of those parents,- section 5(1) of this Act shall apply to the applicant:

(c) Where it appears from the records of the Registrar-General that the applicant was adopted before the 1st day of March 1986, and that- **(i)** Details relating to both of the applicant's birth parents appear in the original entry of the applicant's birth, but there are on that entry unexpired endorsements under section 3(2) of this Act relating to only one of them; or **(ii)** There are no unexpired endorsements under section 3(2) of this Act on that entry,- section 5(2) of this Act shall apply to the applicant:

(d) Where it appears from the records of the Registrar-General that the applicant was adopted after the 28th day of February 1986, section 6 of this Act shall apply to the applicant.

(2) Where- **(a)** There is on the original entry of the birth of an adopted person any unexpired endorsement under section 3(2) of this Act relating to a birth parent of that person;

and **(b)** The Registrar-General is satisfied that that person is dead- paragraphs (b) and (c) of subsection (1) of this section shall apply to any application under that subsection as if that endorsement had expired.

5 Certificates for persons adopted before commencement of Act

(1) The Registrar-General shall inform every applicant to whom this subsection is applied by section 4(1)(b) of this Act of the existence, effect, and date of expiry of the endorsements concerned, and, notwithstanding section 21(7) of the Births and Deaths Registration Act 1951, shall send the applicant an original birth certificate from which all details relating to the applicant's birth parents have been omitted.

[1995 Amendment

"By omitting from section 5(1) the words 'all details relating to the applicant's birth parents have been omitted', and substituting the words 'there have been removed all details relating to the applicant's birth parents, and every reference to any surname registered for the applicant'" Births, Deaths, and Marriages Registration Act 1995 s96. 31/3/1995 In force 1/9/1995]

(2) Notwithstanding section 21(7) of the Births and Deaths Registration Act 1951, but subject to subsection (3) of this section, the following provisions shall apply to every application under section 4(1) of this Act made by an applicant to whom this subsection is applied by section 4(1)(c) of this Act:

(a) The Registrar-General shall notify the applicant in writing,- **(i)** If the applicant lives within New Zealand, of the counselling available in the area in which the applicant lives, from social workers and approved persons and organisations; and **(ii)** That except where the applicant lives outside New Zealand, an original birth certificate will not be given to the applicant until the applicant has received counselling:

(b) If the applicant notifies the Registrar-General in writing that the applicant desires counselling from a social worker or a specified approved person or organisation, the Registrar-General shall forthwith send an original birth certificate to- **(i)** The appropriate office of the Department; or **(ii)** The approved person or organisation specified by the applicant as the case requires:

(c) The person or organisation to whom or to which an original birth certificate is sent under paragraph (b) of this subsection shall release to the applicant after the applicant has received counselling:

(d) If it appears to the Registrar-General that the applicant is permanently resident outside New Zealand, the Registrar-General shall send the applicant an original birth certificate and the address of the Director-General.

(3) There shall be omitted from every original birth certificate sent under subsection (2) of this section all details relating to any birth parent of the applicant concerned if-

(a) There is on the original entry of the applicant's birth and unexpired endorsement under section 3(2) of this Act relating to that parent; and **(b)** The Registrar-General is not satisfied that that parent is dead.

[1995 ADDITION “(4)"]

There shall be omitted from every original birth certificate sent under subsection (2) of this section every reference to any surname registered for the applicant if—

- (a)** There is on the original entry of the applicant’s birth an unexpired endorsement under section 3(2) of this Act relating to a parent who has that surname; and
- (b)** The Registrar-General is not satisfied that that parent is dead.” Inserted by Births, Deaths, and Marriages Registration Act 1995 s96 31/3/1995 In force 1/9/1995]

6 Certificates for persons adopted after commencement of Act

Notwithstanding section 21(7) of the Births and Deaths Registration Act 1951, the following provisions shall apply to every application under section 4(1) of this Act by an applicant to whom this section is applied by section 4(1)(d) of this Act:

- (a)** The Registrar-General shall notify the applicant in writing,- (i) Of the counselling available in the area in which the applicant lives, from social workers and approved persons and organisations; and (ii) That within 28 days the applicant notifies the Registrar-General in writing that the applicant desires counselling from a social worker or a specified approved person or organisation, and original birth certificate will be sent to the appropriate office of the Department or that person or organisation; and (iii) That if the applicant does not desire counselling, or fails within 28 days to inform the Registrar-General that the applicant does require counselling, and original birth certificate will thereafter be held on the applicants’s behalf:
- (b)** If the applicant- **(i)** Notifies the Registrar-General in writing that the applicant does not desire counselling; or **(ii)** Has not, within 28 days following the dispatch to the applicant of the notice under paragraph (a) of this section, notified the Registrar-General in writing that the applicant desires counselling from a social worker or a specified approved person or organisation,- the Registrar-General shall forthwith notify the applicant in writing that an original birth certificate is held on the applicant’s behalf:
- (c)** If the applicant is notified under paragraph (b) of this section that and original birth certificate is held on the applicant’s behalf, and thereafter notifies the Registrar-General in writing that the applicant wishes it sent to the applicant, the Registrar-General shall send it to the applicant:
- (d)** If, within the 29 days following the dispatch to the applicant of the notice under paragraph (a) of this section the applicant has notified the Registrar-General that the applicant desires counselling from a social worker or a specified approved person or organisation, the Registrar-General shall forthwith send an original birth certificate to- **(i)** The appropriate office of the Department; or **(ii)** The approved person or organisation specified by the applicant,- as the case requires; and the applicant shall be entitled to uplift it at any reasonable time.

7 Adopted person may register desire not to have**contact with birth parents**

- (1)** An adopted person who has attained the age of 19 years may at any time request the Registrar-General to have the original entry of that person’s birth endorsed to the effect that that person does not desire any contact with a specified birth parent, or with either of that person’s birth parents.
 - (2)** The following provisions shall apply to every request under subsection (1) of this section:
 - (a)** The Registrar-General shall inform the person making that request of the counselling available in the area in which that person lives, from social workers and approved persons and organisations.
 - (b)** That person shall indicate to the Registrar-General whether or not that person desires counselling:
 - (c)** If the person indicates that that person desires counselling, the Registrar-General shall take no further action until that person requests the Registrar-General to proceed with the original request:
 - (d)** If that person-
 - (i)** Indicates that that person does not desire counselling; or
 - (ii)** Under paragraph (c) of this subsection requests the Registrar-General to proceed with the original request- the Registrar-General shall case the original entry of that person’s birth to be endorsed accordingly, and to be endorsed also with the date on which it was so endorsed.
 - (3)** The fact that there is upon the original entry of a person’s birth one unexpired endorsement under subsection (2) of this section relating to a parent shall not prevent a further endorsement under that subsection relating to that parent.
 - (4)** Subject to subsection (5) of this section, every endorsement under subsection (2) of this section shall continue in force until the expiration of 10 years from the date of its making, and shall then expire.
 - (5)** Any person may at any time request the Registrar-General to have removed the original entry of that person’s birth any endorsements under subsection (2) of this section; and in that case the Registrar-General shall cause that entry to be noted accordingly, and those endorsements shall then expire.
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- 8 Access by birth parents to identifying information-**
- (1)** Any person may make a written application to the Director-General for identifying information relating to an adult adopted person whose birth parent the applicant is
 - (2)** Where the Director-General is satisfied that an applicant under subsection (1) of this section is a birth parent of the adult adopted person to whom the information sought relates, the following provisions shall apply:
 - (a)** Where the Director-General is satisfied that the adopted person concerned is dead, the Director-General shall so inform the applicant: and the Director-General may disclose to the applicant such information as the Director-General thinks fit relating to that person, that person’s circumstances at the time of that person’s death, and the circumstances of that person’s death:

(b) Where the Director-General is not satisfied that the adopted person concerned is dead, the Director-General shall enquire of the Registrar-General if there is on the original entry of the birth of that person any unexpired endorsement under section 7(2) of this Act relating to the applicant; and in that case the Registrar-General shall inform the Director-General whether or not there is such an entry and, if so, when it (or if more than one the most recent of them) will expire:

(c) Where the Registrar-General informs the Director-General that there is such an endorsement on that entry the Director-General shall give the applicant the information given to the Director-General by the Registrar-General under paragraph (b) of this subsection, and shall inform the applicant of the effect of the endorsement concerned:

(d) Where the Registrar-General informs the Director-General that there is no such endorsement on that entry-

(i) If the Director-General does not know the name and address of the adopted person concerned but, in the Director-General's opinion, it is probable that a social worker can ascertain identifying information relating to that person without undue effort, the Director-General shall cause a social worker to attempt to do so:

(ii) If the Director-General knows the name and address of the adopted person concerned and, in the Director-General's opinion, it would be possible for a social worker to contact that person without undue effort, the Director-General shall cause a social worker to attempt to do so and to ascertain whether or not that person is willing to have that person's name and address communicated to the applicant:

(iii) The name and address of the adopted person concerned shall not be communicated to the applicant unless that person has indicated to that social worker that that person is willing for them so to be communicated:

(iv) If the adopted person concerned has indicated to that social worker that the person is willing to have that person's name and address communicated to the applicant, the Director-General shall communicate them to the applicant and inform both the adopted person and the applicant of the effect of section 10 of this Act.

9 Access by adult adopted person to identifying information

(1) Any adult adopted person may make a written application to the Director-General for identifying information relating to either or both of that person's birth parents.

(2) Every application under subsection (1) of this section shall be accompanied by an original birth certificate relating to the applicant.

(3) The Director-General shall disclose to an applicant under subsection (1) of this section all available identifying information relating to any birth parent concerned, and inform that person of the effect of section 10 of this Act, if, and only if,-

(a) Details of that parent appear in the original birth certificate accompanying the application; or

(b) The Director-General is satisfied that that parent is dead.

(4) Where—

(a) The Director-General is required by subsection (3) of this section to disclose to an applicant under subsection (1) of this section identifying information relating to a birth parent; and

(b) The Director-General does not know the name and address of that parent; and

(c) In the opinion of the Director-General, it is probable that a social worker can ascertain identifying information relating to that parent without undue effort,- the Director-General shall cause a social worker to attempt to do so; and subsection (3) of this section shall apply to all identifying information obtained as a result.

10 Departmental assistance in approaching parent or child

(1) An adult adopted person who has ascertained the name and address of a birth parent may request any social worker to approach that parent on that person's behalf.

(2) Any person who has ascertained the name and address of an adult adopted person whose birth parent that person is may request any social worker to approach that adopted person on that person's behalf.

(3) Any adoptive parent of an adopted person who has ascertained the name and address of a birth parent of that adopted person may request any social worker to approach that parent on that adoptive parent's behalf.

(4) A social worker to whom a request is made under this section may decline that request.

(5) Where a social worker accepts a request made under this section, that social worker shall approach the person concerned and ask if that person is willing to meet the person who made the request, and if so under what circumstances; and-

(a) If the person concerned is unwilling to meet the person who made the request, the social worker shall so inform the person who made the request; and

(b) If the person concerned is willing to meet the person who made the request, the social worker shall inform the person who made the request of the circumstances under which the person concerned is will to do so.

(6) Where a social worker accepts a request under this section, and approaches any person,-

(a) If the person who made that request is an adult adopted person, or an adoptive parent of an adult adopted person, that social worker shall inform the person approached of the rights (if any) that that person has under section 3 of this Act in relation to any other child of that person who may have been adopted:

(b) If the person who made that request is a birth parent, that social worker shall inform the person approached of the rights that that person has under section 7 of this Act in relation to the other birth parent of that person.

11 Access to information on medical grounds

(1) For the purpose of this section, -

Doctor means a registered medical practitioner:

Medical includes psychiatric:

Relative, in relation to any other person, means a person who is by blood the grandparent, parent, child, grandchild, or (whether of the whole or half blood) brother, sister, or cousin, of that other person:

Unknown relative, in relation to any person, means a relative whose name and address are unknown to that person by virtue of the confidentiality attendant upon the adoption of that person, that relative, or some other person who is a relative of them both.

(2) A doctor who is-

(a) Responsible for the medical treatment and advice of any patient; and

(b) Satisfied that it is necessary or desirable, for the purpose of providing treatment of or advice relating to any medical condition of that patient, or for the purpose of providing genetic counselling for or in relation to that patient, to obtain information about the medical or genetic history of an unknown relative, may give the Director-General notice in writing to that effect, specifying the information concerned.

(3) Where, in the opinion of any doctor, any information obtained as a result of that doctor's dealings with any patient is likely to be relevant to provision of treatment of or advice relating to any medical condition of potential medical condition of any unknown relative, or the provision of genetic counselling for or in relation to any unknown relative, that doctor may with the consent of that patient (or, where that patient is not an adult, of that patient's guardian) give the Director-General notice in writing to that effect, together with a separate statement of that information.

(4) A social worker may produce a notice under subsection (2) or subsection (3) of this section-

(a) To the Registrar-General; and in that case, notwithstanding section 21(7) of the Births and Deaths Registration Act 1951, the social worker shall be entitled to obtain an original birth certificate of the adopted person concerned:

(b) To the Registrar of the Court where the Court file relating to the adoption concerned is held; and in that case the social worker shall be entitled to search, inspect, and take a copy of any document on the file concerned.

[1995 Amendment]

By omitting from section 11(4) the words 'section 21(7) of the Births and Deaths Registration Act 1951', and substituting the words 'section 63 of the Births, Deaths, and Marriages Registration Act 1995''. Births, Deaths, and Marriages Registration Act 1995 s96 First Schedule. 31/3/1995 In force 1/9/1995]

(5) A social worker may disclose to the doctor concerned (in the case of a notice under subsection (2) of this section) or the doctor of any unknown relative (in the case of a notice under subsection (3) of this section) any information whatsoever (not being identifying information) rel-

evant to the medical or genetic history of the patient or relative concerned.

(6) No doctor shall disclose to any person any identifying information obtained by the use of information obtained under this section.

Approved Persons and Organisations**12 Minister may approve persons and organisations for purpose of Act**

(1) The minister of Social Welfare may from time to time, by notice in the Gazette, approve any person or organisation (whether incorporated or unincorporated) to undertake counselling under the Act.

(2) Any approved organisation may from time to time notify the Director-General of the name of any member or employee authorised to act on behalf of that organisation; and may at any time notify the Director-General that the authority of that member or employee has been withdrawn.

1991 Amendment repealed s12(2) substituted new 12A per Adult Adoption Information Amendment Act 1991 s2(1) printed at end this Act.

13 Regulations

(1) The Governor-General may from time to time, by Order in Council, make regulations for either of both of the following purposes:

(a) Prescribing fees payable under this Act:

(b) Providing for such other matters as are contemplated by or necessary for giving full effect to this Act and its due administration.

***(2)** Where the Registrar-General is empowered by this Act to do any act for which a fee is payable, the Registrar-General may refuse to do the act until the fee is paid.

***(3)** Notwithstanding the provisions of any regulation under this Act, the Registrar-General may dispense with the payment of any fee payable under this Act.*

[1991 Amendment. S.13(2) and (3) repealed by Adult Adoption Information Amendment Act 1991 S2.(2) of 1991 No.94 see as printed at end of this Act]

14 Act not to effect disclosure of non-identifying information

Nothing in this Act shall effect the disclosure to any person of any information relating to any other person that is not, in relation to that other person, identifying information.

15 Amendment to Adoption Act 1955

The Adoption Act 1955 is hereby amended by repealing section 23, and substituting the following section:

“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 shall be open to inspection by any Registrar of Marriages or marriage celebrant under the

Marriage Act 1955 for the purposes of investigating forbidden degrees of relationship under the Act.

(3) Adoption records shall not be available for production or open to inspection except-

(a) To the extent authorised by subsection (1) or subsection (2) 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. Enacted 13/9/1985. s4-6,8, and 9 into force 1/9/1986. Remainder of Act in force 1/3/1986.

ADULT ADOPTION INFORMATION AMENDMENT ACT 1991

Statute 8/8/1991: An Act to amend the Adult Adoption Information Act 1895. Be it enacted by the Parliament of New Zealand as follows:

1 Short Title— This Act may be cited as the Adult Adoption Information Amendment Act 1991, and shall be read together with and deemed part of the Adult Adoption Information Act 1985 (hereinafter referred to as the principal Act).

2 Fees—

(1) The principal Act is hereby amended by inserting, before section 13, the following section:

12A.

[1] Regulations made under section 13(1)(a) of this Act may prescribe fees for—

(a) The making of any application or request under this Act to the Registrar-General, the Director-General, or a social worker; or

(b) The approval of any person or organisation under section 12 of this Act; or

(c) The doing of any other act under this Act by the Registrar-General, the Director-General, or a social worker.

[2] Notwithstanding anything in the Official Information Act 1982, the Registrar-General, the Director-General, or a social worker (as the case may be) may refuse to—

(a) Accept any application or request under this Act; or

(b) Approve any person or organisation under section 12 of this Act; or

(c) Do any other act under this Act,—for which or for the making or doing of which a fee is prescribed (whether under this Act or by or under any other enactment) unless the fee has been paid. **[3]** Notwithstanding subsection (2) of this section,—

(a) The Registrar-General may— **(i)** Dispense with the payment of all or any part of any fee payable to the Registrar-General under this Act; or **(ii)** Refund all or any part of any fee paid to the Registrar-General under this Act; and

(b) The Director-General may—**(i)** Dispense with the

payment of all or any part of any fee payable to the Director-General under this Act; or **(ii)** Refund all or any part of any fee paid to the Director-General under this Act.

(2) Section 13 of the principal Act is hereby consequentially amended by repealing subsections (2) and (3).

(3) The Adult Adoption Information (Fees) Regulations 1989 are hereby revoked.

(4) Until for the first time after the commencement of this Act regulations made under this Act prescribing fees come into force, there shall be deemed to be prescribed the following fees (inclusive of goods and services tax under the Goods and Services Tax Act 1985):

(a) For every original birth certificate from an entry in the records kept in the office of the Registrar-General (including the search in the year concerned)- \$15:

(b) For every other search of a register book or index or records kept in the office of the Registrar-General, in respect of each name or entry searched, in respect of each year- \$3

(c) For processing a written application to the Director-General by the birth parent of an adult adopted person for identifying information relating to the person- \$140.60

(d) For processing a written application to the Director-General by an adult adopted person for identifying information relating to one or both of the person’s birth parents- \$87.15:

(e) For counselling an adult adopted person about the endorsement of the original entry of the person’s birth to the effect that the person is not to have access to identifying information relating to a birth parent- \$35.40:

(f) For counselling a birth parent of an adult adopted person about the endorsement of the original entry of the person’s birth to the effect that the person does not desire any contact with the parent (or with either birth parent)- \$35.40:

(g) For approaching- **(i)** A birth parent of an adult adopted person on the person’s behalf; or **(ii)** An adult adopted person on behalf of a birth parent; or **(iii)** A birth parent of an adult adopted person on behalf of an adoptive parent of the person- \$92.25. Enacted 8/8/1991.

Rules Adult Adoption Information Act 1985

SR1986/207 Adult Adoption Information Act Fees

1 Title and commencement:

(1) These regulations may be cited as the Adult Adoption Information (Fees) Regulations 1986.

(2) These regulations shall come into force on the 1st day of September 1986.

2 Fees: There shall be paid to the Registrar-General, for each matter specified in the Schedule to these regulations, the fee specified for it in the Schedule. **SCHEDULE:** For every original birth certificate from an entry in the records kept in the office of the Registrar-General (including the search in the year concerned)- \$10. For any other search of a register book or index or records kept in the office of the Registrar-General, in respect of each name or entry searched, in respect of each year- \$2. Dated 25/8/1986. Gaz 28/8/1986 In Force 1/9/1986. Revoked by SR1987/150 1/7/1987

SR1987/150 Adult Adoption Information Act Fees**1 Title and commencement:**

(1) These regulations may be cited as the Adult Adoption Information (Fees) Regulations 1987. (2) These regulations shall come into force on the 1st day of July 1987.

2 Fees: There shall be paid to the Registrar-General, for each matter specified in the Schedule to these regulations, the fee specified for it in the Schedule.

3 Amount of goods and services tax included: The fees prescribed by these regulations are inclusive of goods and services tax under the Goods and Services Tax Act 1985.

4 Revocation: The Adult Adoption Information (Fees) Regulations 1986 are hereby revoked. **SCHEDULE:** For every original birth certificate from an entry in the records kept in the office of the Registrar-General (including the search in the year concerned- \$12. For any other search of a register book or index or records kept in the office of the Registrar-General, in respect of each name or entry searched, in respect of each year- \$3. [Note: These regulations, which come into force on 1 July 1987 increase the fees payable under the Adult Adoption Information Act 1985, and make clear that the fees are inclusive of GST.] Date 8/6/1987 Gaz 11/6/1987. In Force 1/7/1987 Revoked SR1988/75 23/5/1988

SR1988/75 Adult Adoption Information Act Fees

1 Title and commencement: (1) These regulations may be cited as the Adult Adoption Information (Fees) Regulations 1988. (2) These regulations shall come into force on the 23rd day of May 1988.

2 Fees: There shall be paid to the Registrar-General, for each matter specified in the Schedule to these regulations, the fee specified for it in the Schedule.

3 Amount of goods and services tax included: The fees prescribed by these regulations are inclusive of goods and services tax under the Goods and Services Tax Act 1985

4 Revocation: The Adult Adoption Information (Fees) Regulations 1987 are hereby revoked. **SCHEDULE:** For every original birth certificate from an entry in the records kept in the office of the Registrar-General (including the search in the year concerned- \$14. For any other search of a register book or index or records kept in the office of the Registrar-General, in respect of each name or entry searched, in respect of each year- \$3. Dated 18/4/1988 Gaz 21/4/1988 In Force 23/5/1988. Revoked by SR 1989/318 1/12/1989

SR1989/318 Adult Adoption Information Act fees**1 Title and commencement:**

(1) These regulations may be cited as the Adult Adoption Information (Fees) Regulations 1989.

(2) These regulations shall come into force on the 1st day of December 1989.

2 Fees: There shall be paid to the Registrar-General, for each matter specified in the Schedule to these regulations, the fee specified for it in the Schedule.

3 Amount of goods and services tax included: The fees prescribed by these regulations are inclusive of goods and services tax under the Goods and Services Tax Act

1985. **SCHEDULE:** For every original birth certificate from an entry in the records kept in the office of the Registrar-General (including the search in the year concerned- \$15. For any other search of a register book or index or records kept in the office of the Registrar-General, in respect of each name or entry searched, in respect of each year- \$3. Dated 30/10/1989 Gaz 2/11/1989 In Force 1/12/1989. Revoked by SR1991/96

SR1991/196 Adult Adoption Information Act fees

1 Title and Commencement: (1) These regulations may be cited as the Adult Adoption Information (Fees) Regulations 1991. (2) These regulations shall come into force on the 28th day after the date of their publication in the Gazette.

2 Fees:

(1) There shall be paid to the Registrar-General, for each matter specified in Part.1 of the Schedule to these regulations, the fee specified for it in the Part.

(2) There shall be paid to the Director-General, for each matter specified in Part 11 of the Schedule these regulations, the fee specified for it in the Part.

3 Amount of goods and services tax included: The fees prescribed by these regulations are inclusive of goods and services tax under the Goods and Services Tax Act 1985. **SCHEDULE Reg.2 Fees (Including GST)**

Part.1. Fees payable to Registrar-General. For every original birth certificate (including the search in the year concerned)- \$15. For every other search of information under the control of the Registrar-General, in respect of each name or entry searched in respect of each year- \$3.

Part.2. Fees payable to the Director-General. For processing a written application to the Director-General by the birth parent of an adult adopted person for identifying information relating to the person- \$140. For processing a written application to the Director-General by an adult adopted person for identifying information relating to one or both of the person's birth parents- \$87.15. For counselling an adult adopted person about the endorsement of the original entry of the person's birth to the effect that the person is not to have access to identifying information relating to a birth parent- \$35.40. For counselling a birth parent of an adult adopted person about the endorsement of the original entry of the person's birth to the effect that the person does not desire any contact with the parent (or with either birth parent)- \$35.40. For approaching- (i) A birth parent of an adult adopted person on the person's behalf; or (ii) An adult adopted person on behalf of a birth parent; or (iii) A birth parent of an adult adopted person on behalf of an adoptive parent of the person- \$92.25.

Note: These regulations, which come into force 28 days after notification in the Gazette, prescribe certain fees payable under the Adult Adoption Information Act 1985. The fees, payable to the Registrar-General and the Director-General of Social Welfare, are the same as those deemed by section 2(4) of the Adult Adoption Information Amendment Act 1991 to be prescribed Date 2/9/1991 Gaz 5/9/1991 In Force 3/10/1991.

imposition of high adoption charges

Bradley— “On Budget night 1991 as part of the user pays line of thinking the Government imposed adoption services charges in respect to both the Adoptions Act 1955 and the Adult Adoption Information Act 1985, effective from August 1991. A fee of \$35.40 was charged for an initial adoptee face to face interview and a further \$87.15 fee for identifying information. A birth parent applying for information was subject to the same initial face to face interview fee \$35.40 and subsequent charge of \$140.60 for application for information. A further service of veto counselling was offered to the birth parent at a fee of an additional \$35.40. Prospective adoptive applicants could expect to pay an initial interview fee of \$42.15, followed by charges of \$53.40 for training and education, \$53.40 with the application, \$464.05 for the assessment and \$78.75 for the final preparation; being a total of \$691.75. The implications for a move such as this on the part of government invites an array of criticism- from the point of view that the state could be condemned for its actions, morally, from a discriminatory point of view, and from the point of view that the information it holds belongs to the people as of right. If it feels that it cannot maintain its keeper of the information role then the alternative might be to give it up. It is not surprising the charges were dropped two years later on the July budget night 1993.”

Source John Bradley ‘We are Still Here’ in ‘book Adoption and Healing’ 1997 pp14-15. [The move for high adoption fees was strongly opposed by the Department Social Welfare but insisted upon by Treasury and Government. KCG]

ADOPTION (INTERCOUNTRY) ACT 1997**Statute No.109/1997**

(a) To implement in the law of New Zealand the Convention on Protection of the Children and Co-operation in Respect of Intercountry Adoption; and

(b) To provide for the approval of organisations as accredited bodies to whom functions may be delegated under the Convention; and

(c) To make other provision for intercountry adoption and other matters related to adoption [17 December 1997 Be it enacted by the Parliament of New Zealand as follows:

1 Short Title and commencement

(1) This Act may be cited as the Adoption (Intercountry) Act 1997.

(2) This Act comes into force on a date to be appointed by the Governor-General by Order in Council.

2 Interpretation- In this Act, unless the context otherwise requires,—

“*Contracting State*” means, subject to Article 45 of the Convention, a country for which the Convention is for the time being in force as between that country and New Zealand:

“*Convention*” means the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption signed at The Hague on 29 May 1993, a copy of the English text of which is set out in the Schedule:

“*Director-General*” means the Director-General of Social Welfare, being the chief executive of the Department of Social Welfare appointed under Part III of the State Sector Act 1988:

“*New Zealand accredited body*” means an organisation approved as an accredited body under Part 2 and the Convention:

“*New Zealand Central Authority*” has the meaning given by section 5:

“*Organisation*” means any body or organisation, whether incorporated or unincorporated.

3. Act binds the Crown-This Act binds the Crown.

[[Addition: REFERENCE.- 1999 No. 82 (Department of Child, Youth and Family Services Act 1999). In force 1/10/1999 by s.1(2) of that Act. See ss. 7 to 12 of that Act for the transitional and savings provisions. See s. 11 of that Act as to every reference to the Director- General of Social Welfare being a reference to the chief executive of the responsible department and every reference to any designated unit or to the Department of Social Welfare being a reference to the responsible department.

REGULATIONS:- Adoption (Intercountry) Act Commencement Order 1998/427. Adoption (Intercountry) Regulations 1998/428.

ANALYSIS ALTERATIONS:- Adoption (Intercountry) Act 1997. 7. Chief executive must offer choice of report-writing service]]

PART 1 INTERCOUNTRY ADOPTION

4 Convention to have force of law—Subject to the provisions of this Act, the provisions of the Convention

have the force of law in New Zealand.

5 New Zealand Central Authority—

(1) The Director-General is the New Zealand Central Authority for the purposes of the Convention.

(2) The Director-General has all the duties, may exercise all the powers, and must perform all the functions, that a Central Authority has under the Convention.

(3) The Director-General may not be made subject to any order to pay costs relating to adoptions in relation to the exercise or performance, by the Director-General, of any of the Director-General’s duties, powers, or functions as the New Zealand Central Authority. Cf 1991, No.19. s.7

6 Delegation of functions—

(1) The New Zealand Central Authority may, to the extent permitted by the Convention and by any regulations made under this Act, delegate the functions of a Central Authority under Article 9 or Chapter IV of the Convention to public authorities or New Zealand accredited bodies.

(2) No such delegation prevents the exercise of any functions by the New Zealand Central Authority.

7 Director-General must offer choice of report-writing service—

(1) The Director-General must, on application by prospective adoptive parents, prepare reports under the Convention as to their eligibility and suitability to adopt.

(2) Subsection (1) applies notwithstanding that the function of preparing those reports may also have been delegated to any public authority or New Zealand accredited body.

(3) This section applies for the purpose of offering prospective adoptive parents a choice of whether the report is prepared by a Government or non-Government agency.

8 Authority for New Zealand accredited bodies to act overseas—

The New Zealand Central Authority may authorise a New Zealand accredited body to act in another Contracting State.

9 Authority for overseas accredited bodies to act in New Zealand—

The New Zealand Central Authority may authorise a body accredited under Chapter III of the Convention in another Contracting State to act in New Zealand.

10 Approval of placement—

(1) A child who is habitually resident in another Contracting State must not be entrusted to prospective adoptive parents who are habitually resident in New Zealand unless the New Zealand Central Authority has approved the decision.

(2) Where the New Zealand Central Authority refuses to approve such a decision, the Authority must give notice in writing to the prospective adoptive parents of the refusal and the reasons for it.

11 Recognition of Convention adoptions—

(1) An adoption made in accordance with the Convention, subject to Article 24 of the Convention,-

(a) Must be recognised in accordance with the Conven-

tion; and

(b) For the purposes of this Act and all other New Zealand enactments and laws, has, subject to section 12, the same effect as an adoption order validly made under the Adoption Act 1955.

(2) A certificate signed by the competent authority in the State where the adoption took place and stating that the adoption was made in accordance with the Convention is for all purposes prima-facie evidence of that fact.

(3) The Family Court may, under Article 24 of the Convention, refuse to recognise an adoption made in accordance with the Convention, subject to such terms and conditions as it thinks fit.

(4) No application to the Court under subsection (3) may be made without the prior approval of the Attorney-General.

(5) Every application to the Court under subsection (3) must be heard as soon as practicable.

12 Termination of pre-existing legal parent-child relationships—

(1) Adoption in accordance with the Convention does not have the effect of terminating a pre-existing legal parent-child relationship unless-

(a) The adoption has that effect in the State where it was made; or

(b) The Family Court makes an order converting the adoption into one having that effect.

(2) The Court may, on application, make such an order if satisfied that-

(a) The adoptive parent is habitually resident in New Zealand; and

(b) The adoptive parent has, in accordance with the Convention, adopted, in another Contracting State, a child who is habitually resident in that Contracting State; and

(c) The consents to the adoption required by paragraphs (c) and (d) of Article 4 of the Convention have been given for the purpose of an adoption that terminates the pre-existing legal parent-child relationship.

13 Access to information—

(1) The New Zealand Central Authority must ensure that every report under paragraph I of Article 16 of the Convention that is prepared or received by it, and that results in an adoption, in accordance with the Convention, of the child who is the subject of the report, is retained either by the New Zealand Central Authority or by the Chief Archivist under the Archives Act 1957.

(2) Every New Zealand accredited body that prepares or receives a report under paragraph 1 of Article 16 of the Convention must give a copy to the New Zealand Central Authority.

(3) A person who is adopted in accordance with the Convention may make an information privacy request under the Privacy Act 1993 for information concerning the person's origin, notwithstanding that the person may not be a New Zealand citizen or a permanent resident of New Zealand or an individual who is in New Zealand, and section 34 of that Act is to be read subject to this subsection.

14 Certificate of Secretary of Foreign Affairs and Trade—A certificate signed by the Secretary of Foreign Affairs and Trade and stating that a specified country is or is not a Contracting State is, unless the contrary is proved by the production of another certificate issued under this section (being a certificate that was issued after the first-mentioned certificate was issued), for all purposes conclusive evidence of that fact.

PART 2 NEW ZEALAND ACCREDITED BODIES

15 New Zealand accredited bodies-

(1) The Director-General may approve as a New Zealand accredited body under the Convention any organisation that-

(a) Pursues only non-profit objectives; and

(b) Has demonstrated its capability and competence to carry out properly and on a continuing basis the tasks that may be delegated to it under the Convention; and

(c) Has demonstrated, by its aims, policy, and operations, that it will operate in the best interests of the child, and with respect for his or her fundamental rights, when carrying out tasks that may be delegated to it under the Convention; and

(d) Is directed and staffed by persons qualified by their ethical standards and by training or experience to work in the field of inter-country adoption.

(2) An organisation that is formed or carried on for the purpose of trading or securing a pecuniary profit for its members is, for the purpose of this Act, treated as pursuing profit objectives.

[[Amendment- S. 15(1) (that part before paragraph (a)). READS as amended by s. 13 of 1999 No. 82:- “(1) The [chief executive) may approve as a New Zealand accredited body under the Convention any organisation that”.]]

16 Application for accreditation—

(1) Any application for approval as a New Zealand accredited body-

(a) Must be in writing and contain such information relating to the organisation as is required by the Director-General; and

(b) Must nominate a person to act as principal officer of the organisation or the purposes of this Act.

(2) Before considering any such application, the Director-General must publicly notify the application in at least one daily newspaper circulating in the area in which the principal office of the organisation is situated.

(3) The notice must set a closing date for receiving submissions on the application, which must not be earlier than 10 working days after publication.

(4) The Director-General is not required to conduct a public hearing on the application.

17 Grant of accreditation—Where the Director-General approves an organisation as a New Zealand accredited body, the accreditation must-

(a) Be in writing; and

(b) Specify any conditions to which it is subject (if any); and

(c) Specify the functions that have been delegated to the

organisation under Article 9 or Chapter IV of the Convention; and

(d) Be notified in the *Gazette*.

18 Declining of application for accreditation—The Director-General must not decline an application made under section 16 without giving the applicant-

(a) A copy of any information on which the Director-General relies in proposing to decline the application; and

(b) A reasonable opportunity to make written submissions to the Director-General in relation to the information.

19 Suspension and revocation of accreditation—

(1) If the Director-General is satisfied that a New Zealand accredited body-

(a) Has pursued, or is pursuing, profit objectives; or

(b) Is no longer suited to performing functions that, under the Convention, may be delegated to New Zealand accredited bodies; or

(c) Has failed in a significant way to adequately perform any function that has been delegated to that body under the Convention; or

(d) Has not provided to the New Zealand Central Authority access to documents or records relating to any adoption arranged by the body in accordance with functions delegated to it under the Convention; or

(e) Has not submitted to Supervision of its composition, operation, and financial situation by the Director General; or

(f) Has charged excessive costs and expenses in respect of the performance of any function delegated to that body under the Convention; or

(g) Has allowed the payment of unreasonably high remuneration to the principal officer or staff in relation to functions delegated to that body under the Convention, the Director-General may exercise either or both of the powers contained in subsection (2).

(2) The Director-General may-

(a) Suspend the approval of an organisation as a New Zealand accredited body if the Director-General considers that Suspension is desirable in the public interest; and

(b) Give the organisation 60 days' notice of the Director-General's intention to revoke the approval of the organisation as a New Zealand accredited body and the reasons for that intention.

(3) The Director-General must have regard to any submissions that are received from the organisation before the decision to revoke the approval of the organisation as a New Zealand accredited body is made.

(4) The Director-General must- (a) Give notice in writing of the suspension or revocation of accreditation, and the reasons for it, to the organisation; and (b) Give notice of the suspension or revocation in the *Gazette*.

(5) Where the accreditation of any organisation is suspended or revoked under this section, the New Zealand Central Authority must ensure, in relation to any on-going adoption, that the functions that were delegated to the organisation under the Convention at the time of suspension or revocation are carried out.

[[Amendment- 15(1) (that part before paragraph (a)). READS as amended by s. 13 of 1999 No. 82:-

111.f “(1) The [chief executive] may approve as a New Zealand accredited body under the Convention any organisation that-”.

20 Appeals—

(1) Any person who is dissatisfied with-

(a) Any decision of the Director-General to decline an application by that person for approval as a New Zealand accredited body; or

(b) Any decision of the Director-General to revoke or suspend that person's approval as a New Zealand accredited body -may appeal to a District Court against the decision.

(2) An appeal under this section must be brought within 28 days after notice of the decision was communicated to the appellant, or within such further time as a District Court may allow on application made before or after the expiration of that period. Every appeal under this section must be heard as soon as practicable after the appeal is lodged.

(4) Where, before an appeal against a decision to suspend a person's approval as a New Zealand accredited body has been dealt with, the approval is revoked, the Court may treat the appeal as an appeal against the decision to revoke the approval.

(5) On the hearing of an appeal under this section the District Court may confirm, reverse, or modify the decision of the Director-General, or may give any decision that the Director-General could have given or made in respect of the matter.

(6) Nothing in this section gives a District Court power to renew any part of the decision of the Director-General other than the part against which the appellant has appealed.

(7) Subject to my order of the Court, every decision appealed against under this section continues in force and has effect according to its tenor pending the determination of the appeal.

(8) The decision of a District Court on any appeal under this section is final.

21 Accredited bodies to report annually—

(1) Every New Zealand accredited body must report annually to the Director-General on the exercise of its functions delegated under the Convention during the year.

(2) The report must be given within 3 months of the end of each year ending with 30 June, or such other date as may from time to time be directed by the Director-General.

(3) The report must be accompanied by a copy of the body's financial accounts, which must include a statement of the money received, and the expenses paid to other persons, by the body in respect of- (a) The functions delegated to the body under the Convention; and (b) The services provided by the body to persons intending to be adoptive parents.

22 Assessment of accredited bodies—

(1) The Director-General may at any time, and must at intervals of not more than 12 months, carry out an assessment of a New Zealand accredited body for the purpose of-

(a) Supervising the organisation as to its composition, operation, and financial situation; and

(b) Reviewing whether or not its approval as a New Zealand accredited body should continue.

(2) Any such assessment may be carried out by any employee of the Department of Social Welfare authorised by the Director-General.

(3) Every employee of the Department of Social Welfare who carries out an assessment of a New Zealand accredited body must prepare a report on that assessment for the Director-General, and a copy of that report must be supplied by the Director-General to that organisation.

(4) For the purpose of carrying out an assessment under this section, an employee of the Department of Social Welfare authorised by the Director-general may-

(a) Interview the principal officer or any other officer or employee of the organisation; and

(b) Examine any documents or records that are held by the organisation and that relate to its composition, operation, or financial situation; and

(c) Communicate with any person to whom the organisation is providing a service, or has provided a service, in relation to functions delegated to the organisation under the Convention; and

(d) Communicate with any other person who may be able to provide relevant information.

(5) Every employee of the Department of Social Welfare who carries out an assessment under this section must give reasonable notice of that person's intention to interview the principal officer or other officer or employee of an organisation, or to examine any documents or records held by the organisation.

(6) The provisions of section 16 (2) to (4) apply to any review under subsection (1) (b) as if it were an application.

23 Change of principal officer to be notified—Every New Zealand accredited body must, within 10 working days, notify the Director-General in writing of any change in the person acting as its principal officer for the purposes of this Act.

PART 3 MISCELLANEOUS PROVISIONS

24 Regulations—The Governor-general may from time to time, by Order in Council, make regulations- (a) Prescribing the extent to which the functions of a Central Authority under Article 9 or Chapter IV of the Convention may be delegated to public authorities or New Zealand accredited bodies: (b) Providing for such matters as are contemplated by or necessary for giving full effect to this Act and for its due administration.

Amendments to Adoption Act 1955

25 Recognition of overseas adoptions—Section 17 of the Adoption Act 1955 is amended by adding the following subsections: “(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.”

26 Prohibition of payments—Section 25 of the Adoption Act 1955 is amended by adding, as subsection (2), the following subsection; “(2) This section 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.”

27 Restriction upon advertisements—section 26 of the Adoption Act 1955 is amended by adding, as subsection (2), the following subsection: “(2) An Organisation approved as a New Zealand accredited body under Part 2 of the Adoption (Intercountry) 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.”

28 Offences—Section 27(2) of the Adoption Act 1955 is amended by omitting the expression “\$100” and substituting the expression “\$15,000”.

Amendments to Citizenship Act 1977

29 Special provisions relating to parentage—(1) Section 3(2) of the Citizenship Act 1977 is amended by inserting, after paragraph (b)(ii), the word “or” and the following paragraph: “(ba) He or she has been adopted by that citizen, outside New Zealand, by an adoption order which has been certified by the competent authority of the Contracting State in which the adoption was made as being an adoption made in accordance with the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption,-”.

(2) Section 3 of the Citizenship Act 1977 is amended by adding the following subsection: “(6) In subsection (2) (ba), ‘Contracting State’ has the same meaning as in the Adoption (Intercountry) Act 1997.”

Amendments to Births, Deaths, and Marriage Registration Act 1995

30 Registration of overseas adoptions—Section 25 (a) of the Births, Deaths, and Marriages Registration Act 1995 is amended by inserting, after the expression “Adoption Act 1955”, the expression “or section 11 of the Adoption (Intercountry) Act 1997”.

Section 2 Schedule— Hague Convention— See printed on pp214-218 this book

HUMAN ASSISTED REPRODUCTIVE TECHNOLOGY ACT 2004

Public Act 2004 No 92

Date of assent 21 November 2004

Commencement see section 2

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Schedule 1 Prohibited actions

Schedule 2 Form of search warrant

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Human Assisted Reproductive

Technology Act 2004.

2 Commencement

- (1) Part 1, subpart I of Part 2, the provisions of section 67 (other than subsection (2)(c)(ii) to (v)), sections 68 to 75, the provisions of section 76(1), sections 77, 79 to 85, and 87, and Schedules I and 2 come into force on the day after the date on which this Act receives the Royal assent.
- (2) The rest of this Act comes into force on the expiry of 9 months after the date on which it receives the Royal assent.

Part 1

Preliminary provisions

3 Purposes

This Act has the following purposes:

- (a) to secure the benefits of assisted reproductive procedures, established procedures, and human reproductive research for individuals and for society in general by taking appropriate measures for the protection and promotion of the health, safety, dignity, and rights of all individuals, but particularly those of women and children, in the use of these procedures and research:
- (b) to prohibit unacceptable assisted reproductive procedures and unacceptable human reproductive research:
- (c) to prohibit certain commercial transactions relating to human reproduction:
- (d) to provide a robust and flexible framework for regulating and guiding the performance of assisted reproductive procedures and the conduct of human reproductive research:
- (e) to prohibit the performance of assisted reproductive procedures (other than established procedures) or the conduct of human reproductive research without the continuing approval of the ethics committee:
- (f) to establish a comprehensive information-keeping regime to ensure that people born from donated embryos or donated cells can find out about their genetic origins.

4 Principles

All persons exercising powers or performing functions under this Act must be guided by each of the following principles that is relevant to the particular power or function:

- (a) the health and well-being of children born as a result of the performance of an assisted reproductive procedure or an established procedure should be an important consideration in all decisions about that procedure:
- (b) the human health, safety, and dignity of present and future generations should be preserved and promoted:
- (c) while all persons are affected by assisted reproductive procedures and established procedures, women, more than men, are directly and significantly affected by their application, and the health and well-being of women must be protected in the use of these

procedures:

(d) no assisted reproductive procedure should be performed on an individual and no human reproductive research should be conducted on an individual unless the individual has made an informed choice and given informed consent:

(e) donor offspring should be made aware of their genetic origins and be able to access information about those origins:

(f) the needs, values, and beliefs of Maori should be considered and treated with respect:

(g) the different ethical, spiritual, and cultural perspectives in society should be considered and treated with respect.

5 Interpretation

In this Act, unless the context otherwise requires,-

advisory committee means the committee established under section 32

approval, in relation to the ethics committee, means an approval given by the ethics committee under section 19

assisted reproductive procedure or procedure-

(a) means a procedure performed for the purpose of assisting human reproduction that involves-

(i) the creation of an in vitro human embryo; or
(ii) the storage, manipulation, or use of an in vitro human gamete or an in vitro human embryo; or
(iii) the use of cells derived from an in vitro human embryo; or

(iv) the implantation into a human being of human gametes or human embryos; but

(b) does not include an established procedure

authorised person—

(a) means a person authorised in writing by the Director-General of Health to enter and inspect premises for the purposes of this Act; and

(b) includes the Director-General of Health

cloned embryo means a human embryo that is a genetic copy (whether identical or not) of a living or dead human being, a still-born child, a human embryo, or a human foetus

Customs officer has the same meaning as in section 2(1) of the Customs and Excise Act 1996

donated cell means the whole or part of an in vitro human gamete or other in vitro human cell that is donated for reproductive purposes

donated embryo means an in vitro human embryo that is donated for reproductive purposes

donor means a person from whose cells a donated embryo is formed or from whose body a donated cell is derived; and,-

(a) in relation to a donor offspring, means the donor or donors of a donated embryo or a donated cell from which the donor offspring was formed; and

(b) in relation to an embryo that is a donated embryo or is formed from a donated cell, means the donor or donors of that donated embryo or donated cell; and

(c) in relation to a provider, means the donor or donors of a donated embryo or a donated cell used or available for use in a service performed or arranged

by the

provider **donor offspring,—**

(a) in relation to a donor, means a person formed from a donated embryo, or a donated cell, that is derived wholly or partly from the donor's body; and

(b) in relation to a provider, means a person formed from a donated embryo or a donated cell used in a service performed or arranged by the provider

embryo includes a zygote and a cell or a group of cells that has the capacity to develop into an individual; but does not include stem cells derived from an embryo

established procedure means any procedure, treatment, or application declared to be an established procedure under section 6

ethics committee means the committee designated under section 27

gamete means-

(a) an egg or a sperm, whether mature or not; or

(b) any other cell (whether naturally occurring or artificially formed or modified) that-

(i) contains only 1 copy of all or most chromosomes; and

(ii) is capable of being used for reproductive purposes

guardian, in relation to a donor offspring, means the donor offspring's guardian within the meaning of the Guardianship Act 1968

human reproductive research means research that uses or creates a human gamete, a human embryo, or a hybrid embryo

hybrid embryo means an embryo that is formed-

(a) by fusing a human gamete with a non-human gamete; or

(b) by fusing or compacting a cell of a human embryo with the cell of a non-human embryo; or

(c) by fusing or compacting a cell or cells of a human embryo with the cell or cells of another human embryo; or

(d) by transferring the nucleus of a human cell into a non-human egg or a non-human embryo; or

(e) by transferring the nucleus of a non-human cell into a human egg or a human embryo

identifying information, in relation to any person, means that person's name, address, or contact details; and includes any information that is likely to enable another person to ascertain that person's name, address, or contact details

implant includes insert into and inject into

in vitro, in relation to an embryo, a foetus, gamete, or cell means an embryo, a foetus, gamete, or cell that is outside a living organism

Minister means the Minister of Health person responsible, in relation to an activity approved by the ethics committee, means the person for the time being approved under section 20

provider-

(a) means a person who, in the course of a business (whether or not carried on with a view to making a profit), performs, or arranges the performance of, services in which donated embryos or donated cells

are used; and

(b) includes a successor provider

Registrar-General means the person for the time being appointed to that office under section 79(1) of the Births, Deaths, and Marriages Registration Act 1995

still-born child has the meaning given to it by section 2 of the Births, Deaths, and Marriages Registration Act 1995

successor provider means the successor, receiver, or liquidator of any provider or successor provider

surrogacy arrangement means an arrangement under which a woman agrees to become pregnant for the purpose of surrendering custody of a child born as a result of the pregnancy

valuable consideration includes an inducement, discount, or priority in the provision of a service.

6 Procedures or treatments may be declared to be established procedures

- (1)** The Governor-General may, by Order in Council made on the recommendation of the Minister given after advice tendered by the advisory committee, declare any of the following to be an established procedure for the purposes of the definition of **assisted reproductive procedure** in section 5:
- (a)** a medical, scientific, or technical procedure:
 - (b)** a medical treatment:
 - (c)** an application of a medical, scientific, or technical procedure:
 - (d)** an application of a medical treatment.
- (2)** In tendering advice to the Minister, under subsection (1), about a procedure or treatment, the advisory committee must provide the Minister with a report that sets out the following:
- (a)** information about the procedure or treatment:
 - (b)** an assessment, drawn from published and peer reviewed research, of the known risks and benefits to health of the procedure or treatment:
 - (c)** advice as to whether, in its expert opinion, the known risks to health of the procedure or treatment fall within a level of risk that is acceptable in New Zealand:
 - (d)** an ethical analysis of the procedure or treatment:
 - (e)** advice as to whether, in its expert opinion, the Minister should recommend that the procedure or treatment be declared an established procedure.
- (3)** Promptly after providing the Minister with a report under subsection (2), the chairperson of the advisory committee must ensure that the report is published on the Internet.

7 Act binds the Crown

This Act binds the Crown.

Part 2

Prohibited and regulated activities

Subpart 1-Prohibited actions

8 Prohibited actions

- (1)** Every person commits an offence who takes an action described in Schedule 1.
- (2)** Every person commits an offence who, knowing that

an in vitro gamete, an in vitro embryo or an in vitro foetus, or an in vitro being has been formed by an action described in Schedule 1, imports into, or exports from, New Zealand that in vitro gamete, in vitro embryo, in vitro foetus, or in vitro being.

- (3)** Every person commits an offence who, knowing that a gamete, an embryo or foetus, or a being has been formed by an action described in Schedule 1, possesses, without reasonable excuse, that gamete, embryo, foetus, or being.
- (4)** A person who commits an offence against this section is liable on conviction on indictment to imprisonment for a term not exceeding 5 years or a fine not exceeding \$200,000, or both.

9 Duty to stop development of in vitro human or hybrid embryos

- (1)** This section applies to an in vitro human embryo or an in vitro hybrid embryo that has been artificially formed (whether in New Zealand or elsewhere).
- (2)** Every person commits an offence who, knowing that the embryo has been developing after the specified day, intentionally—
- (a)** imports the embryo into New Zealand or exports the embryo from New Zealand; or
 - (b)** does anything,—
 - (i)** in the case of a human embryo, to cause the further development of the embryo outside the body of a human being; or
 - (ii)** in the case of a hybrid embryo, to cause the further development of the embryo; or
 - (c)** possesses the embryo with a view to using it in human reproductive research or for reproductive purposes; or
 - (d)** uses the embryo in human reproductive research or for reproductive purposes.
- (3)** Every provider and every person responsible for an activity approved by the ethics committee commits an offence who fails to take all practicable steps to ensure that subsection (2) is not contravened.
- (4)** For the purposes of this section, **specified day** means,—
- (a)** in relation to a human embryo, the 14th day after its formation (exclusive of any day during which the development of the embryo is suspended); and
 - (b)** in relation to a hybrid embryo, the 14th day after its formation (exclusive of any day during which the development of the embryo is suspended) or the day on which the primitive streak appears, whichever is the earlier.
- (5)** Every person who commits an offence against subsection (2) is liable on summary conviction to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$100,000, or both.
- (6)** Every person who commits an offence against subsection (3) is liable on summary conviction to a fine not exceeding \$50,000.

10 Human in vitro embryos and human in vitro gametes not to be stored for more than 10 years

- (1)** No person may keep a human in vitro gamete or a human in vitro embryo (being an embryo whose

development has been suspended) that has been stored for more than—

- (a) a period of 10 years; or
 - (b) if the ethics committee has, before the expiry of that period of 10 years, approved a longer period in respect of the gamete or embryo, the longer period approved by the ethics committee.
- (2) Every person commits an offence who contravenes this section and is liable on summary conviction to a fine not exceeding \$20,000.

11 Restrictions on sex selection of human embryos

- (1) No person may, for reproductive purposes,—
- (a) select an in vitro human embryo for implantation into a human being on the basis of the sex of the embryo; or
 - (b) perform any procedure, or provide, prescribe, or administer any thing in order to ensure, or in order to increase the probability, that a human embryo will be of a particular sex.
- (2) Every person commits an offence who contravenes this section and is liable on summary conviction to imprisonment for a term not exceeding 1 year or a fine not exceeding \$100,000, or both.
- (3) It is a defence to a charge of an offence against this section if the defendant proves that the act to which the charge relates was performed to prevent or treat a genetic disorder or disease.

12 Restriction on obtaining gametes from minors

- (1) No person may—
- (a) obtain a gamete from an individual who is under 16 years; or
 - (b) use a gamete that has been obtained from an individual who is under 16 years.
- (2) Every person commits an offence who contravenes this section and is liable on summary conviction to imprisonment for a term not exceeding 1 year or a fine not exceeding \$100,000, or both.
- (3) It is a defence to a charge of an offence against this section if the defendant proves that the gamete concerned was obtained or used by a person—
- (a) to preserve the gamete; or
 - (b) to bring about the birth of a child that was, in the reasonable opinion of the person, likely to be brought up by the individual from whom the gamete was obtained.

13 Commercial supply of human embryos or human gametes prohibited

- (1) No person may give or receive, or agree to give or receive, 4 valuable consideration for the supply of a human embryo or human gamete.
- (2) Every person commits an offence who contravenes subsection (1) and is liable on summary conviction to imprisonment for a term not exceeding 1 year or a fine not exceeding \$100,000, or both.

14 Status of surrogacy arrangements and prohibition of commercial surrogacy arrangements

- (1) A surrogacy arrangement is not of itself illegal, but is

not enforceable by or against any person.

- (2) Subsection (1) does not affect the Status of Children Amendment Act 1987.
- (3) Every person commits an offence who gives or receives, or agrees to give or receive, valuable consideration for his or her participation, or for any other person's participation, or for arranging any other person's participation, in a surrogacy arrangement.
- (4) Subsection (3) does not apply to a payment—
- (a) to the provider concerned for any reasonable and necessary expenses incurred for any of the following purposes:
 - (i) collecting, storing, transporting, or using a human embryo or human gamete;
 - (ii) counselling 1 or more parties in relation to the surrogacy agreement;
 - (iii) insemination or in vitro fertilisation;
 - (iv) ovulation or pregnancy tests; or
 - (b) to a legal adviser for independent legal advice to the woman who is, or who might become, pregnant under the surrogacy arrangement.
- (5) Every person who commits an offence against subsection (3) is liable on summary conviction to imprisonment for a term not exceeding 1 year or a fine not exceeding \$100,000, or both.

15 Advertising for illegal action prohibited

- (1) No person may, with the intention of obtaining responses from members of the public, publish, or arrange for any other person to publish, any material that invites persons to participate, or to inquire about opportunities for participating, in actions that are prohibited by section 8 or section 13 or section 14.
- (2) For the purposes of subsection (1), **publish** means—
- (a) insert in any newspaper or other periodical publication printed, published, or distributed in New Zealand; or
 - (b) send to any person, by post or otherwise; or
 - (c) deliver to any person or leave upon premises occupied by any person; or
 - (d) broadcast within the meaning of the Broadcasting Act 1989; or
 - (e) include in any film or video recording; or
 - (f) include in any disk for use with a computer; or
 - (g) disseminate by means of the Internet or any other electronic medium; or
 - (h) distribute by any means; or
 - (i) display by way of a sign, notice, poster, or other means; or
 - (j) bring to the notice of the public in New Zealand in any other manner.
- (3) Every person who commits an offence against subsection (1) is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,500, or both.

Subpart 2-Activities requiring approval of ethics committee

Activities to proceed only in accordance with approvals and regulations

16 Assisted reproductive procedures and human reproductive research only to proceed with prior

approval

- (1) Every person commits an offence who performs an assisted reproductive procedure or conducts human reproductive research without the prior approval in writing of the ethics committee.
- (2) Every person who commits an offence against subsection (1) is liable on summary conviction to a fine not exceeding \$50,000.

17 Approved activities must proceed in accordance with applicable conditions and regulations

The person responsible for an activity approved by the ethics committee must ensure that the activity is undertaken in accordance with-

- (a) any conditions imposed by the committee under section 19 or section 21; and
- (b) any regulations made under section 76 that for the time being govern the activity.

Matters to be considered and decided by ethics committee

18 Applications for approval

- (1) The ethics committee may receive a written application for an approval for an assisted reproductive procedure or for human reproductive research if the application-
 - (a) is in a form approved by the ethics committee; and
 - (b) describes the activity for which approval is sought; and
 - (c) states the purpose of the proposed activity; and
 - (d) nominates an appropriate person who is to be responsible for the activity.
- (2) If the kind of activity for which an approval is sought is not covered in guidelines or advice issued or given by the advisory committee, the ethics committee must
 - (a) decline the application; and
 - (b) refer the application to the advisory committee.
- (3) The ethics committee may, for any reason that it considers appropriate, reconsider an application that it has previously declined if relevant new information becomes available.

19 Approval of assisted reproductive procedure or research

- (1) The ethics committee may give its written approval-
 - (a) for the performance of assisted reproductive procedures by a nominated person; or
 - (b) for the conduct of human reproductive research by a nominated person.
- (2) The ethics committee may not give an approval unless it is satisfied that the activity proposed to be undertaken under the approval is consistent with relevant guidelines or relevant advice issued or given by the advisory committee.
- (3) The ethics committee may give an approval subject to any conditions it thinks fit to impose, which may, with out limitation,—
 - (a) limit the duration of the approval; or
 - (b) limit the individual or individuals on whom any assisted reproductive procedure may be performed to a particular individual or to particular individuals or

to a class or classes of individuals.

- (4) The ethics committee must impose any conditions that it considers are required to ensure that the informed consent of any person is obtained before-
 - (a) the person is involved in an activity to be undertaken under the approval; or
 - (b) 1 or more embryos, gametes, or other cells derived from the person are used.
- (5) In an approval for human reproductive research, the ethics committee must impose a condition that requires any person specified in the approval—
 - (a) to prepare, in accordance with any requirements stated by the committee, reports on the research (consisting of progress reports and a final report); and
 - (b) to provide those reports to the committee,-
 - (i) in the case of progress reports, at specified intervals of not less than 1 year; and
 - (ii) in the case of the final report, on completion of the research.

20 Person responsible for activity

- (1) Before the ethics committee gives an approval for an activity, it must approve a person nominated under section 18(1)(d) as the person responsible for the activity to be undertaken under the approval.
- (2) If, at any time, the person responsible for an activity undertaken under an approval is, for any reason, unable or unwilling to perform the person's duties, the activity under the approval must be suspended until the ethics committee concerned approves, or 1 or more members of the committee authorised by the committee in that behalf approve, another person nominated by the agency that applied for that approval under section 18 as the person responsible for the activity.
- (3) Before the ethics committee approves a person under this section, the committee must be satisfied that the person-
 - (a) is able to ensure that the activity concerned will be undertaken in a manner that is consistent with relevant guidelines or relevant advice issued by the advisory committee; and
 - (b) is willing to assume responsibility for the activity.
- (4) Every person appointed under this section must be a natural person.

21 Ethics committee may change conditions

- (1) The ethics committee may change an approval in 1 or more of the following respects:
 - (a) by varying a condition previously imposed on the approval;
 - (b) by revoking a condition previously imposed on the approval;
 - (c) by imposing 1 or more new conditions on the approval.
- (2) The ethics committee may change the approval on its own initiative only if it is satisfied that the change is necessary—
 - (a) to ensure consistency with this Act or relevant guidelines or relevant advice issued or given by the advisory committee before or after the date on which the approval was given; or

- (b) to correct an error or omission made by the ethics committee.
- (3) The ethics committee may change the approval at the request of the person responsible for the activity undertaken under the approval if it is satisfied that the change is consistent with relevant guidelines or relevant advice issued or given by the advisory committee before or after the date on which the approval was given.
- (4) In any case where the person responsible for the activity requests the ethics committee to exercise its power under subsection (1)(a), the power may be exercised by 1 or more members of the committee authorised by the committee in that behalf.
- (5) The ethics committee may not change the approval on its own initiative unless it has first—
- (a) informed the person responsible for the activity under— taken under the approval concerned why it is considering the change; and
- (b) given that person a reasonable time to make written submissions and be heard on the question, either personally or by his or her representative; and
- (c) considered any submissions made in that time.

22 Ethics committee may cancel approval

- (1) The ethics committee may cancel an approval, in whole or in part, if it is satisfied—
- (a) that 1 or more conditions stated in the approval have been breached; or
- (b) that the activity undertaken, or purportedly undertaken, under the approval—
- (i) is inconsistent with any relevant guidelines and advice issued by the advisory committee on or before or after the date on which the approval was given; or
- (ii) is inconsistent with the description set out in the application in which the approval was sought; or
- (iii) breaches or has breached this Act or regulations made under section 76; or
- (c) that, since giving the approval, the ethics committee has become aware that the activity to which the approval relates poses a serious risk to human health and safety.
- (2) The ethics committee must cancel an approval so far as it relates to a kind of assisted reproductive procedure or human reproductive research that has become subject to a moratorium imposed under section 24.
- (3) The ethics committee may not cancel an approval under subsection (1) unless it has first—
- (a) informed the person responsible for the activity under the approval why it is considering cancelling the approval; and
- (b) given that person a reasonable opportunity to make written submissions and be heard on the question, either personally or by his or her representative.
- (4) Before the ethics committee cancels an approval under subsection (2), it must endeavour to inform the person responsible for the activity of the forthcoming cancellation and of the date on which the cancellation is to take effect.
- (5) If the ethics committee cancels an approval, it may

give directions on how the activity affected by the cancellation is to be stopped.

- (6) Directions under subsection (5) may, without limitation, relate to the preservation, custody, or disposal of in vitro human gametes, in vitro human embryos, or in vitro hybrid embryos.
- (7) The ethics committee cancels an approval under this section by written notice given or sent to the person responsible for the activity to which the approval relates or to any other person who appears to be in charge of the activity.
- (8) A notice issued under subsection (7) takes effect according to its tenor and must—
- (a) state the date on which it takes effect (not being a date earlier than the date of the notice); and
- (b) if the cancellation relates to only part of the approval, identify the part to which it relates.

23 If approval cancelled, activity must be stopped

If the ethics committee cancels an approval, the person who, immediately before the cancellation, is the person responsible for the activity under the approval must—

- (a) ensure that the activity is stopped; and
- (b) comply with any directions given, under section 22(5), on how the activity is to be stopped.

Moratorium for particular forms of assisted reproductive procedure or human reproductive research

24 Moratorium may be imposed on forms of assisted reproductive procedure or human reproductive research

- (1) For the purpose of allowing time for the development of advice or guidelines, or both, about any kind of assisted reproductive procedure or human reproductive research, the Governor-General may, by Order in Council made on the recommendation of the Minister, declare a particular kind of assisted reproductive procedure or human reproductive research to be subject to a moratorium for a period not exceeding 18 months.
- (2) The Governor-General may, by Order in Council made on the recommendation of the Minister, extend a moratorium imposed under subsection (1) for 1 further period not exceeding 18 months.
- (3) After the imposition of a moratorium under subsection (1) on a form of assisted reproductive procedure or human reproductive research, the advisory committee must, by a date agreed with the Minister, provide the Minister with information, advice, and, if the committee thinks fit, recommendations on that form of procedure or research.

25 Committee must not consider applications for approvals subject to moratorium

During any time that a kind of assisted reproductive procedure or human reproductive research is subject to a moratorium imposed under section 24, the ethics committee must not consider or grant a request to approve a proposal for that form of procedure or research.

26 Offence to perform procedures or conduct re-

search subject to moratorium

- (1) Every person commits an offence who performs an assisted reproductive procedure or conducts human reproductive research in the following circumstances:
- (a) the procedure or research is at the time of its performance of a kind that is subject to a moratorium imposed under section 24(1); and
 - (b) the ethics committee—
 - (i) has never given its approval for the procedure or research; or
 - (ii) has cancelled any approval previously given for the procedure or research.
- (2) Every person who commits an offence against subsection (1) is liable on summary conviction to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$100,000, or both.

*Designation and functions of ethics committee***27 Designation of ethics committee**

- (1) The Minister may, by written notice given to any committee, designate the committee as the ethics committee for the purposes of this Part.
- (2) The Minister may designate a committee—
- (a) that the Minister establishes for the purposes of this section; or
 - (b) that has been established for another purpose.
- (3) In designating a committee under this section, the Minister must ensure that the committee—
- (a) complies in its composition with any applicable standard governing ethics committees determined by the national advisory committee appointed under section 16(1) of the New Zealand Public Health and Disability Act 2000; and
 - (b) includes—
 - (i) I or more members with expertise in assisted reproductive procedures; and
 - (ii) I or more members with expertise in human reproductive research.
- (4) The committee designated under this section is subject to any applicable ethical standards determined by the national advisory committee appointed under section 16(1) of the New Zealand Public Health and Disability Act 2000.
- (5) Each meeting of the ethics committee may be attended by the chairperson of the advisory committee or a member of the advisory committee nominated by the chairperson for the meeting, but a person attending under this subsection is not a member of the ethics committee.
- (6) If the committee is established for the purposes of this section, the Minister may, by written notice,—
- (a) appoint any person to be a member or chairperson of the ethics committee; and
 - (b) terminate the appointment of a member or chairperson of the ethics committee.
- (7) Each member of the ethics committee established for the purposes of this section is appointed on any terms and conditions (including terms and conditions as to remuneration and travelling allowances and expenses) that the Minister determines by written notice to the member.

- (8) In order to meet the requirements of subsection (3), the Minister may appoint 1 or more additional members to a committee, being a committee established for another purpose, on any terms and conditions (including terms and conditions as to remuneration and travelling allowances and expenses) that the Minister determines by written notice to the member.
- (9) A change in the membership of the committee designated under this section does not affect its designation.

28 Functions of ethics committee

- (1) For the purposes of this Part, the ethics committee has the following functions:
- (a) to consider and determine applications for approvals for the performance of assisted reproductive procedures or the conduct of human reproductive research;
 - (b) to keep under review any approvals previously given and, without limitation, to monitor the progress of any assisted reproductive procedures performed or any human reproductive research conducted under current approvals;
 - (c) to liaise with the advisory committee on general and specific matters relating to assisted reproductive procedures and human reproductive research and, without limitation, to forward to the advisory committee reports received under section 19(5) together with any comments or requests for advice that the ethics committee considers appropriate;
 - (d) to consult with any persons who, in the opinion of the committee, are able to assist it to perform its functions;
 - (e) any other functions that the Minister assigns to the committee by written notice.
- (2) For the purpose of assisting the ethics committee in the performance of its functions under this Part, the Director-General of Health must provide the committee with administrative support.

*Duties of ethics committee in relation to advisory committee***29 Ethics committee must operate expeditiously and in accordance with guidelines of advisory committee**

In the performance of its functions and the exercise of its powers, the ethics committee must operate—

- (a) in accordance with any guidelines issued by the advisory committee; and
- (b) expeditiously, having regard, in particular, to the effect that undue delay may have on the reproductive capacity of individuals.

30 Advisory committee to be informed of approvals

As soon as practicable after the ethics committee grants an approval, it must give a copy of the approval and the relevant proposal to the advisory committee.

*Presentation and publication requirements***31 Information about ethics committee must be made public**

As soon as practicable after giving a notice of the kind specified in subsection (2), the Minister must present a copy of the notice to the House of Representatives.

(2) The kinds of notice are as follows:

(a) a notice designating the ethics committee under section 27;

(b) a notice assigning a function to an ethics committee under section 28(1)(e).

(3) In every annual report of the Ministry of Health, the Ministry must publish-

(a) the name of the chairperson of the ethics committee; and

(b) the names of the members of the ethics committee.

Subpart 3-Advisory committee

Establishment, appointments, and functions

32 Advisory committee must be established

The Minister must establish a committee to be known as the Advisory Committee on Assisted Reproductive Procedures and Human Reproductive Research.

33 Number of members and procedure (1) The advisory committee-

(a) consists of not fewer than 8 and not more than 12 members; and

(b) may, subject to this Act and any directions that the Minister gives by written notice to the committee, regulate its procedure in any manner that the committee thinks fit.

(2) Each meeting of the advisory committee may be attended by the chairperson of the ethics committee or a member of the ethics committee nominated by the chairperson of the ethics committee for the meeting, but a person attending under this subsection is not a member of the committee.

(3) Promptly after an agenda for, and the minutes of, a meeting of the advisory committee are sent to the members of the committee, the chairperson of the committee must ensure that the agenda and minutes are published on the Internet.

34 Appointment of members

(1) The Minister may appoint any person to be a member or chairperson of the advisory committee and must, before doing so, consult any persons who, in the Minister's opinion, are able to provide advice on prospective appointees who have the required expertise and the ability to reflect relevant perspectives and concerns, including, without limitation, the perspectives and concerns of women.

(2) The Minister may, by written notice, terminate the appointment of a member or chairperson of the advisory committee.

(3) Each member of the advisory committee is appointed on any terms and conditions (including terms and conditions as to remuneration and travelling allowances and expenses) that the Minister determines by written notice to the member.

(4) The advisory committee must include—

(a) 1 or more members with expertise in assisted reproductive procedures; and

(b) 1 or more members with expertise in human reproductive research; and

(c) 1 or more members with expertise in ethics; and

(d) 1 or more Maori members with expertise in Maori customary values and practice and the ability to articulate issues from a Maori perspective; and

(e) 1 or more members with the ability to articulate issues from a consumer perspective; and

(f) 1 or more members with expertise in relevant areas of the law; and

(g) 1 or more members with the ability to articulate the interests of children.

(5) Any person appointed by virtue of subsection (4)(g) must at the time of his or her appointment hold the office of Children's Commissioner or be a representative or employee of the person who holds that office.

(6) At least half the members of the advisory committee must be lay persons.

(7) For the purposes of subsection (6), a lay person is a person who, at no time during the person's membership of the advisory committee or in the 3 years before becoming a member of the committee,-

(a) is a health practitioner within the meaning of the Health Practitioners Competence Assurance Act 2003; or

(b) is involved in health research; or

(c) is employed by or associated with, or has a pecuniary interest in, a provider.

35 Functions of advisory committee

(1) The advisory committee has the following functions:

(a) to issue guidelines and advice to the ethics committee on any matter relating to any kind of assisted reproductive procedure or human reproductive research and to keep such guidelines and advice under review;

(b) to provide the Minister with advice on aspects of, or issues arising out of, kinds of assisted reproductive procedure or human reproductive research and, without limitation, advice as to whether—

(i) this Act or another enactment should be amended to prohibit or provide for any kind of assisted reproductive procedure or human reproductive research;

(ii) on the basis of the information, assessment, advice, and ethical analysis required under section 6(2)(a) to (d), any kind of procedure or treatment should be declared an established procedure;

(iii) any established procedure should be modified or should cease to be an established procedure;

(iv) a moratorium should be imposed on any kind of assisted reproductive procedure or human reproductive research;

(v) regulations should be made under section 76 to regulate the performance of any kind of assisted reproductive procedure or the conduct of any kind of human reproductive research;

(c) to liaise with the ethics committee on general and specific matters relating to assisted reproductive procedures or human reproductive research;

(d) to consult with any persons who, in the opinion of

the advisory committee, are able to assist it to perform its functions:

- (e) any other function that the Minister assigns to the advisory committee by written notice.
- (2) For the purposes of performing its functions under subsection (1), the advisory committee must monitor—
 - (a) the application, and health outcomes, of assisted reproductive procedures and established procedures; and
 - (b) developments in human reproductive research.
- (3) For the purpose of assisting the advisory committee in the performance of its functions, the Director-General of Health must provide the committee with administrative support.

Guidelines and advice

36 Advisory committee to publish and notify guidelines

- (1) The advisory committee may issue guidelines only after it has,—
 - (a) on the basis of a discussion paper or an outline of the proposed guidelines, given interested parties and members of the public a reasonable opportunity to make submissions; and
 - (b) taken any such submissions into account.
- (2) When the advisory committee issues guidelines, it must—
 - (a) give copies of the guidelines to the Minister, the Director-General of Health, to the ethics committee, and to providers; and
 - (b) publish the guidelines on the Internet and in any other publications (if any) that the committee thinks appropriate; and
 - (c) give public notice of the issue of the guidelines by publishing in any publication that it considers appropriate for the purpose a notice that states—
 - (i) the date and subject matter of the guidelines; and
 - (ii) the Internet website on which they are published.
 - (3) As soon as practicable after receiving a copy of guidelines under subsection (2)(a), the Minister must present a copy of those guidelines to the House of Representatives.
- (4) The Director-General of Health must ensure that there are—
 - (a) sufficient copies of guidelines published under this section available for public inspection, free of charge, at the Head Office of the Ministry of Health during normal office hours; and
 - (b) sufficient copies of those guidelines available, either for distribution free of charge or for purchase at a reasonable price during normal office hours, at places designated by the Director-General of Health.

37 Advisory committee to provide specific advice in respect of human reproductive research

- (1) The advisory committee must, within time frames agreed with the Minister, provide the Minister with information, advice, and, if it thinks fit, recommendations on the following matters in relation to the use of gametes and embryos in human reproductive research:

- (a) cloned embryos;
- (b) donations of human embryos;
- (c) genetic modification of human gametes and human embryos;
- (d) human gametes derived from foetuses or deceased persons;
- (e) hybrid embryos;
- (f) requirements for informed consent;
- (g) the import into, or export from, New Zealand of in vitro human gametes or in vitro human embryos.
- (2) In subsection (1)(e), hybrid embryo does not include a mixture of animal and human gametes that has been prepared for any diagnostic test.

38 Advisory committee to provide specific advice in respect of human assisted reproductive technology

The advisory committee must, within time frames agreed with the Minister, provide the Minister with information, advice, and, if it thinks fit, recommendations on the following matters in relation to human assisted reproductive technology:

- (a) donations of embryos;
- (b) embryo splitting;
- (c) gametes derived from deceased persons;
- (d) requirements for informed consent;
- (e) selection of embryos using pre-implantation genetic analysis;
- (f) the import into, or export from, New Zealand of in vitro donated cells or in vitro donated embryos.

39 Advisory committee to call for and consider submissions before giving significant advice

- (1) This section applies to advice that—
 - (a) is given under section 37 or section 38; or
 - (b) although not given under those sections, is of significant public interest but is not required as a matter of urgency.
- (2) The advisory committee may give advice to which this section applies only after it has,—
 - (a) on the basis of a discussion paper or an outline of the proposed advice, given interested parties and members of the public a reasonable opportunity to make submissions; and
 - (b) taken any such submissions into account.
- (3) For the purposes of subsection (1)(b), advice is not required as a matter of urgency if it relates to the question whether or not a treatment or procedure should be declared to be an established procedure.

40 Public meetings on proposed significant advice

- (1) If, in the opinion of the advisory committee, a significant number of persons wish to make oral submissions on a proposal to give advice of the kind to which section 39 applies, the advisory committee must hold as many meetings as are required to enable those submissions to be made.
- (2) The advisory committee must—
 - (a) notify the persons who wish to make oral submissions of the time and place of any meeting to be held under subsection (1); and

- (b) publish a notice on the Internet and in any other publication the committee thinks appropriate that states the time, place, and purpose of any such meeting and that it will be held in public.
- (3) A meeting held under subsection (1) must be held in public.

41 Requirement to consult

- (1) Before the advisory committee gives advice to the Minister or issues guidelines to the ethics committee, it must consult on the proposed advice or guidelines with—
- (a) any members of the public that the committee considers appropriate;
- (b) appropriate government departments and agencies;
- (c) any other person or group that the committee considers appropriate.
- (2) Before the advisory committee issues guidelines to the ethics committee, it must consult on the proposed guidelines with the Minister.

Presentation and publication requirements

42 Information about advisory committees to be made public

- (1) As soon as practicable after giving a notice of the kind specified in subsection (2), the Minister must present a copy of the notice to the House of Representatives.
- (2) The kinds of notice are as follows:
- (a) a notice appointing a member or chairperson of the advisory committee under section 34(1);
- (b) a notice terminating the appointment of a member of the advisory committee under section 34(2);
- (c) a notice assigning a function to the advisory committee under section 35(1)(e);
- (d) a notice giving directions as to the procedure of the advisory committee under section 33(1)(b).
- (3) The advisory committee must, as soon as practicable after each 12-month period ending on 30 June, give the Minister a report-
- (a) on its progress in carrying out its functions; and
- (b) on the number and kinds of decisions given by the ethics committee in that period.
- (4) As soon as practicable after receiving a report under sub-section (3), the Minister must present the report to the House of Representatives.

Part 3

Information about donors of donated embryos or donated cells and donor offspring Application

43 No retroactive application

Except for section 63, this Part-

- (a) applies to an embryo if, and only if, the embryo is a donated embryo, or is formed from a donated cell, that was donated after the commencement of this Part; and
- (b) applies to a donated cell if, and only if, it was donated after the commencement of this Part; and
- (c) applies to a donor offspring if, and only if, the donated embryo or every donated cell from which the donor offspring was formed was donated after the

commencement of this Part.

44 Provisions not applicable to all information

The provisions of this Part apply to information only if the information is required to be kept by this Part.

Duties of keepers of information when information requests are made

45 Duty to ensure that person requesting information is authorised

- (1) When a person requests a provider or the Registrar-General to give the person access to information required to be kept by this Part, the provider or the Registrar-General must not give the person access to that information unless satisfied about the identity of the person who is making the request.
- (2) Each provider and the Registrar-General—
- (a) must adopt appropriate procedures to ensure that any information intended for a person is received—
- (i) only by that person; or
- (ii) if the request is made by an agent of the person, only by that person or his or her agent; and
- (b) must ensure that, if the request is made by an agent of the person, the agent has the written authority of that person to obtain the information or is otherwise properly authorised by that person to obtain the information.

Advice to prospective donors

46 Providers must give advice to prospective donors and prospective guardians

- (1) A provider must ensure that, before a person consents to donating a donated embryo or a donated cell to or through the provider, or to any service performed or arranged by the provider that involves a donated embryo or a donated cell, the person is told the things described in subsection (3).
- (2) Before a provider performs or arranges the performance of a service that may result in the birth of a donor offspring, the provider must ensure that each prospective guardian of the donor offspring is told the things described in subsection (3).
- (3) The things are as follows:
- (a) which information about donors is obtained and kept by providers;
- (b) how long the information is kept;
- (c) why the information is obtained and kept;
- (d) which part of the information is forwarded to, and kept indefinitely by, the Registrar-General;
- (e) the rights given by this Act to donor offspring, the guardians of donor offspring, and other people to obtain information about donors;
- (f) the rights given by this Act to donors and other people to obtain information about donor offspring;
- (g) the importance of telling offspring about the nature of their conception;
- (h) the availability of counselling.
- (4) To avoid any doubt, this section does not limit any right or duty set out in the Health and Disability Commissioner (Code of Health and Disability Services Consumers' Rights) Regulations 1996.

Information about donors

47 Providers must obtain and accept information about donors

(1) When a donor donates a donated embryo or a donated cell to or through a provider, the provider must ensure that the provider has obtained the following information about the donor or, as the case requires, about each donor:

- (a)** the donor's name;
- (b)** the donor's gender;
- (c)** the donor's address;
- (d)** the date, place, and country of the donor's birth;
- (e)** the donor's height;
- (f)** the colour of the donor's eyes and hair;
- (g)** the donor's ethnicity and any relevant cultural affiliation;
- (h)** in the case of a Maori donor, the donor's whanau, hapu, and iwi, to the extent that the donor is aware of those affiliations;
- (i)** any aspects, considered significant by the provider, of the medical history of-
 - (i)** the donor; and
 - (ii)** the donor's parents and grandparents; and
 - (iii)** the donor's children (if any); and
 - (iv)** the donor's siblings (if any);
- (j)** the donor's reasons for donating.

(2) The provider must accept any information that is offered by a donor that updates or corrects any of the information about the donor obtained under subsection (1).

48 Providers and Registrar-General must keep information about donors

(1) A provider must, in accordance with this section, keep all information about a donor obtained or accepted under section 47 in relation to any donated embryo or a donated cell.

(2) In any case where the use of the donated embryo or the donated cell results in the birth of a living donor offspring, the provider must give the information to the Registrar-General on the earlier of the following events:

- (a)** the expiry of 50 years after the date of that birth;
- (b)** the provider ceasing to be a provider in circumstances where there is no successor provider.

(3) The Registrar-General must keep indefinitely all information given under subsection (2).

(4) In any case where no living donor offspring is formed from the donated embryo or the donated cell, the provider may destroy the information on the occurrence of any of the following events:

- (a)** the termination (otherwise than by the birth of a living child) of a pregnancy resulting from the implantation of a donated embryo or an embryo formed from the donated cell;
- (b)** the destruction before implantation of a donated embryo or an embryo formed from the donated cell;
- (c)** the destruction of the donated cell.

49 Access by donors to information about them kept by providers

If asked to do so by a donor, a provider must—

- (a)** give the donor access to any information about

the donor that the provider is keeping; and
(b) tell the donor whether the donor offspring has asked for information about the donor.

50 Access by donor offspring to information about donors kept by providers and Registrar-General

(1) If asked to do so by a donor offspring who is 18 years or older, the relevant agency must tell the offspring whether the relevant agency is keeping any information about the donor or, as the case requires, the donors and, if so, give the offspring access to it.

(2) If asked to do so by a guardian of a donor offspring who is under 18 years, the relevant agency must tell the guardian whether the relevant agency is keeping any information about the donor or, as the case requires, the donors and, if so, give the guardian access to it.

(3) If asked to do so by a donor offspring who is under 18 years, the relevant agency must tell the donor offspring whether the relevant agency is keeping any information about the donor or, as the case requires, the donors and, if so, give the donor offspring access to as much of that information as is not identifying information.

(4) The relevant agency may refuse to give a person access to information about a donor if satisfied, on reasonable grounds, that the disclosure is likely to endanger any person.

(5) The relevant agency that gives a person access to information under this section must advise the person of the desirability of counselling.

(6) The relevant agency must advise the donor concerned whenever a person is, under this section, given access to identifying information about the donor.

(7) Subsection (4) overrides subsections (1) to (3).

(8) In this section, relevant agency means a provider or the Registrar-General.

51 Restriction on access to information about donors

A provider or the Registrar-General must not allow any person access to information about a donor unless—

- (a)** authorised or required to do so by this Act; or
- (b)** required to do so by any other enactment or rule of law; or
- (c)** the information is relevant for the purposes of providing medical treatment or medical advice to a person, and is requested by a medical practitioner who produces a certificate signed by 2 medical practitioners that states that access to the information should be obtained for those purposes.

Information about donor offspring

52 Providers must keep track of donor offspring births

A provider must ensure that, at all times, there is in place an effective system for being notified of, or otherwise becoming aware of, the births of donor offspring.

53 Providers must notify Registrar-General of

donor offspring births

- (1) A provider who learns of the birth of a donor offspring must promptly—
- (a) take all practicable steps to obtain, from any person who knows of the donor offspring, the following information:
 - (i) the date and place of the donor offspring's birth;
 - (ii) the donor offspring's sex; (iii) the donor offspring's name; and
 - (b) give to the Registrar-General, on a form provided by the Registrar-General for the purpose,—
 - (i) the information that the provider has been able to obtain under paragraph (a); and
 - (ii) the names and addresses of the guardians of the donor offspring; and
 - (iii) the information specified in subsection (2) about the donor or, as the case requires, about each donor; and
 - (iv) the name of the provider.
- (2) The information referred to in subsection (1)(b)(iii) is—
- (a) the donor's name;
 - (b) the donor's address;
 - (c) the date, place, and country of the donor's birth.

54 Providers must give Registrar-General corrected information

If a provider who has given the Registrar-General information under section 53(1)(b) receives additional information that updates or corrects any of the information already given, the provider must promptly give the Registrar-General the updated or corrected information.

55 Registrar-General and providers must keep information about donor offspring

- (1) The Registrar-General must keep indefinitely all information given under section 53 or section 54.
- (2) A provider must keep all information obtained under section 53 or accepted under section 56 until the expiry of the specified period.
- (3) In subsection (2), specified period means the period that starts with the date of the birth of the donor offspring concerned and expires on the earlier of the following:
 - (a) the expiry of 50 years after the date of that birth;
 - (b) the provider ceasing to be a provider in circumstances where there is no successor provider.

56 Providers to accept updated and corrected information about donor offspring

- (1) If a donor offspring who is 18 years or older offers to a provider any information that updates or corrects any of the information already given under section 53(1)(b) about the donor offspring, the provider must accept the updated or corrected information.
- (2) If a guardian of a donor offspring who is under 18 years offers to a provider any information that updates or corrects any of the information already given under section 53(1)(b) about the donor offspring, the provider must accept the updated or corrected information.

57 Access by donor offspring to information about them kept by providers or Registrar-General

- (1) If asked to do so by a donor offspring who is 18 years or older, the relevant agency must—
- (a) give the donor offspring access to any information about the donor offspring kept by the relevant agency;
 - (b) tell the donor offspring whether the donor has asked for information about the donor offspring.
- (2) If asked to do so by the guardian of a donor offspring who is under 18 years, the relevant agency must—
- (a) give the guardian access to any information about the donor offspring kept by the relevant agency;
 - (b) tell the guardian whether the donor has asked for information about the donor offspring.
- (3) If asked to do so by a donor offspring who is under 18 years, the relevant agency must—
- (a) give the offspring access to as much information about the donor offspring that is kept by the relevant agency and that is not identifying information about the donor;
 - (b) tell the offspring whether the donor has asked for information about the donor offspring.
- (4) The relevant agency that gives a person access to information under this section must advise the person of the desirability of counselling.
- (5) In this section, relevant agency means a provider or the Registrar-General.

58 Access to information about siblings of donor offspring

- (1) A provider or the Registrar-General may tell a donor offspring (**donor offspring A**) and, if donor offspring A is under 18 years, the guardian of donor offspring A whether donor offspring A shares a donor with another donor offspring (**donor offspring B**) and, if that is the case and the condition specified in subsection (2) is met, give access to identifying information about donor offspring B—
- (a) if donor offspring A is 18 years or older, to donor offspring A; or
 - (b) if donor offspring A is under 18 years, to the guardian of donor offspring A.
- (2) The condition referred to in subsection (1) is that—satisfied, on reasonable grounds, that to do so is likely to endanger any person.
- (4) Subsection
- (3) overrides subsections (1) and (2).

61 Access by donors to information about donor offspring kept by Registrar-General

- (1) At the request of a donor, the Registrar-General must tell the donor whether information given to the Registrar-General under section 53(1)(b) discloses that there have been any donor offspring born and, if so, the sex of each donor offspring.
- (2) If the Registrar-General has the donor offspring's consent to give the donor access to identifying information about the donor offspring, the Registrar-General must do so at the donor's request.
- (3) The Registrar-General may refuse to disclose to the

donor, or give the donor access to, identifying information about the donor offspring if satisfied, on reasonable grounds, that to do so is likely to endanger any person.

(4) Subsection (3) overrides subsections (1) and (2).

62 Restriction on disclosure of information about donor offspring

A provider or the Registrar-General must not disclose any information about a donor offspring unless—

- (a) authorised or required to do so by this Act; or
- (b) required to do so by any other enactment or rule of law.

63 Voluntary register to be maintained by Registrar-General

(1) This section applies to—

- (a) any donor who has, before the commencement of this Part, donated a donated embryo or a donated cell; and
- (b) any donor offspring formed from a donated embryo or a donated cell that has been donated before that commencement.

(2) A donor to whom this section applies may give to the Registrar-General, on a form provided by the Registrar-General for the purpose, the following information:

- (a) the donor's name;
- (b) the donor's gender;
- (c) the donor's address;
- (d) the date, place, and country of the donor's birth;
- (e) the donor's height;
- (f) the colour of the donor's eyes and hair;
- (g) the donor's ethnicity and any relevant cultural affiliation;
- (h) in the case of a Maori donor, the donor's whanau, hapu, and iwi, to the extent that the donor is aware of those affiliations;
- (i) any aspects, considered significant, of the medical history of—
 - (i) the donor; and
 - (ii) the donor's parents and grandparents; and
 - (iii) the donor's children (if any); and
 - (iv) the donor's siblings (if any);
- (j) the name of the provider who received any donated embryo or donated cell from the donor;
- (k) any number or other symbol used by the provider to identify the donor, if known.

(3) The following persons may give to the Registrar-General, on a form provided by the Registrar-General for the purpose, the information specified in subsection (4):

- (a) a donor offspring who is 18 years or older and to whom this section applies;
- (b) the guardian of a donor offspring, being a donor offspring who is under 18 years and to whom this section applies.

(4) The following information is the information referred to in subsection (3):

- (a) the donor offspring's name;
- (b) the date and place of the donor offspring's birth;
- (c) the donor offspring's address;

(d) if the information is given by the guardian, the guardian's name and address;

(e) the donor offspring's gender;

(f) the donor offspring's ethnicity and any cultural affiliation;

(g) in the case of a Maori donor offspring, the donor offspring's whanau, hapu, and iwi, to the extent that those affiliations are known;

(h) any aspects, considered significant, of the medical history of the donor offspring;

(i) the name of the provider who received the donated embryo or donated cell concerned;

(j) any number or other symbol used by the provider to identify the donor offspring, if known.

(5) The Registrar-General must accept, on a form provided by the Registrar-General for the purpose, information—

(a) from a donor that updates information provided by the donor under subsection (2);

(b) from a donor offspring who is 18 years or older that updates information provided by the donor offspring or by the guardian of the donor offspring under subsection (3);

(c) from a guardian of a donor offspring who is under 18 years that updates information provided by the guardian under subsection (3).

(6) Any person who provides information under this section may also request the Registrar-General to restrict the access to the information in the manner specified in the request.

(7) A donor offspring about whom information has been given by a guardian under subsection (3) may, at any time after turning 18, do either or both of the following:

(a) request the Registrar-General to restrict the access to that information;

(b) vary or revoke any request made by the guardian under subsection (6).

(8) The Registrar-General may, subject to any request made under subsection (6), give each of the following persons access to information about a donor provided under subsection (2) and subsection (5):

(a) the donor;

(b) any person whom the Registrar-General believes on reasonable grounds to be—

(i) the offspring of the donor; and

(ii) 18 years or older;

(c) any person whom the Registrar-General believes on reasonable grounds to be the guardian of a person who is—

(i) the offspring of the donor; and

(ii) under 18 years.

(9) The Registrar-General may, subject to any request made under subsection (6) or subsection (7)(a), give each of the following persons access to information about a donor offspring provided under subsection (3) and subsection (5):

(a) the donor offspring, if he or she is 18 years or older;

(b) the guardian of the donor offspring, if the donor offspring is under 18 years;

(c) a person whom the Registrar-General believes on

reasonable grounds to be the donor of the donor offspring:

- (d) a person whom the Registrar-General believes on reasonable grounds to be a person-
 - (i) who shares a donor with the donor offspring; and
 - (ii) who is 18 years or older;
 - (e) a person whom the Registrar-General believes on reasonable grounds to be the guardian of a person-
 - (i) who shares a donor with the donor offspring; and
 - (ii) who is under 18 years.
- (10) The Registrar-General may decline to give access to information under this section if satisfied, on reasonable grounds, that the disclosure is likely to endanger any person.
- (11) The Registrar-General, when giving access to information under this section to a person, must advise the person of the desirability of counselling.

64 Application of this Part to section 63

The provisions of this Part, other than this section and sections 43, 45, 51, 62, 65, and 66, do not apply to section 63.

Court orders deeming certain donor offspring to be 18

65 Family Court may confer certain rights on donor offspring aged 16 or 17

- (1) A donor offspring who is 16 years or older but under 18 years may apply to the Family Court for an order that, for the purposes of 1 or more of the provisions stated in subsection (2), the donor offspring is to be treated as a donor offspring who is 18 years old.
- (2) The provisions are sections 50, 56, 57, 58, 59, and 63.
- (3) If satisfied that it is in the best interests of the donor offspring to do so, a Family Court Judge may make an order that requires a named provider or the Registrar-General, or both, to treat, for the purposes of 1 or more of the provisions specified in subsection (2), the donor offspring as a donor offspring who is 18 years old.
- (4) Rules may be made under section 16A of the Family Courts Act 1980 relating to the practice and procedure of Family Courts in proceedings under this Act.

Application of Privacy Act 1993

66 Application of Privacy Act 1993

- (1) Any person may make a complaint to the Privacy Commissioner holding that office under section 12 of the Privacy Act 1993 if-
 - (a) the person is dissatisfied with any decision, action, or failure to act by a provider or the Registrar-General in relation to—
 - (i) a request under this Act for information or access to information; or
 - (ii) a request under this Act to accept updated or corrected information; or
 - (b) the person believes that information-
 - (i) has been obtained, kept, or disclosed otherwise than in accordance with this Act; or
 - (ii) has not been obtained, accepted, kept, or given, as required by this Act.
- (2) Sections 40 and 41 of the Privacy Act 1993, so far as

applicable and with any necessary modifications, apply to any request of a kind referred to in subsection (1)(a).

- (3) Parts VIII, IX, and XII of the Privacy Act 1993, so far as applicable and with any necessary modifications, apply to the making of a complaint under subsection (1) as if the matter to which the complaint relates were an interference with privacy within the meaning of section 66 of that Act.
- (4) Nothing in this section limits the jurisdiction of the Privacy Commissioner under the Privacy Act 1993 to investigate any complaint made under Part VIII of that Act.

Part 4

Enforcement and miscellaneous provisions

Enforcement

67 Matters to be ascertained by authorised persons

- (1) Subsection (2) applies if an authorised person believes on reasonable grounds that there is a place (the place) in which—
 - (a) a gamete, an embryo or a foetus, or being that has been formed by an action described in Schedule 1 is located; or
 - (b) any assisted reproductive procedure is performed or any human reproductive research is conducted.
- (2) The authorised person may at any reasonable time exercise any of the powers in section 68 reasonably necessary to ascertain all or any of the following matters:
 - (a) whether a gamete, an embryo or a foetus, or being that has been formed by an action described in Schedule 1 is, in fact, located in the place:
 - (b) whether any assisted reproductive procedure or any human reproductive research is, in fact, performed or conducted in the place:
 - (c) whether the performance of any assisted reproductive procedure or the conduct of any human reproductive research-
 - (i) involves a contravention of any of sections 8 to 13:
 - (ii) involves a contravention of section 26:
 - (iii) complies with any regulations made under section 76(1) that regulate any kind of assisted reproductive procedure or human reproductive research:
 - (iv) complies with the requirement to obtain the approval of the ethics committee for the performance of an assisted reproductive procedure or the conduct of human reproductive research:
 - (v) complies with any conditions included in an approval given by an ethics committee.

68 Powers of authorised persons

- (1) The powers referred to in section 67, in relation to any place, are the powers to—
 - (a) enter the place:
 - (b) inspect-
 - (i) any equipment or device believed on reasonable grounds to be used in the place in relation to any assisted reproductive procedure or human

reproductive research:

- (ii) any document in the place believed on reasonable grounds to relate to any assisted reproductive procedure or human reproductive research:
- (c) take or make copies of, or copies of extracts from, any document inspected and, for that purpose,-
 - (i) take possession of and remove the document from the place for any reasonable period:
 - (ii) in the case of a document or information stored otherwise than on paper, take any reasonable steps to reproduce, in usable form, any or all of the information in it:
 - (d) search for and seize-
 - (i) any equipment or device referred to in paragraph (b)(i):
 - (ii) an in vitro gamete:
 - (iii) an in vitro embryo or an in vitro foetus:
 - (iv) a document or record (whether in electronic or other form):
 - (e) use any force for gaining entry to the place and for breaking open any article or thing that is in the place, being force that is reasonable in the circumstances and applied in a manner that is calculated to avoid adverse effects on any gametes, embryos, or foetuses:
 - (f) take photographs, and make drawings or other representations, of any item that may be seized under paragraph (d):
 - (g) mark or identify, by any appropriate means, any item that may be seized under paragraph (d):
 - (h) require any person appearing to be in charge of the place concerned (or any part of it) to ensure that any item that may be seized under paragraph (d) is not removed or interfered with:
 - (i) require any person appearing to be in charge of the place concerned (or any part of it) to answer any question the authorised person may reasonably ask for the purpose of exercising the powers of the authorised person.
- (2) An authorised person who enters a place under this section must produce evidence of his or her authorisation-
 - (a) on first entering the place:
 - (b) whenever subsequently reasonably required to do so by a person appearing to be in charge of the place or any part of the place.
- (3) An authorised person who enters a place under this section may be accompanied by any number of persons (including any member of the police) reasonably necessary to assist him or her with the exercise of his or her powers under this section.
- (4) A person who accompanies an authorised person under subsection (3) may, under the direction of the authorised person, exercise each of the powers described in subsection (1)(a) to (g).
- (5) This section does not limit the privilege against self-incrimination.

69 Entry of dwelling houses

- (1) An authorised person may not enter a dwelling-house under section 68(1)(a), except-

- (a) with the consent of an occupier of the dwelling-house; or
- (b) with the authority of a search warrant issued under subsection (2).
- (2) A District Court Judge, a Justice, or a Court Registrar who is not a member of the police, may, on a written application made on oath by an authorised person, issue a search warrant in the form set out in Schedule 2 in respect of a dwelling-house if satisfied that there are reasonable grounds to believe that in that house-
 - (a) an offence against this Act has been or is being committed; or
 - (b) there is any gamete, any kind of embryo or foetus, or being that is or may be evidence of the commission of an offence against this Act.
- (3) The search warrant authorises the authorised person to whom it is directed to exercise in respect of the dwelling-house all or any of the powers described in section 68, and the provisions of that section apply to the execution of the warrant.
- (4) The Judge, Justice, or Court Registrar may issue the warrant unconditionally or subject to any conditions that he or she thinks fit.
- (5) The authorised person to whom the search warrant is directed may execute it on 1 occasion within 14 days after the date of its issue.

70 Identification of authorised person

- (1) An authorised person exercising powers under section 68 in respect of any place,—
 - (a) if a person appearing to be in charge of the place is present on first entering the place, must identify himself or herself to that person; and
 - (b) if asked by the person appearing to be in charge of the place or any part of the place to do so, must produce evidence of his or her identity and evidence of his or her appointment as an authorised person.
- (2) If the authorised person executes a search warrant issued under section 69, the authorised person must produce the warrant,—
 - (a) on first entering the place specified in the warrant, to the person appearing to be in charge of the place; and
 - (b) whenever subsequently required to do so by any person appearing to be in charge of the place or any part of that place.

71 Notice requirements when place entered

- (1) If the occupier of the place is not present when an authorised person enters a place under section 68(1)(a), the authorised person must leave in a prominent location at the place a written statement of the time and date of the entry, the name of the person, and the address of the office of the Ministry of Health to which inquiries should be made.
- (2) If anything is seized under section 68(1)(d), the authorised person concerned must leave in a prominent location at the place, or deliver or send to the occupier within 10 working days after the search, a written inventory of all things seized.

72 Disposal of property seized

Section 199 of the Summary Proceedings Act 1957 applies to any property seized by an authorised person under section

68(1)(d), subject to the following provisions:

- (a) an item seized by an authorised person may be retained by the authorised person or the Commissioner of Police pending the trial of the person for the offence in respect of which the item was seized; and
- (b) any item retained under paragraph (a) that is any kind of gamete, embryo, or foetus must receive the expert treatment that is required to preserve it and to avoid any contravention of section 9; and
- (c) the item in question must be returned to the person from whom it was seized,—
 - (i) if no proceedings are taken in respect of an offence to which the item relates, within 6 months after its seizure; or
 - (ii) if proceedings are completed in respect of the offence and no order of forfeiture is made in respect of the item; and
- (d) if any person is convicted of an offence to which the item relates, the Court may, if it thinks fit, order that the item be forfeited to the Crown or disposed of as the Court directs at the expense of the convicted person, and may order that the person pay any reasonable costs incurred by the authorised person or the Commissioner of Police in retaining the item.

73 Detection of import and export offences

- (1) A Customs officer may detain any matter or item that he or she finds in the course of exercising any power of search or examination under the Customs and Excise Act 1996, if he or she believes on reasonable grounds that the matter or item is—
 - (a) a gamete, an embryo, or a foetus, or being that is being imported or exported in contravention of section 8(2) or section 9(2); or
 - (b) any equipment or device used in relation to that import or export.
- (2) If a Customs officer detains any matter or item under subsection (1), he or she must, as soon as practicable, deliver that matter or item into the custody of an authorised person.
- (3) Once a matter or item has been delivered under subsection (2),—
 - (a) responsibility for that matter or item passes from the Customs officer to the authorised person; and
 - (b) section 72 applies to that matter or item as if it had been seized under section 68(1)(d).
- (4) The following sections of the Customs and Excise Act 1996 apply, with any necessary modifications, to any gamete, embryo, foetus, or being that is imported or exported in contravention of section 8(2) or section 9(2) as if the gamete, embryo, foetus, or being and any equipment or device used in relation to that import or export were a prohibited import or, as the case requires, a prohibited export within the meaning of that Act:
 - (a) section 145 (questioning persons about goods and debt);
 - (b) section 147 (evidence of identity and entitlement

to travel):

(c) section 148 (detention of persons questioned about goods or debt):

(d) section 160 (requisition to produce documents):

(e) section 161 (further powers in relation to documents).

- (5) If a Customs officer requests an authorised person to assist the Customs officer in the exercise of a power under this section or any of the sections applied by subsection (4), the authorised person may exercise the relevant power under the direction of the Customs officer.

74 Exclusion of liability of authorised persons, Customs officers, and assistants

No authorised person, or a person requested to assist an authorised person, or a Customs officer who does, or omits to do, an act in pursuance of a function or power conferred on that person by this Act or by the Customs and Excise Act 1996 as applied by section 73 is under civil or criminal liability for that act or omission unless the person acts, or omits to act, in bad faith or without reasonable cause.

75 Offences related to inspections and searches

- (1) Every person commits an offence who—
 - (a) intentionally obstructs, hinders, or resists an authorised person, or any person lawfully assisting an authorised person, in the exercise of the authorised person's powers under this Act; or
 - (b) intentionally refuses or fails to comply with any lawful requirements of an authorised person under this Act.
- (2) A person who commits an offence against subsection (1) is liable on summary conviction to a fine not exceeding \$20,000.

Miscellaneous provisions

76 Regulations

- (1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:
 - (a) providing for the circumstances and the manner in which, and the conditions subject to which, any kind of assisted reproductive procedure may be performed or any kind of human reproductive research may be conducted, including, without limitation:
 - (i) prescribing requirements for informed consent in relation to the performance of assisted reproductive procedures or the conduct of human reproductive research, not being requirements that are inconsistent with this Act or the Health and Disability Commissioner (Code of Health and Disability Services Consumers' Rights) Regulations 1996;
 - (ii) providing for the use or destruction of in vitro gametes or in vitro embryos, in particular, without limitation, in cases where one party from whom such a gamete or embryo has been obtained or formed withdraws his or her consent to any course of action;
 - (iii) prescribing requirements or conditions for, or imposing restrictions on, the import into, or the export from, New Zealand of in vitro gametes or in vitro embryos, including, without limitation,

requirements for the giving of informed consent (not being requirements that are inconsistent with this Act or the Health and Disability Commissioner (Code of Health and Disability Services Consumers' Rights) Regulations 1996) by persons from whom gametes are obtained overseas:

(iv) requiring any person approved under section 20 as the person responsible for an activity to keep records of information of a kind provided for by the regulations (not being identifying information) in relation to that activity, and requiring that person to disclose, in the manner provided for by the regulations, that information to the advisory committee or any duly authorised representative of that committee or the Director-General of Health:

(v) requiring persons who perform, or who arrange for the performance of, established procedures or any class of health practitioner (within the meaning of the Health Practitioners Competence Assurance Act 2003) to keep records of information of a kind provided for by the regulations (not being identifying information) in relation to established procedures, and requiring those persons and health practitioners to disclose, in the manner provided for by the regulations, that information to the advisory committee or to any duly authorised representative of that committee or to the Director-General of Health:

(b) prescribing offences in respect of the contravention of, or non-compliance with, any regulations made under paragraph (a) and the amounts of fines that may be imposed in respect of those offences, which fines must not exceed \$20,000:

(c) prescribing the fees to be paid in relation to the taking of any action under Part 3 by the Registrar-General:

(d) providing for any other matters that are contemplated by, or necessary for giving full effect to, this Act, and for its due administration.

(2) Regulations under subsection (1)(a) may be made only on the recommendation of the Minister after the Minister has consulted and received advice from the advisory committee and consulted any other person the Minister thinks fit to consult.

77 Liability of employers, principals, and directors

(1) An act done by a person as the employee (the employee) of another person (the **employer**) is, for the purposes of an offence against this Act, to be treated as done by the employer as well as by the employee if—

(a) the employer approved of the act; or
(b) the employer knew that the act was to be done or was being done and failed to take all reasonable steps to prevent it.

(2) An act done by a person as the agent (the **agent**) of another person (the **principal**) is, for the purposes of an offence against this Act, to be treated as done by the principal as well as by the agent if—

(a) the principal approved of the act; or
(b) the principal knew that the act was to be done or

was being done and failed to take all reasonable steps to prevent it.

(3) Whenever a body corporate is convicted of an offence against this Act, a director of the body corporate is to be treated as having committed the same offence if—
(a) the director approved of the act that constituted the offence; or

(b) the director knew the offence was to be or was being committed and failed to take all reasonable steps to prevent it.

(4) In subsection (3), director includes a person who is concerned in the management of a body corporate.

78 Fees

The Registrar-General may refuse to take any action under this Act for which a fee is prescribed unless the fee has been paid.

Transitional provisions

79 Director-General of Health to be advisory committee pending its establishment

(1) Until the expiry of 9 months after the date on which this Act receives the Royal assent, the Director-General of Health is deemed to be the advisory committee for the purposes of this Act.

(2) This section expires, and is taken to be repealed on the date that is 9 months after the date on which this Act receives the Royal assent.

80 Health and Disability Services (Safety) Act 2001 applies to fertility services

(1) For the purposes of the Health and Disability Services (Safety) Act 2001, fertility services are deemed to be included in the definition of **specified health or disability services** in section 4(1) of that Act.

(2) In this section and in sections 81 and 82, **fertility services** means services performed for the purpose of assisting human reproduction that involve—
(a) the creation of an in vitro human embryo; or
(b) the storage, manipulation, or use of an in vitro human gamete or an in vitro human embryo; or
(c) the use of cells derived from an in vitro human embryo; or
(d) the implantation in a human being of human gametes or human embryos.

(3) Subsection (1) overrides section 7 of the Health and Disability Services (Safety) Act 2001.

81 Compliance with Health and Disability Services (Safety) Act 2001 by providers of fertility services during interim period

(1) During the interim period, the provision of fertility services by a person is deemed to comply with section 9 of the Health and Disability Services (Safety) Act 2001 if the person who provides those services—
(a) is certified by the Director-General of Health; and
(b) has been the subject of an audit report completed, for the purposes of the person's accreditation, by an organisation approved under subsection (4); and
(c) has, within 5 days after the receipt of the most recent report of the kind described in paragraph (b), given the Director-General a copy of the report; and

- (d) complies with any standards approved by the Director-General of Health under section 82.
- (2) For the purposes of subsection (1)(a), a person who is accredited by an organisation approved under subsection (4) is deemed to be certified for the purposes of section 26 of the Health and Disability Services (Safety) Act 2001.
- (3) The provision of fertility services is not in compliance with section 9 of the Health and Disability Services (Safety) Act 2001 unless it is deemed to comply with that section by subsection (1).
- (4) The Director-General may approve any organisation to act as auditing agency to accredit a person for the purposes of the interim period if the Director-General is satisfied that the organisation has the expertise and experience to carry out that function.
- (5) An organisation approved under subsection (4) may be a body corporate or an association of persons, whether or not that body is incorporated, or any of those persons reside, in New Zealand or overseas.
- (6) In this section and in section 82, interim period means the period that commences on the day after the date on which this Act receives the Royal assent and ends immediately before the commencement of the first notice under section 13 of the Health and Disability Services (Safety) Act 2001 that approves standards for fertility services.

82 Approval of standards during interim period

- (1) During the interim period, the Director-General of Health may,—
- (a) by written notice describing by name the standards concerned, approve standards for providing fertility services; and
- (b) amend or revoke such a notice.
- (2) A notice, or the amendment or revocation of a notice, comes into force on the 28th day after the day on which it is published in the Gazette.
- (3) A notice and any amendment of a notice, unless sooner revoked, expires at the end of the interim period.

83 Provisions to be treated as guidelines in interim period

- (1) In this section, **interim period** means the period that commences on the day after the date on which this Act receives the Royal assent and ends on the third anniversary of that day.
- (2) During the interim period, the Minister may—
- (a) issue a requirement requiring the ethics committee to treat specified provisions of any document as guidelines issued by the advisory committee for the purposes of this Act; and
- (b) amend or revoke a requirement of that kind.
- (3) A requirement, or the amendment or revocation of a requirement, comes into force on the 28th day after the day on which it is published in the Gazette.
- (4) A requirement and any amendment of a requirement, unless sooner revoked, expires at the end of the interim period.
- (5) The ethics committee must give effect to the current form of every requirement.
- (6) Every requirement and any amendment or revocation

of the requirement must be published in the Gazette, and the publication of a requirement or an amendment of a requirement must identify the provisions that are to be treated as guidelines but need not set them out.

84 Availability of interim standards and guidelines

- (1) This section applies to the following documents:
- (a) current notices issued under section 82;
- (b) standards for the time being approved under section 82;
- (c) current requirements issued under section 83;
- (d) provisions required to be treated as guidelines under section 83.
- (2) The Director-General of Health must ensure that there are—
- (a) sufficient copies of the documents available for public inspection, free of charge, at the Head Office of the Ministry of Health during normal office hours; and
- (b) sufficient copies of the documents available either for distribution free of charge or for purchase at a reasonable price during normal office hours at places designated by the Director-General of Health.

Amendments to other enactments

85 Amendment to Customs and Excise Act 1996

Section 148(2)(b) of the Customs and Excise Act 1996 is amended by adding the following sub-paragraph: “(v) the Human Assisted Reproductive Technology Act 2004.”

86 Amendment to Medicines Act 1981

- (1) Section 96A of the Medicines Act 1981 is amended by repealing the definitions of **cloned human organism, cloning procedure, genetically modified embryo, genetically modified gamete, and germ-cell genetic procedure**.
- (2) Section 96A of the Medicines Act 1981 is amended by repealing the definition of **specified bio-technical procedure**, and substituting the following definition: “**specified bio-technical procedure** means any xeno-transplantation”.
- (3) Any application made, before the commencement of this section, under section 96G of the Medicines Act 1981 for the grant of an authorisation in relation to any germ-cell genetic procedure or any cloning procedure must be treated as if this Act had not been enacted; and an authorisation under section 96C or section 96D of that Act granted in respect of such an application has effect as if this Act had not been enacted.

87 Amendment to Summary Proceedings Act 1957

Part II of the First Schedule of the Summary Proceedings Act 1957 is amended by inserting, after the item relating to the Harbours Act 1950, the following item:—

Human Assisted Reproductive Technology Act 2004

- 8(1) Taking an action described in Schedule I
- 8(2) Importing or exporting an in vitro gamete, any kind

of in vitro embryo or in vitro foetus, or in vitro being formed by an action described in

25 August 2004 Consideration of report
 6, 20 October 2004 Committee of the whole House (Bill 195-3)
 10 November 2004 Recommittal, third reading
 21 November 2004 Royal assent
 This Act is administered in the Ministry of Justice.

Schedule 1

8(3) Possessing a gamete, any kind of embryo or foetus, or being formed by an action described in Schedule 1

Schedule 1

Prohibited actions s 8

- 1** Artificially form, for reproductive purposes, a cloned embryo. For the purposes of this item, a cloned embryo is not formed by splitting, on 1 or more occasions, an embryo that has been formed by the fusion of gametes.
- 2** Artificially form, for reproductive purposes, a hybrid embryo.
- 3** Implant into a human being a cloned embryo.
- 4** Implant into a human being an animal gamete or embryo.
- 5** Implant into a human being a hybrid embryo.
- 6** Implant into an animal a human gamete or human embryo.
- 7** Implant into an animal a hybrid embryo.
- 8** Implant into a human being a genetically modified gamete, human embryo, or hybrid embryo.
- 9** Implant into a human being gametes derived from a foetus, or an embryo that has been formed from a gamete or gametes derived from a foetus.

s 69(2) Schedule 2

Form of search warrant

Warrant under section 69(2) of Human Assisted Reproductive Technology Act 2004 to enter dwelling-house

To: *[state name of authorised person]*

Being satisfied on written application made on oath by an authorised person that there are reasonable grounds to believe that in the dwelling-house located at *[state address or other description of location]*-

(a) an offence against the Human Assisted Reproductive Technology Act 2004 has been or is being committed; or

(b) there is any gamete, any kind of embryo or foetus, or being that is or may be evidence of the commission of an offence against the Human Assisted Reproductive Technology Act 2004,—

by this warrant I authorise you, on 1 occasion within 14 days of the issue of this warrant, to enter that dwelling-house and exercise the powers conferred by section 68 of that Act.

Dated at *[state place and date of issue]*.

Conditions (if any) subject to which warrant issued:

.....

District Court Judge (or Justice or Court Registrar (not being a member of the police)).

Human Assisted Reproductive 2004 No 92 Technology Act 2004

Legislative history

27 June 1996 Introduction and first reading (Bill 195-1)
 23 April 1997 Second reading and referral to Health Committee
 6 August 2004 Reported from Health Committee (Bill 195-2)

HISTORIC CODES AND STATUTES

HISTORIC CODES & STATUTES

Great Code of Hammurabi- Babylon c1770BC

—and Legal Commentary

Great Code of Alfonso X of Spain 1263AD

— Las Siete Partidas

Code Napoleon- French Civil Code 1803

HUMMURABI CODE OF LAW

(Translated by L. W. King)

Hammurabi (ca. 1792 - 1750 BC) united all of Mesopotamia under his forty-three year reign of Babylon. Although Hammurabi's Code is not the first code of laws (the first records date four centuries earlier), it is the best preserved legal document reflecting the social structure of Babylon during Hammurabi's rule.

About the Code Two hundred eighty-two laws, concerning a wide variety of abuses, justify Hammurabi's claim of having acted "like a real father to his people ... [who] has established prosperity ... and (gave) good government to the land."

The laws were discovered in 1901 on a stela now in the Louvre Museum of Paris, France.

The Code of Laws

1 If any one ensnare another, putting a ban upon him, but he can not prove it, then he that ensnared him shall be put to death.

2 If any one bring an accusation against a man, and the accused go to the river and leap into the river, if he sink in the river his accuser shall take possession of his house. But if the river prove that the accused is not guilty, and he escape unhurt, then he who had brought the accusation shall be put to death, while he who leaped into the river shall take possession of the house that had belonged to his accuser.

3 If any one bring an accusation of any crime before the elders, and does not prove what he has charged, he shall, if it be a capital offense charged, be put to death.

4 If he satisfy the elders to impose a fine of grain or money, he shall receive the fine that the action produces.

5 If a judge try a case, reach a decision, and present his judgment in writing; if later error shall appear in his decision, and it be through his own fault, then he shall pay twelve times the fine set by him in the case, and he shall be publicly removed from the judge's bench, and never again shall he sit there to render judgement.

6 If any one steal the property of a temple or of the court, he shall be put to death, and also the one who receives the stolen thing from him shall be put to death.

7 If any one buy from the son or the slave of another man, without witnesses or a contract, silver or gold, a male or female slave, an ox or a sheep, an ass or anything, or if he take it in charge, he is considered a thief and shall be put to death.

8 If any one steal cattle or sheep, or an ass, or a pig or a goat, if it belong to a god or to the court, the thief shall pay thirtyfold therefore; if they belonged to a freed man of the king he shall pay tenfold; if the thief has nothing with which to pay he shall be put to death.

9 If any one lose an article, and find it in the possession of another: if the person in whose possession the thing is found say "A merchant sold it to me, I paid for it before witnesses," and if the owner of the thing say, "I will bring witnesses who know my property," then shall the purchaser bring the merchant who sold it to him, and the

witnesses before whom he bought it, and the owner shall bring witnesses who can identify his property. The judge shall examine their testimony — both of the witnesses before whom the price was paid, and of the witnesses who identify the lost article on oath. The merchant is then proved to be a thief and shall be put to death. The owner of the lost article receives his property, and he who bought it receives the money he paid from the estate of the merchant.

10 If the purchaser does not bring the merchant and the witnesses before whom he bought the article, but its owner bring witnesses who identify it, then the buyer is the thief and shall be put to death, and the owner receives the lost article.

11 If the owner do not bring witnesses to identify the lost article, he is an evil-doer, he has traduced, and shall be put to death.

12 If the witnesses be not at hand, then shall the judge set a limit, at the expiration of six months. If his witnesses have not appeared within the six months, he is an evil-doer, and shall bear the fine of the pending case.

14 If any one steal the minor son of another, he shall be put to death.

15 If any one take a male or female slave of the court, or a male or female slave of a freed man, outside the city gates, he shall be put to death.

16 If any one receive into his house a runaway male or female slave of the court, or of a freedman, and does not bring it out at the public proclamation of the major domus, the master of the house shall be put to death.

17 If any one find runaway male or female slaves in the open country and bring them to their masters, the master of the slaves shall pay him two shekels of silver.

18 If the slave will not give the name of the master, the finder shall bring him to the palace; a further investigation must follow, and the slave shall be returned to his master.

19 If he hold the slaves in his house, and they are caught there, he shall be put to death.

20 If the slave that he caught run away from him, then shall he swear to the owners of the slave, and he is free of all blame.

21 If any one break a hole into a house (break in to steal),



he shall be put to death before that hole and be buried.

22 If any one is committing a robbery and is caught, then he shall be put to death.

23 If the robber is not caught, then shall he who was robbed claim under oath the amount of his loss; then shall the community, and ... on whose ground and territory and in whose domain it was compensate him for the goods stolen.

24 If persons are stolen, then shall the community and ... pay one mina of silver to their relatives.

25 If fire break out in a house, and some one who comes to put it out cast his eye upon the property of the owner of the house, and take the property of the master of the house, he shall be thrown into that self-same fire.

26 If a chieftain or a man (common soldier), who has been ordered to go upon the king's highway for war does not go, but hires a mercenary, if he withholds the compensation, then shall this officer or man be put to death, and he who represented him shall take possession of his house.

27 If a chieftain or man be caught in the misfortune of the king (captured in battle), and if his fields and garden be given to another and he take possession, if he return and reaches his place, his field and garden shall be returned to him, he shall take it over again.

28 If a chieftain or a man be caught in the misfortune of a king, if his son is able to enter into possession, then the field and garden shall be given to him, he shall take over the fee of his father.

29 If his son is still young, and can not take possession, a third of the field and garden shall be given to his mother, and she shall bring him up.

30 If a chieftain or a man leave his house, garden, and field and hires it out, and some one else takes possession of his house, garden, and field and uses it for three years: if the first owner return and claims his house, garden, and field, it shall not be given to him, but he who has taken possession of it and used it shall continue to use it.

31 If he hire it out for one year and then return, the house, garden, and field shall be given back to him, and he shall take it over again.

32 If a chieftain or a man is captured on the "Way of the King" (in war), and a merchant buy him free, and bring him back to his place; if he have the means in his house to buy his freedom, he shall buy himself free: if he have nothing in his house with which to buy himself free, he shall be bought free by the temple of his community; if there be nothing in the temple with which to buy him free, the court shall buy his freedom. His field, garden, and house shall not be given for the purchase of his freedom.

33 If a... or a... enter himself as withdrawn from the "Way of the King," and send a mercenary as substitute, but withdraw him, then the... or... shall be put to death.

34 If a ... or a ... harm the property of a captain, injure the captain, or take away from the captain a gift presented to him by the king, then the ... or ... shall be put to death.

35 If any one buy the cattle or sheep which the king has given to chieftains from him, he loses his money.

36 The field, garden, and house of a chieftain, of a man,

or of one subject to quit-rent, can not be sold.

37 If any one buy the field, garden, and house of a chieftain, man, or one subject to quit-rent, his contract tablet of sale shall be broken (declared invalid) and he loses his money. The field, garden, and house return to their owners.

38 A chieftain, man, or one subject to quit-rent can not assign his tenure of field, house, and garden to his wife or daughter, nor can he assign it for a debt.

39 He may, however, assign a field, garden, or house which he has bought, and holds as property, to his wife or daughter or give it for debt.

40 He may sell field, garden, and house to a merchant (royal agents) or to any other public official, the buyer holding field, house, and garden for its usufruct.

41 If any one fence in the field, garden, and house of a chieftain, man, or one subject to quit-rent, furnishing the palings therefor; if the chieftain, man, or one subject to quit-rent return to field, garden, and house, the palings which were given to him become his property.

42 If any one take over a field to till it, and obtain no harvest therefrom, it must be proved that he did no work on the field, and he must deliver grain, just as his neighbor raised, to the owner of the field.

43 If he do not till the field, but let it lie fallow, he shall give grain like his neighbor's to the owner of the field, and the field which he let lie fallow he must plow and sow and return to its owner.

44 If any one take over a waste-lying field to make it arable, but is lazy, and does not make it arable, he shall plow the fallow field in the fourth year, harrow it and till it, and give it back to its owner, and for each ten gan (a measure of area) ten gur of grain shall be paid.

45 If a man rent his field for tillage for a fixed rental, and receive the rent of his field, but bad weather come and destroy the harvest, the injury falls upon the tiller of the soil.

46 If he do not receive a fixed rental for his field, but lets it on half or third shares of the harvest, the grain on the field shall be divided proportionately between the tiller and the owner.

47 If the tiller, because he did not succeed in the first year, has had the soil tilled by others, the owner may raise no objection; the field has been cultivated and he receives the harvest according to agreement.

48 If any one owe a debt for a loan, and a storm prostrates the grain, or the harvest fail, or the grain does not grow for lack of water; in that year he need not give his creditor any grain, he washes his debt-tablet in water and pays no rent for this year.

49 If any one take money from a merchant, and give the merchant a field tillable for corn or sesame and order him to plant corn or sesame in the field, and to harvest the crop; if the cultivator plant corn or sesame in the field, at the harvest the corn or sesame that is in the field shall belong to the owner of the field and he shall pay corn as rent, for the money he received from the merchant, and the liveli-

hood of the cultivator shall he give to the merchant.

50 If he give a cultivated corn-field or a cultivated sesame-field, the corn or sesame in the field shall belong to the owner of the field, and he shall return the money to the merchant as rent.

51 If he have no money to repay, then he shall pay in corn or sesame in place of the money as rent for what he received from the merchant, according to the royal tariff.

52 If the cultivator do not plant corn or sesame in the field, the debtor's contract is not weakened.

53 If any one be too lazy to keep his dam in proper condition, and does not so keep it; if then the dam break and all the fields be flooded, then shall he in whose dam the break occurred be sold for money, and the money shall replace the corn which he has caused to be ruined.

54 If he be not able to replace the corn, then he and his possessions shall be divided among the farmers whose corn he has flooded.

55 If any one open his ditches to water his crop, but is careless, and the water flood the field of his neighbor, then he shall pay his neighbor corn for his loss.

56 If a man let in the water, and the water overflow the plantation of his neighbor, he shall pay ten gur of corn for every ten gan of land.

57 If a shepherd, without the permission of the owner of the field, and without the knowledge of the owner of the sheep, lets the sheep into a field to graze, then the owner of the field shall harvest his crop, and the shepherd, who had pastured his flock there without permission of the owner of the field, shall pay to the owner twenty gur of corn for every ten gan.

58 If after the flocks have left the pasture and been shut up in the common fold at the city gate, any shepherd let them into a field and they graze there, this shepherd shall take possession of the field which he has allowed to be grazed on, and at the harvest he must pay sixty gur of corn for every ten gan.

59 If any man, without the knowledge of the owner of a garden, fell a tree in a garden he shall pay half a mina in money.

60 If any one give over a field to a gardener, for him to plant it as a garden, if he work at it, and care for it for four years, in the fifth year the owner and the gardener shall divide it, the owner taking his part in charge.

61 If the gardener has not completed the planting of the field, leaving one part unused, this shall be assigned to him as his.

62 If he do not plant the field that was given over to him as a garden, if it be arable land (for corn or sesame) the gardener shall pay the owner the produce of the field for the years that he let it lie fallow, according to the product of neighboring fields, put the field in arable condition and return it to its owner.

63 If he transform waste land into arable fields and return it to its owner, the latter shall pay him for one year ten gur for ten gan.

64 If any one hand over his garden to a gardener to work,

the gardener shall pay to its owner two-thirds of the produce of the garden, for so long as he has it in possession, and the other third shall he keep.

65 If the gardener do not work in the garden and the product fall off, the gardener shall pay in proportion to other neighboring gardens.

[The text for laws 66 through 99 is missing]

100. ... interest for the money, as much as he has received, he shall give a note therefor, and on the day, when they settle, pay to the merchant,

101 If there are no mercantile arrangements in the place whither he went, he shall leave the entire amount of money which he received with the broker to give to the merchant.

102 If a merchant entrust money to an agent (broker) for some investment, and the broker suffer a loss in the place to which he goes, he shall make good the capital to the merchant.

103 If, while on the journey, an enemy take away from him anything that he had, the broker shall swear by God and be free of obligation.

104 If a merchant give an agent corn, wool, oil, or any other goods to transport, the agent shall give a receipt for the amount, and compensate the merchant therefor. Then he shall obtain a receipt from the merchant for the money that he gives the merchant.

105 If the agent is careless, and does not take a receipt for the money which he gave the merchant, he can not consider the unreceipted money as his own.

106 If the agent accept money from the merchant, but have a quarrel with the merchant (denying the receipt), then shall the merchant swear before God and witnesses that he has given this money to the agent, and the agent shall pay him three times the sum.

107 If the merchant cheat the agent, in that as the latter has returned to him all that had been given him, but the merchant denies the receipt of what had been returned to him, then shall this agent convict the merchant before God and the judges, and if he still deny receiving what the agent had given him shall pay six times the sum to the agent.

108 If a tavern-keeper (feminine) does not accept corn according to gross weight in payment of drink, but takes money, and the price of the drink is less than that of the corn, she shall be convicted and thrown into the water.

109 If conspirators meet in the house of a tavern-keeper, and these conspirators are not captured and delivered to the court, the tavern-keeper shall be put to death.

110 If a "sister of a god" open a tavern, or enter a tavern to drink, then shall this woman be burned to death.

111 If an inn-keeper furnish sixty ka of usakani-drink to ... she shall receive fifty ka of corn at the harvest.

112 If any one be on a journey and entrust silver, gold, precious stones, or any movable property to another, and wish to recover it from him; if the latter do not bring all of the property to the appointed place, but appropriate it to his own use, then shall this man, who did not bring the property to hand it over, be convicted, and he shall pay fivefold for all that had been entrusted to him.

113 If any one have consignment of corn or money, and he take from the granary or box without the knowledge of the owner, then shall he who took corn without the knowledge of the owner out of the granary or money out of the box be legally convicted, and repay the corn he has taken. And he shall lose whatever commission was paid

to him, or due him.

114 If a man have no claim on another for corn and money, and try to demand it by force, he shall pay one-third of a mina of silver in every case.

115 If any one have a claim for corn or money upon another and imprison him; if the prisoner die in prison a natural death, the case shall go no further.

116 If the prisoner die in prison from blows or maltreatment, the master of the prisoner shall convict the merchant before the judge. If he was a free-born man, the son of the merchant shall be put to death; if it was a slave, he shall pay one-third of a mina of gold, and all that the master of the prisoner gave he shall forfeit.

117 If any one fail to meet a claim for debt, and sell himself, his wife, his son, and daughter for money or give them away to forced labor: they shall work for three years in the house of the man who bought them, or the proprietor, and in the fourth year they shall be set free.

118 If he give a male or female slave away for forced labor, and the merchant sublease them, or sell them for money, no objection can be raised.

119 If any one fail to meet a claim for debt, and he sell the maid servant who has borne him children, for money, the money which the merchant has paid shall be repaid to him by the owner of the slave and she shall be freed.

120 If any one store corn for safe keeping in another person's house, and any harm happen to the corn in storage, or if the owner of the house open the granary and take some of the corn, or if especially he deny that the corn was stored in his house: then the owner of the corn shall claim his corn before God (on oath), and the owner of the house shall pay its owner for all of the corn that he took.

121 If any one store corn in another man's house he shall pay him storage at the rate of one gur for every five ka of corn per year.

122 If any one give another silver, gold, or anything else to keep, he shall show everything to some witness, draw up a contract, and then hand it over for safe keeping.

123 If he turn it over for safe keeping without witness or contract, and if he to whom it was given deny it, then he has no legitimate claim.

124 If any one deliver silver, gold, or anything else to another for safe keeping, before a witness, but he deny it, he shall be brought before a judge, and all that he has denied he shall pay in full.

125 If any one place his property with another for safe keeping, and there, either through thieves or robbers, his property and the property of the other man be lost, the owner of the house, through whose neglect the loss took place, shall compensate the owner for all that was given to him in charge. But the owner of the house shall try to follow

up and recover his property, and take it away from the thief.

126 If any one who has not lost his goods state that they have been lost, and make false claims: if he claim his goods and amount of injury before God, even though he has not lost them, he shall be fully compensated for all his loss claimed. (i.e., the oath is all that is needed.)

127 If any one "point the finger" (slander) at a sister of a god or the wife of any one, and can not prove it, this man shall be taken before the judges and his brow shall be marked. (by cutting the skin, or perhaps hair.)

128 If a man take a woman to wife, but have no intercourse with her, this woman is no wife to him.

129 If a man's wife be surprised (in flagrante delicto) with another man, both shall be tied and thrown into the water, but the husband may pardon his wife and the king his slaves.

130 If a man violate the wife (betrothed or child-wife) of another man, who has never known a man, and still lives in her father's house, and sleep with her and be surprised, this man shall be put to death, but the wife is blameless.

131 If a man bring a charge against one's wife, but she is not surprised with another man, she must take an oath and then may return to her house.

132 If the "finger is pointed" at a man's wife about another man, but she is not caught sleeping with the other man, she shall jump into the river for her husband.

133 If a man is taken prisoner in war, and there is a sustenance in his house, but his wife leave house and court, and go to another house: because this wife did not keep her court, and went to another house, she shall be judicially condemned and thrown into the water.

134 If any one be captured in war and there is not sustenance in his house, if then his wife go to another house this woman shall be held blameless.

135 If a man be taken prisoner in war and there be no sustenance in his house and his wife go to another house and bear children; and if later her husband return and come to his home: then this wife shall return to her husband, but the children follow their father.

136 If any one leave his house, run away, and then his wife go to another house, if then he return, and wishes to take his wife back: because he fled from his home and ran away, the wife of this runaway shall not return to her husband.

137 If a man wish to separate from a woman who has borne him children, or from his wife who has borne him children: then he shall give that wife her dowry, and a part of the usufruct of field, garden, and property, so that she can rear her children. When she has brought up her children, a portion of all that is given to the children, equal as that of one son, shall be given to her. She may then marry the man of her heart.

138 If a man wishes to separate from his wife who has borne him no children, he shall give her the amount of her purchase money and the dowry which she brought from her father's house, and let her go.

139 If there was no purchase price he shall give her one mina of gold as a gift of release.

140 If he be a freed man he shall give her one-third of a mina of gold.

141 If a man's wife, who lives in his house, wishes to leave it, plunges into debt, tries to ruin her house, neglects her husband, and is judicially convicted: if her husband offer her release, she may go on her way, and he gives her nothing as a gift of release. If her husband does not wish to release her, and if he take another wife, she shall remain as servant in her husband's house.

142 If a woman quarrel with her husband, and say: "You are not congenial to me," the reasons for her prejudice must be presented. If she is guiltless, and there is no fault on her part, but he leaves and neglects her, then no guilt attaches to this woman, she shall take her dowry and go back to her father's house.

143 If she is not innocent, but leaves her husband, and ruins her house, neglecting her husband, this woman shall be cast into the water.

144 If a man take a wife and this woman give her husband a maid-servant, and she bear him children, but this man wishes to take another wife, this shall not be permitted to him; he shall not take a second wife.

145 If a man take a wife, and she bear him no children, and he intend to take another wife: if he take this second wife, and bring her into the house, this second wife shall not be allowed equality with his wife.

146 If a man take a wife and she give this man a maid-servant as wife and she bear him children, and then this maid assume equality with the wife: because she has borne him children her master shall not sell her for money, but he may keep her as a slave, reckoning her among the maid-servants.

147 If she have not borne him children, then her mistress may sell her for money.

148 If a man take a wife, and she be seized by disease, if he then desire to take a second wife he shall not put away his wife, who has been attacked by disease, but he shall keep her in the house which he has built and support her so long as she lives.

149 If this woman does not wish to remain in her husband's house, then he shall compensate her for the dowry that she brought with her from her father's house, and she may go.

150 If a man give his wife a field, garden, and house and a deed therefor, if then after the death of her husband the sons raise no claim, then the mother may bequeath all to one of her sons whom she prefers, and need leave nothing to his brothers.

151 If a woman who lived in a man's house made an agreement with her husband, that no creditor can arrest her, and has given a document therefor: if that man, before he married that woman, had a debt, the creditor can not hold the woman for it. But if the woman, before she entered the man's house, had contracted a debt, her creditor can not arrest her husband therefor.

152 If after the woman had entered the man's house, both contracted a debt, both must pay the merchant.

153 If the wife of one man on account of another man has their mates (her husband and the other man's wife) murdered, both of them shall be impaled.

154 If a man be guilty of incest with his daughter, he shall be driven from the place (exiled).

155 If a man betroth a girl to his son, and his son have intercourse with her, but he (the father) afterward defile her, and be surprised, then he shall be bound and cast into the water (drowned).

156 If a man betroth a girl to his son, but his son has not known her, and if then he defile her, he shall pay her half a gold mina, and compensate her for all that she brought out of her father's house. She may marry the man of her heart.

157 If any one be guilty of incest with his mother after his father, both shall be burned.

158 If any one be surprised after his father with his chief wife, who has borne children, he shall be driven out of his father's house.

159 If any one, who has brought chattels into his father-in-law's house, and has paid the purchase-money, looks for another wife, and says to his father-in-law: "I do not want your daughter," the girl's father may keep all that he had brought.

160 If a man bring chattels into the house of his father-in-law, and pay the "purchase price" (for his wife): if then the father of the girl say: "I will not give you my daughter," he shall give him back all that he brought with him.

161 If a man bring chattels into his father-in-law's house and pay the "purchase price," then his friend gander him, and his father-in-law say to the young husband: "You shall not marry my daughter," the he shat give back to rim undiminished all that he had brought with him; but his wife shall not be married to the mend.

162 If a man marry a woman, and she bear sans to him; if then this woman die, then shall her father have no claim on her dowry; this belongs to her sons.

163 If a man marry a woman and she bear him no Sons; if then this woman die, if the "purchase price" which he had paid into the house of his father-in-law is repaid to him, her husband shall have no claim upon the dowry of this woman; it belongs to her father's house.

164 If his father-in-law do not pay back him the amount of the "purchase price" he may subtract the amount of the "Purchase price from the dowry, and then pay the remainder to her father's house.

165 If a man give to one of his sons whom he prefers a field, garden, and house, and a deed therefor: if later the father die, and the brothers divide the estate, then they shall first give him the present of his father, and he shall accept it; and the rest of the paternal property shall they divide.

166 If a man take wives for his son, but take no wife for his minor son, and if then he die: If the sons divide the estate, they shall set aside besides his portion the money for the "purchase price" for the minor brother who had taken no wife as yet, and secure a wife for him.

167 If A a man marry a wife and she bear him children: if this wife die and he then take another wife and she bear him

children: if then the father die, the sons must no partition the estate according to the mothers, they shall divide the dowries of their mothers only in this way the paternal estate they shall divide equally with one another.

168 If a man wish to put his son out his house, and declare before the judge: "I want to put my son out," then the judge shall examine into his reasons. If the son be guilty of no great fault, for which he can be rightfully put out, the father shall not put him out

169 If he be guilty of a grave fault, which should rightfully deprive him of the filial relationship, the father shall forgive him the first time; but if he be guilty of a grave fault a second time the father may deprive his son of all filial relation.

170 If his wife bear sons to a man, or his maid-servant have borne sons, and the father while still living says to the children whom his maid-servant has borne: "My Sons," and he count them with the sons of his wife; if then the father die, then the sons of the wife and of the maid-servant shall divide the paternal property in common. The son of the wife is to partition and choose.

171 If however, the father while still living did not say to the sons of the maid-servant: "My Sons" and then the father dies then the sons of the maid-servant shall not share with the sons of the wife, but the freedom of the maid and her sons shall be granted. The sons of the wife shall have no right to enslave the sons of the maid; the wife shall take her dowry (from her father), and the gift that her husband gave her and deeded to her (separate from dowry, or the purchase-money paid her father), and live in the home of her husband: so long as she lives she shall use it, it shall not be sold for money. Whatever she leaves shall belong to her children.

172 If her husband made her no gift, she shall be compensated for her gift, and she shall receive a portion from the estate of her husband, equal to that of one child. If her sons oppress her, to force her out of the house, the judge shall examine into the matter, and if the sons are at fault the woman shall not leave her husband's house. If the woman desire to leave the house, she must leave to her sons the gift which her husband gave her, but she may take the dowry of her father's house. Then she may marry the man of her heart.

173 If this woman bear sons to her second husband, in the place to which she went, and then die, her earlier and later sons shall divide the dowry between them.

174 If she bear no sons to her second husband, the sons of her first husband shall have the dowry.

175 If a State slave or the slave of a freed man marry the daughter of a free man, and children are born, the master of the slave shall have no right to enslave the children of the free.

176 If, however, a State slave or the slave of a freed man marry a man's daughter, and after he marries her she bring a dowry from a father's house, if then they both enjoy it and found a household, and accumulate means, if then the slave die, then she who was free born may take her dowry, and all that her husband and she had earned; she shall divide

them into two parts, one-half the master for the slave shall take, and the other half shall the free-born woman take for her children. If the free-born woman had no gift she shall take all that her husband and she had earned and divide it into two parts; and the master of the slave shall take one-half and she shall take the other for her children.

177 If a widow, whose children are not grown, wishes to enter another house (remarry), she shall not enter it without the knowledge of the judge. If she enter another house the judge shall examine the state of the house of her first husband. Then the house of her first husband shall be entrusted to the second husband and the woman herself as managers. And a record must be made thereof. She shall keep the house in order, bring up the children, and not sell the house-hold utensils. He who buys the utensils of the children of a widow shall lose his money, and the goods shall return to their owners.

178 If a "devoted woman" or a prostitute to whom her father has given a dowry and a deed therefor, but if in this deed it is not stated that she may bequeath it as she pleases, and has not explicitly stated that she has the right of disposal; if then her father die, then her brothers shall hold her field and garden, and give her corn, oil, and milk according to her portion, and satisfy her. If her brothers do not give her corn, oil, and milk according to her share, then her field and garden shall support her. She shall have the usufruct of field and garden and all that her father gave her so long as she lives, but she can not sell or assign it to others. Her position of inheritance belongs to her brothers.

179 If a "sister of a god," or a prostitute, receive a gift from her father, and a deed in which it has been explicitly stated that she may dispose of it as she pleases, and give her complete disposition thereof: if then her father die, then she may leave her property to whomsoever she pleases. Her brothers can raise no claim thereto.

180 If a father give a present to his daughter — either marriageable or a prostitute (unmarriageable) — and then die, then she is to receive a portion as a child from the paternal estate, and enjoy its usufruct so long as she lives. Her estate belongs to her brothers.

181 If a father devote a temple-maid or temple-virgin to God and give her no present: if then the father die, she shall receive the third of a child's portion from the inheritance of her father's house, and enjoy its usufruct so long as she lives. Her estate belongs to her brothers.

182 If a father devote his daughter as a wife of Mardi of Babylon (as in 181), and give her no present, nor a deed; if then her father die, then shall she receive one-third of her portion as a child of her father's house from her brothers, but Marduk may leave her estate to whomsoever she wishes.

183 If a man give his daughter by a concubine a dowry, and a husband, and a deed; if then her father die, she shall receive no portion from the paternal estate.

184 If a man do not give a dowry to his daughter by a concubine, and no husband; if then her father die, her brother shall give her a dowry according to her father's wealth and secure a husband for her.

- 185** If a man adopt a child and to his name as son, and rear him, this grown son can not be demanded back again.
- 186** If a man adopt a son, and if after he has taken him he injure his foster father and mother, then this adopted son shall return to his father's house.
- 187** The son of a paramour in the palace service, or of a prostitute, can not be demanded back.
- 188** If an artizan has undertaken to rear a child and teaches him his craft, he can not be demanded back.
- 189** If he has not taught him his craft, this adopted son may return to his father's house.
- 190** If a man does not maintain a child that he has adopted as a son and reared with his other children, then his adopted son may return to his father's house.
- 191** If a man, who had adopted a son and reared him, founded a household, and had children, wish to put this adopted son out, then this son shall not simply go his way. His adoptive father shall give him of his wealth one-third of a child's portion, and then he may go. He shall not give him of the field, garden, and house.
- 192** If a son of a paramour or a prostitute say to his adoptive father or mother: "You are not my father, or my mother," his tongue shall be cut off.
- 193** If the son of a paramour or a prostitute desire his father's house, and desert his adoptive father and adoptive mother, and goes to his father's house, then shall his eye be put out.
- 194** If a man give his child to a nurse and the child die in her hands, but the nurse unbeknown to the father and mother nurse another child, then they shall convict her of having nursed another child without the knowledge of the father and mother and her breasts shall be cut off.
- 195** If a son strike his father, his hands shall be hewn off.
- 196** If a man put out the eye of another man, his eye shall be put out.
- 197** If he break another man's bone, his bone shall be broken.
- 198** If he put out the eye of a freed man, or break the bone of a freed man, he shall pay one gold mina.
- 199** If he put out the eye of a man's slave, or break the bone of a man's slave, he shall pay one-half of its value.
- 200** If a man knock out the teeth of his equal, his teeth shall be knocked out.
- 201** If he knock out the teeth of a freed man, he shall pay one-third of a gold mina.
- 202** If any one strike the body of a man higher in rank than he, he shall receive sixty blows with an ox-whip in public.
- 203** If a free-born man strike the body of another free-born man or equal rank, he shall pay one gold mina.
- 204** If a freed man strike the body of another freed man, he shall pay ten shekels in money.
- 205** If the slave of a freed man strike the body of a freed man, his ear shall be cut off.
- 206** If during a quarrel one man strike another and wound him, then he shall swear, "I did not injure him wittingly," and pay the physicians.
- 207** If the man die of his wound, he shall swear similarly, and if he (the deceased) was a free-born man, he shall pay half a mina in money.
- 208** If he was a freed man, he shall pay one-third of a mina.
- 209** If a man strike a free-born woman so that she lose her unborn child, he shall pay ten shekels for her loss.
- 210** If the woman die, his daughter shall be put to death.
- 211** If a woman of the free class lose her child by a blow, he shall pay five shekels in money.
- 212** If this woman die, he shall pay half a mina.
- 213** If he strike the maid-servant of a man, and she lose her child, he shall pay two shekels in money.
- 214** If this maid-servant die, he shall pay one-third of a mina.
- 215** If a physician make a large incision with an operating knife and cure it, or if he open a tumor (over the eye) with an operating knife, and saves the eye, he shall receive ten shekels in money.
- 216** If the patient be a freed man, he receives five shekels.
- 217** If he be the slave of some one, his owner shall give the physician two shekels.
- 218** If a physician make a large incision with the operating knife, and kill him, or open a tumor with the operating knife, and cut out the eye, his hands shall be cut off.
- 219** If a physician make a large incision in the slave of a freed man, and kill him, he shall replace the slave with another slave.
- 220** If he had opened a tumor with the operating knife, and put out his eye, he shall pay half his value.
- 221** If a physician heal the broken bone or diseased soft part of a man, the patient shall pay the physician five shekels in money.
- 222** If he were a freed man he shall pay three shekels.
- 223** If he were a slave his owner shall pay the physician two shekels.
- 224** If a veterinary surgeon perform a serious operation on an ass or an ox, and cure it, the owner shall pay the surgeon one-sixth of a shekel as a fee.
- 225** If he perform a serious operation on an ass or ox, and kill it, he shall pay the owner one-fourth of its value.
- 226** If a barber, without the knowledge of his master, cut the sign of a slave on a slave not to be sold, the hands of this barber shall be cut off.
- 227** If any one deceive a barber, and have him mark a slave not for sale with the sign of a slave, he shall be put to death, and buried in his house. The barber shall swear: "I did not mark him wittingly," and shall be guiltless.
- 228** If a builder build a house for some one and complete it, he shall give him a fee of two shekels in money for each sar of surface.
- 229** If a builder build a house for some one, and does not construct it properly, and the house which he built fall in and kill its owner, then that builder shall be put to death.
- 230** If it kill the son of the owner the son of that builder

shall be put to death.

231 If it kill a slave of the owner, then he shall pay slave for slave to the owner of the house.

232 If it ruin goods, he shall make compensation for all that has been ruined, and inasmuch as he did not construct properly this house which he built and it fell, he shall re-erect the house from his own means.

233 If a builder build a house for some one, even though he has not yet completed it; if then the walls seem toppling, the builder must make the walls solid from his own means.

234 If a shipbuilder build a boat of sixty gur for a man, he shall pay him a fee of two shekels in money.

235 If a shipbuilder build a boat for some one, and do not make it tight, if during that same year that boat is sent away and suffers injury, the shipbuilder shall take the boat apart and put it together tight at his own expense. The tight boat he shall give to the boat owner.

236 If a man rent his boat to a sailor, and the sailor is careless, and the boat is wrecked or goes aground, the sailor shall give the owner of the boat another boat as compensation.

237 If a man hire a sailor and his boat, and provide it with corn, clothing, oil and dates, and other things of the kind needed for fitting it: if the sailor is careless, the boat is wrecked, and its contents ruined, then the sailor shall compensate for the boat which was wrecked and all in it that he ruined.

238 If a sailor wreck any one's ship, but saves it, he shall pay the half of its value in money.

239 If a man hire a sailor, he shall pay him six gur of corn per year.

240 If a merchantman run against a ferryboat, and wreck it, the master of the ship that was wrecked shall seek justice before God; the master of the merchantman, which wrecked the ferryboat, must compensate the owner for the boat and all that he ruined.

241 If any one impresses an ox for forced labor, he shall pay one-third of a mina in money.

242 If any one hire oxen for a year, he shall pay four gur of corn for plow-oxen.

243 As rent of herd cattle he shall pay three gur of corn to the owner.

244 If any one hire an ox or an ass, and a lion kill it in the field, the loss is upon its owner.

245 If any one hire oxen, and kill them by bad treatment or blows, he shall compensate the owner, oxen for oxen.

246 If a man hire an ox, and he break its leg or cut the ligament of its neck, he shall compensate the owner with ox for ox.

247 If any one hire an ox, and put out its eye, he shall pay the owner one-half of its value.

248 If any one hire an ox, and break off a horn, or cut off its tail, or hurt its muzzle, he shall pay one-fourth of its value in money.

249 If any one hire an ox, and God strike it that it die, the man who hired it shall swear by God and be considered

guiltless.

250 If while an ox is passing on the street (market) some one push it, and kill it, the owner can set up no claim in the suit (against the hirer).

251 If an ox be a goring ox, and it shown that he is a gorer, and he do not bind his horns, or fasten the ox up, and the ox gore a free-born man and kill him, the owner shall pay one-half a mina in money.

252 If he kill a man's slave, he shall pay one-third of a mina.

253 If any one agree with another to tend his field, give him seed, entrust a yoke of oxen to him, and bind him to cultivate the field, if he steal the corn or plants, and take them for himself, his hands shall be hewn off.

254 If he take the seed-corn for himself, and do not use the yoke of oxen, he shall compensate him for the amount of the seed-corn.

255 If he sublet the man's yoke of oxen or steal the seed-corn, planting nothing in the field, he shall be convicted, and for each one hundred gan he shall pay sixty gur of corn.

256 If his community will not pay for him, then he shall be placed in that field with the cattle (at work).

257 If any one hire a field laborer, he shall pay him eight gur of corn per year.

258 If any one hire an ox-driver, he shall pay him six gur of corn per year.

259 If any one steal a water-wheel from the field, he shall pay five shekels in money to its owner.

260 If any one steal a shadduf (used to draw water from the river or canal) or a plow, he shall pay three shekels in money.

261 If any one hire a herdsman for cattle or sheep, he shall pay him eight gur of corn per annum.

262 If any one, a cow or a sheep ...

263 If he kill the cattle or sheep that were given to him, he shall compensate the owner with cattle for cattle and sheep for sheep.

264 If a herdsman, to whom cattle or sheep have been entrusted for watching over, and who has received his wages as agreed upon, and is satisfied, diminish the number of the cattle or sheep, or make the increase by birth less, he shall make good the increase or profit which was lost in the terms of settlement.

265 If a herdsman, to whose care cattle or sheep have been entrusted, be guilty of fraud and make false returns of the natural increase, or sell them for money, then shall he be convicted and pay the owner ten times the loss.

266 If the animal be killed in the stable by God (an accident), or if a lion kill it, the herdsman shall declare his innocence before God, and the owner bears the accident in the stable.

267 If the herdsman overlook something, and an accident happen in the stable, then the herdsman is at fault for the accident which he has caused in the stable, and he must compensate the owner for the cattle or sheep.

268 If any one hire an ox for threshing, the amount of the

hire is twenty ka of corn.

269 If he hire an ass for threshing, the hire is twenty ka of corn.

270 If he hire a young animal for threshing, the hire is ten ka of corn.

271 If any one hire oxen, cart and driver, he shall pay one hundred and eighty ka of corn per day.

272 If any one hire a cart alone, he shall pay forty ka of corn per day.

273 If any one hire a day laborer, he shall pay him from the New Year until the 5th month (April to August, when days are long and the work hard) six gerahs in money per day; from the sixth month to the end to the year he shall give him five gerahs per day.

274 If any one hire a skilled artizan, he shall pay as wages of the... five gerahs, as wages of the potter five gerahs, of a tailor five gerahs, of... gerahs, ..of a ropemaker four gerahs, of a mason ...gerahs per day.

275 If any one hire a ferryboat, he shall pay three gera hs in money per day.

276 If he hire a freight-boat, he shall pay two and one-half gerahs per day.

277 If any one hire a ship of sixty gur, he shall pay one-sixth of a shekel in money as its hire per day.

278 If any one buy a male or female slave and before a month has elapsed the benu- disease be developed, he shall return the slave to the seller, and receive the money which he had paid.

279 If any one by a male or female slave, and a third party claim it, the seller is liable for the claim.

280 If while in a foreign country a man buy a male or female slave belonging to another of his own country; if when he return home the owners the male or female slave recognize it: if the male or female slave be a native of the country, he shall give them back without any money.

281 If they are from another country, the buyer shall declare the amount of money paid therefore to the merchant, and keep the male or female slave.

282 If a slave say to his master: "You are not my master," if they convict him his master shall cut of his ear.

Source Translation by L. W. King. www.canadianlawsite.com

CODE OF HAMMURABI LEGAL COMMENTARY

Based on 'The Babylonian Laws' Translation and Commentary by G. Driver and John C Miles—

Great Code of Hammurabi

Section Re 'Adoption' R F Harpers translation—

§ 185 If a man take in his name a young child as a son and rear him, one may not bring claim for that adopted son.

§ 186 If a man take a young child as a son and, when he takes him, he is rebellious toward his father and mother (who have adopted him, that adopted son shall return to the house of his father,

§187 One may not bring claim for the son of a NER.SE.GA, who is a palace guard, or the son of a devotee.

§ 188 If an artisan take a son for adoption and teach him his handicraft, one may not bring claim for him.

§ 189 If he do not teach him his handicraft, that adopted son may return to his father's house.

§ 190 If a man do not reckon among his sons the young child whom he has taken for a son and reared, that adopted son may return to his father's house.

§ 191 If a man, who has taken a young child as a son and reared him, establish his own house and acquire children, and set his face to cut off the adopted son, that son shall not go his way. The father who reared him shall give to him of his goods one-third the portion of a son and he shall go. He shall not give to him of field, garden or house.

§ 192 If the son of a NER.SE.GA, or the son of a devotee, say to his father who has reared him, or his mother who has reared him: "My father thou art not," "My mother thou art not," they shall cut out his tongue.

§ 193 If the son of a NER. SE. GA or the son of a devotee identify his own father's house and hate the father who has reared him and the mother who has reared him and go back to his father's house, they shall pluck out his eye.

Source *'The Code of Hammurabi King of Babylon.* Auto-graphed text transliteration translation, glossary, index of subjects, lists of proper names, signs, numerals, corrections and erasures with map frontispice and photographs of text. By Robert F Harper, professor of the Semitic Languages and Literature University of Chicago USA. 2nd Edition Reprint by 'The Lawbook Exchange- Union, New Jersey 1999.

ADOPTION *Legal Commentary*

(i) Nature and purpose of adoption §§ 185-193

The subject of **§§185-193** is adoption or rather in Babylonian terminology 'sonship' (Bab. *mrutum*) ; for 'adoption', as the word is here translated for convenience, suggests conceptions derived from Roman law, which here as elsewhere in the Laws is a most misleading guide. p383

Acquire a son to perpetuate the family and perform religious rights

In Babylonia the main object of adoption was originally to acquire a son to perpetuate the family and to perform the religious rites due to the adopter after his death ; -but purely secular reasons, such as the continuation of his

business or his maintenance in old age, also played their part in this institution. The Attic rule that a man could adopt a son only if he had none was not strictly observed in Babylonia, although it seems to have been usual; for there are several contracts in which the adopters make special provision that, if they subsequently get a son, the adoptee is to be counted as the eldest son, and in two contracts the adopters clearly have a son already in existence. Further, the Babylonians seem to have made no distinction between adoption and legitimation. The distinction is merely one of fact, inasmuch as a man legitimates his natural son by adopting him in the same way as he adopts the son of another person. The Laws also subsume apprenticeship, for which no contracts at this period have been found, under adoption. p384

There are no laws of adoption in the Pentateuch.

There seem, however, to be two references to the practice in the historical part of it, the first [Genesis 48/5-6] where Jacob says to Joseph 'and now thy two sons... are mine; Ephraim and Manasseh, even as Reuben and Simeon, shall be mine', and the second [Exodus 2/10] where it is said of Moses that 'he became her son', i.e. the son of Pharaoh's daughter. [Possibly also Naomi adopted Ruth's son Obed. Ruth 4/16-17] p384

The types of adoption regulated in the Laws are those in which the adopter is an ordinary *awilum* whose object is to get a son to continue the family, a craftsman who wishes to obtain and train an apprentice to carry on his trade, and certain officials of the palace who, being either eunuchs incapable of begetting offspring or epicenes debarred from bearing children, seek by this means to ensure their support in old age. p384

Mixed motives

The motives for adoption, however, must often have been mixed. The religious motive, to which the Laws make no reference, is indeed rarely mentioned and in fact appears in only one contract of adoption; this contains a stipulation that, when the adoptive mother dies, the adopted daughter 'shall offer a libation of water for her' (Bab. *me inaqqisi*), which clearly refers to some funerary rite, perhaps one connected with the worship of ancestors. Further, in a Middle-Babylonian deed from Nuzi the purpose of the adoption seems to be that the adoptee shall feed and clothe the adopter so long as he lives and bury him, and that, having married his daughter, unless he takes another wife, he shall inherit his property which he shall share with sons, if any, of the body. The stipulation requiring the adoptee to maintain the adoptive parent is found in cases of adoption by females and is not infrequent in those of adoption by males; this requirement explains why the adopter is sometimes willing to pay the parents for the privilege of adopting a child. p385

Natural parents

The natural parents, on the one hand, retain some kind of interest in the child which they have given in adoption; for in certain circumstances they may reclaim him and in others he may return to them. These rights are found in the Laws alone; there is no clause dealing with them in any extant deed of adoption, of which, however, few examples are

known. On the other hand, the relationship seems generally to have been revocable by the adoptive parents, although the adoptee in some cases must be given a part of the property of the family, whereby he obtains compensation. It is not certain how far §§ 168-q, which deal with the grounds upon which a father may disinherit his son, apply to an adoptive son. As an adopted son is a son, these two sections should prima facie apply to him; but § 191 seems to point the other way, as it implies that the adopter can put an end to the adoption even when the boy has grown up, although he must give him a portion of his inheritance. In the contracts the parties can make what terms they like, and these frequently contain provision for the punishment of an adopted son who denies his adoptive parents and vice versa. If an adopted son fails to perform the stipulated duty of maintenance, he is deprived of his inheritance. The series *ana ittisu*, too, describes how, when an adopted son has misbehaved, run away or frequented the streets, the adopter 'has ejected him from sonship' (Ass. *ana* [for *ina*] *marutisuhsu*) and 'has disinherited him' (Ass. *ana* [for *ina*] *ablutisa issuhsu*). There is also an Old-Babylonian letter in which the disherison of a son adopted by a *naditum* is reported; the case is brought before the elders of the city by his adoptive brother and the boy, as he has deserted her for three years, is removed 'from brother-hood' (Bab. *ina ahhutim*), thereby ceasing to be his brother and her son. Desertion or the failure to provide a parent with the agreed maintenance might be regarded as an offence entailing disherison under §§ 168-9; but, as an adopted son can be expelled under the terms of the contract of adoption and, where there is no contract, at the will of the adopter subject to the rule of § 191, there is little place for the provisions of §§ 168-9. They might be used in practice, however, where there had been a contract of adoption, if the offence committed by the son did not specifically constitute a breach of its terms, or possibly in the event of a serious offence being committed by the adoptee the adopter might, to avoid the compensation prescribed by § 191, proceed under these sections.

Adoption contract subject to protection rules

The object of Hammurabi is to lay down general provisions to amend the existing law or close gaps in it, and by so doing he alters the nature of adoption. Before his time it seems to have been a matter only of contract; there was no such status as that of an adopted son. By the mere fact of adoption the son got no rights; these depended solely on the contract by which he became adopted. Hammu-rabi, however, introduced a change by laying down rules to apply generally to certain types of adoption. How far such rules were ever operative cannot, however, be said with any certainty. Still, the mere fact of the existence of the rules in the Laws would be a source of protection to adoptees and would clarify the rights of the natural parents and of the adopters. It would seem that before the publication of the Laws the natural parents had a right to reclaim their child unless prevented by the contract. On the one hand, Hammu-rabi forbids such reclamation if the adopter has brought up the child, or if the child has been adopted by a chamberlain, a *SAL-ZIKRUM*, or by a craftsman who has taught him his trade. On the other hand, if separation from his parents endangers his life, if the craftsman has not taught him his trade, or if the adopter, although

he has brought him up, treats him as a slave and not as a son, he is entitled to return to his father's house. pp386-387

Right to inherit and natural family relationship

There are two other questions to be considered. The *first* is whether an adopted son had a right to inherit the share of a son in the property of his adoptive family, and the *second* is whether he still remained a member of his natural family. On the latter question there is no direct evidence. There is no instance of the defence that the claimant to family-property has lost his rights by adoption into another family, but there can be little doubt that an adoptee who was no longer living with his natural family on their property but had joined another family would have no right of succession to his natural family. It is the fact of leaving and thereby ceasing to be a member of his own family rather than the adoption which deprives him of any rights in such a case. The answer to the former question is clear. As the main object of adoption is to obtain a successor who will maintain if necessary the adopter and perform the customary rites, a son adopted by a free man must have a right to inherit from him, although it does not follow that his right is precisely the same as that of a son of the body. That this is so is shown by § 191, where the adopter who has after the adoption begotten sons, cuts off the adopted son but has to give him one-third of anything except land that he would have inherited. The documents tell the same story, since in them the adoptee's right of succession is a matter of contract. For example, it is sometimes provided that, if the adopter begets a son, the adoptee shall be the eldest brother or shall be an heir. The penalties to be inflicted on the adopter if he discards the adoptee point the same way. In one case the adoptee is to receive an equal share of the inheritance with the other sons; in others it is said that, if the adopting parents deny, i.e. cast off, their adopted son, they shall forfeit house and furniture. So, too, the series *ana ittisu* speaks of the adoptee's right of succession and of 'the tablet of his inheritance' (*Ass. tuppi ablutisu*) drawn up for him. Reference may also be made to another document in which an adoptee successfully claims a garden and house belonging to his adoptive father from a purchaser; he sets out his title by saying: 'Verily I am the son of Sin-magir; he has taken me in adoption and my deed (of adoption) has not been destroyed... pp387-388

(ii) Rules of adoption (§§ 185-189)

In § 185 the text sets out the general rule applicable to adoption by a free man. If such a person 'has taken an infant in his name for sonship and has gone to the expense and trouble of bringing him up, 'the child so brought up shall not be reclaimed by his natural parent or guardian. p388

Cannot reclaim child brought up to puberty

The general sense of this section is clear, but the following points may be noticed. *First*, the child is said to be an 'infant' or 'child'. This term includes an infant not necessarily in the usual sense but in that of any child below the age of puberty; for the child may not be reclaimed if the adopter has brought him up, namely if he has reached puberty. That this is what *sihrusn* connotes becomes certain from other passages in which it

is said of such a child that his mother shall bring him up and that he is unable to perform his absent father's service, that he may be kidnapped, and that he is too young either to support a widowed mother or to marry a wife. However this may be, children were commonly adopted in earliest infancy; for instance, in a Sumerian document from Nippur a 'male child at the breast' is adopted and apparently taken away from its mother by the adopters, and in several other documents the adopted child seems to have just been weaned, as the natural mother receives compensation from the adoptive parents for having suckled him. At the same time it may be inferred from two early documents in which a male is adopted 'from himself' or 'of his own accord' that adults were occasionally adopted. Secondly, the adoption is said to be *ina mesu*: this seems to mean that the child is solemnly named the *midrum* of his adoptive parent, as he is described in the documents. These words do not describe a special kind of adoption but refer to a fact which accompanies every adoption; they are therefore implicit in every adoption of a son by a free man, and the draftsman has not thought it necessary to repeat them in the subsequent sections. The child then is recognized as a member of the family of his adopter and, apart from any special terms set out in the contract, will be treated in the same way as a son of the body. pp388-389

Issue of child's return to natural family

In § 186 the boy who is to be adopted is said in 11. 39-40 to be taken by the adopter *ana marutim*. David, having observed that the adoption is not said to be *ina mesu* and that the boy is not said to have been brought up, argues that the grant of the right to be called the son of his adoptive father is essential to the completion of a full adoption and that therefore the adoption contemplated in this section is merely a temporary guardianship or foster-parentage; the foster-father in his view is allowed to rid himself of the child when and as he will. As said above, however, it is probable that *ina mesu* is to be carried through from § 185 and understood here. David's view of the meaning of the section depends also on the interpretation of 11. 42-9 accepted by him, namely that, if the adopter of the child, 'when' or 'so soon as he has taken him', searches for his father or mother, the child returns to them. It is, however, inconceivable that any law should think it necessary to lay down a rule to meet such a case. For why should a man have taken a child if he only meant to keep him till he found the child's parents?' Extant documents, moreover, give no hint of any legal distinction, such as that supposed, between complete and incomplete adoption. pp389-390

(a) Failure of contract

It is also noticeable that in §§ 180-190 it is the privilege of the child to return to his parents, because the adopter has failed to fulfil his part of the bargain; here too, therefore, the statement in 11. 47-9 that the child shall return to his father's house must describe a privilege of the child, and it follows that 11. 42-6 must contain the ground on which the child may exercise this privilege. It is, too, very difficult to imagine any form of compulsion brought by the adopter to bear on the parents of the adoptee which could give the child the right to return home. p390

(b) Young child pines for natural parents

It is therefore suggested that the child and not the adopter is the subject of 'he searches' and that the case contemplated is one in which a man has adopted a child in infancy which, so soon as he is taken away, pines for his father and mother, namely looks for them everywhere; in these circumstances he is to be returned to them. This then would be one of the few humanitarian provisions of the Laws, making allowance for a child's natural longing for its own parents and for the likelihood of its dying if bereft of its mother; and it accounts also for the mention in 11. 44-5 of the child's mother beside his father. p390

(c) Abandoned children not recoverable

David further argues that the adopted child in §§ 185-6 is a foundling. He has observed that the series *ana ittisu* speaks of the adoption of a child of unknown parentage who has been found in a pit or in the street or has been rescued from a dog or a raven after having been exposed in accordance with the well-known practice of the ancient world. From the rule in § 185 that the child, if it has been brought up, may not be recovered, David rightly infers that it may be taken back by its parents at any time before being grown up; but he goes too far when he argues that the child must be a foundling on the ground that the adoptive relationship in the text cannot be based on a contract since, as he says, no contract of adoption would permit the adoptive tie to be broken before the child was grown up. He therefore concludes that there has been no contract and that the child must be a foundling. He further supports this view by the explanation which he gives of § 186, namely that the adopter as soon as he takes the child searches for its parents, on the ground that he would only search for them if they were unknown to him; I but this is a valid argument only if the adopter is or can be the subject of *ihiat*, which is grammatically hardly possible. It may also be asked whether a parent who had exposed an infant child could have a right of recovery at all. Again, the series *ana ittisuz* describes such a child as one 'who has not a father or mother, who knows not his father and mother', and David himself seeks to show that the Sumerian term for a foundling was 'one found in a ditch' so (and this is a crucial question) why does the draftsman of the Laws not say so explicitly, if he is referring to a foundling? As the child in § 185 is not so described, it may be inferred that the draftsman had not a foundling in view; nor are parents who have exposed their children generally likely to wish to reclaim them even if they can identify them, although this is a possibility. It is, too, highly improbable that the law would deal primarily or indeed at all in the few sections devoted to adoption with so unimportant a being as a foundling, and it is indeed at least as probable that a man who had rescued a foundling would bring him up as a slave as that he would treat him as his own son. pp390-391

Child of a 'chamberlain' of the palace

In § 187 the reference to the child of a 'chamberlain' of the palace or of an 'epicene' is clearly not to children born of these persons adopted by others but to those adopted by them; for there is every reason to suppose that neither the chamberlain nor the *SAL-ZIKRUM* had natural children. This argument is finally

clinched by §§ 192-3 where the *marum* of these two persons respectively can only be a child adopted by them, as it would be absurd if the extent of the duty of the adoptee towards the adopter and the punishment for a breach of that duty were determined by the position in life of the adoptee's natural parents; and it is clear that the severity of the penalty is due to the position which the chamberlain and the *SAL-ZIKRUM* occupy. p392

Some children can never be reclaimed

This section, which is not set out in conditional form, is a separate enactment and the circumstances of the preceding sections are not applicable here. It says that a child who has been adopted by a chamberlain or by an epicene can never be reclaimed by his natural parents; and to this extent the position of these persons is more favoured than that of an ordinary adoptive parent, whether it be in virtue of their official rank or office, or in virtue of the position acquired by the child who has by adoption entered into the service of the palace. p392

Adoption of an apprentice.

After § 187 the text inserts two sections on the cognate subject of the adoption of an apprentice. In § 188 a 'craftsman' adopts a young boy 'for training' upon the terms that, if he 'teaches him his handicraft' he shall not be reclaimed by his own parents; but by § 189, if the craftsman fails to teach him, he shall return to his father's house. He is therefore obviously not a foundling. As the boy is not said to be taken *ana marutim* as in §§ 185-6 and §§ 190-1 but *ana tarbitim*, which means literally 'for upbringing' but must here be understood to mean for training in a craft, the question arises how far the relation between the boy and his master is an adoption. David calls this relation a guardianship or foster-parentage and seems to hold that there is no adoption 'in the proper sense' but that, as the continuance of the relation depends on teaching the boy the craft, it is not a permanent relation such as adoption but something of a temporary nature like a modern apprenticeship; but, as the boy if taught the craft is irrecoverable by his natural parents, he must become a member of the craftsman's family and the contract under which the boy is taken clearly intends a permanent relation between master and boy. The boy, without doubt, if not taught the trade 'shall return to his father's house' but so does the boy in § 186, who is certainly adopted. Further, it would be contrary to the practice of the draftsman to insert a subject only in some degree analogous to adoption such as modern apprenticeship in the midst of sections dealing solely with that subject; he would have put it at the end of the group as he puts the law relating to the suckling of an infant, a subject superficially analogous to adoption. The position of §§ 188-9 is then an argument in favour of the view that the apprentice is adopted as a son by the craftsman and the immediate cause of their position is that in them, as in § 187, which immediately precedes them, the boy is adopted for the particular purpose of following the profession of his adoptive parent. David also lays stress

on the fact that succession to the adopter's property is not secured to the apprentice; but the right to inherit is not mentioned in either § 185 or § 186 which are both admitted to be cases of adoption and, as the boy if taught his trade is irrecoverable, it may fairly be assumed that he will inherit the business of his master. The reason why the draftsman does not say that 'he has taken him for sonship' as in §§ 185-6 is that he wishes to lay stress on the object of the adoption, namely that the boy is taken *ana tarbitim* in his craft. Moreover, the text says that 'he has taken' or 'adopted a son' (Bab. *maram ilqi*), and not that 'he has taken an infant for sonship' or 'adoption' (Bab. *sihram ana marutim ilqi*), because in practice the craftsman would not adopt a mere infant but a boy whom he thought capable of learning his trade; and the omission of *ana marutim* does not create any difficulty, for the verb for 'to take' (Bab. *liqium*) can be used alone for 'to adopt' (Bab. *ana marutim liqum*). pp392-394

Although the text seems to contemplate failure on the part of the craftsman to teach the adoptee his trade as the reason for the return of the boy to his parents, it may be assumed that a provision was included or implied in the contract enabling the craftsman to send the boy back to his home if he could not or would not learn. p394

(iii) Rescission of the adoptee tie (§§ 190-3)

In § 190 the draftsman goes back to the subject of ordinary adoption as an *awilum* has adopted a boy 'for sonship to himself' and brought him up, as in §§ 185-6, but, as 'he has not counted him with his sons', the adopted son 'may return to his father's house'. Here again the boy cannot be a foundling; for he has a father's house to which he can return. p395

The difficulty in the interpretation of this section is to discover the precise force to be given to *itti mdrosu Id imtanusu* in 11. 70-1. p395

In § 170 a man has legitimated the sons of his slave-girl by a declaration that '(they are) my sons' (Bab. *marua*) and 'has counted them with ...' (Bab. *itti ... imtanusunuiti*) the sons of the *hirtum*, whereby they become entitled to a share of their father's property with her sons; but in § 171, where the father does not legitimate the sons of the slave-girl by such a declaration, a statement that he does not count them with the sons of the *hirtum* is not made.' It is clear then that 'counting a person with one's sons' is something different from the declaration that he is a son and that it is a consequence of that declaration; it follows, therefore, that the negative form of this phrase is not the same thing as a formal denial of relationship by a declaration that 'Thou art not my son' (Bab. *ul mari atta*). That this is true in § 190 is shown by the contrast with § 192, where the draftsman expresses a denial of the relationship on the part of the son by the usual declaration. The adopter in § 190 does not as in § 191 intend 'to get rid of the adoptee' (Bab. *ana tarbitim nasahim*); consequently *itti marisu Id imtanusu* must not be taken as equivalent to a formal rescission of the adoption nor as an indirect method by which an adopter by ill-treating the adoptee can compel him to de-

part and so rescind the contract of adoption. If this had been the purpose of the section, he would, as § 191 shows, have had to pay a penalty such as giving him a share of the family-property. Accordingly the phrase under discussion does not mean that the adopter either denies the adoption or treats the adoptee as a slave or even is guilty of physical cruelty towards him but rather that he neglects him and does not implement the contract of adoption by treating him in the same way as his own sons; as he has thereby broken the contract, the adoptee is entitled to leave him and return to his own family. In a Middle-Assyrian document' this implied term in the contract of adoption is expressed by saying that the adopter of a boy 'shall treat him as sons' (Ass. *ki mare itpasu*) just as the boy shall treat the adopter 'as a father' (Ass. *ki abae*). pp395-396

Right of inheritance from adoptive father

Normally the adopted son has a right of inheritance in the family property of his adoptive father, and there is no suggestion in this section that the adoption is in any way abnormal or that the adoptive parents or the natural parents of the boy are other than free persons. Yet it is certain that here the son has no right of inheritance in his adoptive family; for by returning to his natural father's house he renounces all rights in or connexion with his adoptive family. He would take back his original name and reacquire his right to inherit from his natural father and could not possibly have any right of succession in his adoptive family. There is therefore no need to suppose that Hammu-rabi is providing protection for a class of children who have been adopted without a contract of adoption or whose contract of adoption confers no right to inherit. p396

Dissolution of the adoptive tie

In § 191 the subject is again the dissolution of the adoptive tie. David' takes § 191 as an exception to § 185 and argues that the child is here again a foundling who has been fully adopted and brought up by his adoptive father and has also acquired rights of succession; and that the adopter wishes to get rid of him because 'he has founded a family' (Bab. *bizu ipus*) and begotten other sons. He dissociates this section from § 190, in which the adoptee cannot be a foundling as he returns to his father's house, and he comes to the conclusion that § 191 entitles an adoptive parent, if he subsequently begets sons, to rid himself of the foundling on paying compensation. There are several objections to this view: first, the circumstances as set out in the opening lines of the section are identical with those of § 190, so that it is very difficult to regard the one section as referring to a child given in adoption by its own parents and the other to a foundling; secondly, the fact that his father's house is not mentioned here, as in § 190, is to be explained not on the supposition that the child is a foundling but rather on the ground that he is grown up and dwelling in his own house; and thirdly, it is unlikely, as already said, that, if the child were a foundling, the Laws would show any interest in him. It would seem then that § 191 must be read in close connexion with § 190 of which it is the converse; for here it is a question not of the adopted son leaving his

adoptive father but of the adoptive father getting rid of his adopted son. The adoptive father has brought up the boy and 'he has made his house' (*Bab. bizu ipus*), as the phrase may be literally translated. This has generally been explained as meaning that the adopter himself has set up a household and has 'afterwards' (*Bab. warka*) begotten sons, and David' supports this view on the ground that several contracts of adoption contain a clause dealing with the rights and portion of the adoptee if the adopter subsequently acquires sons. If, however, this was intended, the draftsman would have said not 'his house' (*Bab. bizu*) but 'a house' (*Bab. bitam*); and surely the adopter must already at the time of the adoption have possessed a house and will have adopted a son only because his wife has borne him none. Here then the pronoun in 'his house' refers to the 'infant' (*Bab. sihram*) and, as Koschaker has seen, the clause must mean that the adopter has provided him, i.e. the adoptee, with a house in the sense that he has set him up with a separate establishment, probably on the occasion of his marriage. The series *ana ittisu* shows that this cannot have been unusual; there a father on marrying his daughter to a man, who is clearly an adopted son, provides him with a house and furniture. Then § 191 goes on to say that, if 'afterwards' (*Bab. warka*), namely after having brought up his adopted son and provided him with a home, the adopter 'has got' (*Bab. irtasi*) sons? he is free 'to get rid of the child taken for upbringing' (*Bab. ana tarbitim nasahim*). Here the adopted son 'shall not go empty-handed' (*Bab. riquzu ul ittallak*;) he does not return to his father's family like the boy in § 190 but goes where he will' as he is an independent householder. In this case the adoptive father is not required to prove any such misconduct as he is by §§168-9, if indeed these sections are applicable to adopted sons. pp396-398

Compensation by adopter to adoptee

The compensation which the adopter must give to the adoptee is fixed at 'a third of his (i.e. the adoptee's) heritage' (*Bab. salusti ablulisu*), taken 'from his (i.e. the adopter's) property' (*Bab. ina makkurisu*); but the adopter 'shall not give him (anything) from field, grove and house' (*Bab. Ina eqlim kirim u bitim ul inaddissum*). Here Hammu-rabi determines the portion which a son who is discarded in the circumstances of this section shall receive. It is to be noticed that the text assumes that an adopted son has a right to inherit from his adoptive father, as *salusti ablutisu* but it implies that here the adopted son has no part in field or grove or house. These words probably describe the ancestral property of the family, which is elsewhere called NIG *E-A.BA* and which normally is divided at the father's death equally amongst the heirs, and that share is the *ablutum* of an heir.' Here the adoptee gets one-third of his share in his adoptive father's property other than the ancestral property (field, grove, house), which is here expressly excluded because he has become a stranger to the family. pp398-399

Share the adoptee receives

The next problem is whether the adoptee receives his one-third share immediately or whether it is delivered

into his possession only at the death of the adopter. A somewhat similar question arises in the documents of adoption with regard to the penalty to be inflicted on the adopter if he denies the relationship with the adoptee. In some of these the adopter is required to pay a stipulated sum of money: for example a woman who has adopted a girl pays 10 shekels of silver and also forfeits all right to the sum paid by her to the parents for rearing the girl whom she has adopted. In such cases it seems that the money is to be paid immediately. Elsewhere the adopter is said to forfeit field and house together with his chattels and once or twice he pays a sum of money. Such clauses seem to imply that the adopter loses all his possessions, which is impossible; hence Koschaker has been led to take the view that an adoptee if denied becomes entitled to his normal share of the inheritance but cannot enter into possession till the death of his adoptive father. The statement that 'he shall forfeit' (*Sum. BA.RA-P-NE*) the property clearly says on the face of it that the adopter loses this property forthwith; but does that mean that he merely loses the possession of so much as would otherwise at his death have passed to the adoptee, or does it mean that his whole property passes to his sons, including the adoptee? For it is impossible that the other heirs should suffer because of the denial of the adoptee. Again, if the adopter forfeits all that he has, how can he also pay a sum of money, as he once has to do? The penalty is so excessive that it seems unlikely that it should be taken literally, and it seems more probable that these clauses are mere threats inserted in *terrorem* in the contract of adoption. David' acutely points out that, as the same forfeiture of property is prescribed in the case of the mother as in that of the father who denies an adoptee, the penalty is not to be taken *au pied de la lettre*, since it is absurd to suppose that the father can lose all his property for the mother's act, and it is noticeable that the series *ana ittisu* prescribes different forfeitures of property for the two parents. pp399-400

Two documents re estate disposal

There are, indeed, two documents which explicitly state that, if the adopter denies the adoptee, in the one case 'he shall forfeit field, house, and prebend' (*Sum. MAR.ZA*), and the adoptee 'shall receive and take away his share' (*Sum. HA.LA-NI SU.BA-AB-TE.G4 BA.AN-TUM*), and in the others 'he shall take and carry away his single share like the (other) sons' (*Bab. zittasu kima mare. . . isten iliqe-ma ittassu*). These phrases show that the discarded son gets his share and suggest prima facie that he takes this with him forthwith; but Koschaker's view seems to be right in these two cases, since Babylonian law clearly recognized the possibility of a gift or grant of which the possession did not accrue till the donor's death. Thus in § 165 the favourite son does not get possession of his additional gift till the division of the property at his father's death; and in § 171 a wife does not get possession of her *nudunnun* till her husband's death. The two documents may then be understood as meaning that the adoptee takes his share when the division of the father's estate takes place. In other words, the clause will mean that he

is not deprived of his share in the inheritance. p400

Although, then, the penalties for denial of the adoptee in the documents may be explained in some such way as this, it does not follow that § 191 is to be similarly explained, as the wording is very different. It is clear here that the compensation to the adoptee is to be paid out of the adopter's personal or acquired property, since the adoptee is expressly said to receive no part of the ancestral estate of the family. The *salusti ablutisu* taken out of this property will not be very large and can be paid comparatively easily at the time of the rescission of the adoption. There is nothing in the text, as there is in § 165 and §§ 181-2, to suggest that the adoptee must wait till the adopter's death to receive this third share of the inheritance; in fact, the wording of 11. 90-1, that the adopter himself is to give this share and that the adoptee thereafter departs, clearly proves an immediate payment of the prescribed compensation; and it is certain that he can get no more at the time of his adoptive father's death, since he has ceased to be a member of the family. pp400-401

In §§ 192-3 something further is said of children adopted by a chamberlain or *SAL-ZIKRUM*; for these two sections deal with the cases in which they wrongfully break the adoptive tie. The reason for the separation of these two sections from § 187 is that the draftsman deals first in §§ 185-91 with the various ways in which an adoption may be lawfully created or dissolved and second in §§ 192-3 with unlawful attempts to dissolve it. This analysis raises the question why no mention is made in the Laws of the case in which the adopted son of an ordinary free man tries to break the adoptive tie; for the Sumerian Laws as well as several contemporary deeds of adoption and the series *ana ittisu* contain clauses designed to prevent such a breach. Nor is there any mention in the Laws of the case in which it is the adopter who wishes to break the tie except in § 191 when subsequently he has got other sons. The answer seems to be that the Laws are not intended to be exhaustive; they are not a code. They amend the existing law and seek to secure protection for the weak, but they allow parties to make what terms they like in their contracts. Not a single clause in any contract is based on a section of the Laws in the manner usual in English conveyancing, nor are provisions of the Laws cited in such reports of cases as have survived, nor is any judgement expressed as being decided in accordance with them.' p401

In § 192 the adoptee makes a formal declaration to his adoptive parent, saying 'Thou art not my father, thou art not my mother' (Bab. *ul abi atta ul ummi atti*) ; in § 193 having discovered his natural parents 'he has hated' (Bab. *izir*) his adoptive parents and has gone back to the former. He loses in the first case his tongue, in the second his eye. p401

David suggests that originally some prescribed formula must have been used for creating and for dissolving an adoption. To prove this he refers to the usage in legitimation and in the dissolution of a marriage and cites a document in which a mother, when giving up her son to another woman, says 'Take the lad away; surely (he is) thy son' (Bab. *tabli suharam lu maruki*). He holds that such *sollemnia verba*, though used in the period before the invention of writing, have become

mere survivals no longer employed in actual practice but retained in the documents as a means of expressing the termination of the relationship to which they refer. Such a view, however, runs counter to the unchanging habits of the East. The Mishnah implies that the essential element in Jewish divorce was that the husband should say 'Thou art free to marry any man' to his wife, and these words were written in the bill of divorce at the time when the Mishnah was compiled. In the case, too, of a Muslim divorce Lane has left it on record that in his time the words 'I divorce thee' or 'Thou art divorced' were still spoken as the necessary formula of divorce by a husband in Egypt. It is therefore *a priori* likely that the Babylonian *sollemnia verba* were no mere archaism but were still used in daily practice. p402

The force of such *sollemnia verba* varied with the position of the speaker, i.e. according as they are addressed by a superior to an inferior or by an inferior to a superior. p402

In tablets of adoption there is frequently a clause stating that, if the parent shall say 'Thou art not my son' (Bab. *ul mari atta*), the adoption is dissolved and the son becomes entitled to the whole or part of the property which would otherwise have passed to him upon the death of the adopter, I or sometimes he receives monetary compensation.' So, too, in marriage-contracts, if the husband denies his wife, he must pay her a small sum of money which in one document is called her 'divorce-money' money' (Bab. *uzibum*), and here the denial is tantamount to a divorce and terminates the marriage. If, however, the wife denies her husband, she is threatened with being hurled down from a pillar or being cast into the rivers i.e. with death; obviously, as the wife cannot divorce her husband, it is not so much her denial but her punishment which terminates the marriage. In two documents it is provided that, if the slave-girl denies her mistress, she may be shaved and sold. Here, too, as in § 282, where a slave denies his master and loses his ears as the penalty of his action, the slave's declaration in no way affects the relationship between them, although the slave is punished for insubordination. Again, if a *naditum* whose property after her death will pass to her adoptive brothers denies them, she forfeits her present interest in it, and it forthwith passes to her brothers; her denial has not so much affected the rights of her brothers as diminished her own; it has merely accelerated their interest in the property and has not had the effect desired by her words. If then a superior denies an inferior, he *ipso facto* terminates the relationship between them; but, if an inferior denies a superior, the legal relationship is not, or is only indirectly, affected. If, however, his repudiation had no effect, there would be no caution against it in the contract, nor would it entail a severe penalty. The inferior then by denying the existence of the relationship puts an end to it in fact by conducting himself as if it did not exist and for so doing is punished. It seems probable that the superior employs the form of words usual in the texts, but it is difficult to say whether the corresponding formula must have been used by the inferior or whether it may be inferred from his conduct. It may be that before the infliction of any

penalty on a free person, e.g. wife or son, the parties have recourse to a court, which is necessary in the case of the disherison of a son. The rebellious son, too, according to Hebrew law is brought before the elders before being stoned. [Duet 21/18-21] It thus seems probable that a formal repudiation had to be proved. If such a repudiation might be inferred from conduct, the misconduct of the adopted son in § 193 seems certainly to amount to such a formal repudiation as § 192 requires. p403

Different penalties and offences

As the penalties are different, so the offences in the two sections differ. The offence in § 192 has been committed by the tongue which suffers as the peccant member on the principle of talion, because it has uttered the formal denial of the adoption; in § 193 the adopted son loses the eye wherewith he has looked for and discovered his natural father's house, although here he has uttered no formal repudiation. These penalties are at variance with those found in contracts of adoption, namely the forfeiture of inheritance' and/or being sold into slavery.' The reason clearly is that the lawgiver wishes to enable the chamberlain or the *SAL-ZIKRUM*, neither of whom can have natural children, to retain the adoptee at all costs. Does he still remain, however, with his adoptive parents? By § 187 his own parents have no right to claim him, although that he is said in § 193 to go to his own father's house suggests that he stays there; but § 192 does not say this. The answer perhaps is that, although the adoptive parents retain their legal rights over him, whether they shall keep him or give him up is left to their discretion. The adopted child obviously cannot affect their rights by his misconduct. It may, however, be doubted if the temple or palace would keep in their service' one who had lost the tongue or an eye. pp403-404

In § 192 the question who is the mother denied by the adopted child arises. The adoptee who denies the father is not the adoptee who denies the mother, since the text mentions two children, that of the chamberlain and that of the epicene. These persons therefore are not husband and wife. The father denied is then the chamberlain, the mother denied is the epicene. Thus 11. 96, 2-3, and 6 on the one hand, and 11. 1, 4-5, and 7 on the other hand, must be taken together. In § 193 the adopted child has 'hated' or 'loathed' his adoptive parent, who is again a chamberlain or epicene. This verb means that he has refused to perform towards his parent the duties of an adopted child, as two other passages in which the same word is used prove. In the first a wife 'has hated' (Bab. *izir*) her husband and denied marital rights to him.' In the second' the wife of a man who has abandoned his city is excused from returning to him 'because he has hated his city' (Bab. *assum alsu iziru*) and absconded; here again the reference is to the neglect of certain duties, in this case the civic duties incumbent on the man as a householder in a city. Incidentally it may be remarked that, as the child has had to discover his natural parents' home, he has probably been adopted in early infancy, and the view that he is a foundling is unnecessary.' p404

The disherison of an adoptee

is illustrated by a document dated in the reign of *Abil-Sin*, in which Haliyatum granted an inheritance to Amat-Samas (evidently her adopted daughter) on condition that she kept her supplied with clothing and oil and other commodities; as she failed to do this, they went before the court and Haliyatum 'disinherited' (Bab. *ina ablutisa isuh*) Amat-Samas. There is also a contemporary letter' which describes how the adopted son of a priestess was disinherited, since he had deserted her for three years, before twenty elders of the city, who seem to have constituted a local court. In both these cases the adoptive parent is a woman, but they are interesting as showing that one who wishes to get rid of an adopted child must obtain the leave of a court, as the natural parent is required to do by the Laws. p405

Source: 'The Babylonian Laws' Translation and Commentary by G. Driver and John C Miles. Vol.1. Legal Commentary. Oxford Press 1952 pp383-405

**LAS SIETE PARTIDAS
GREAT CODE OF ALFONSO x 1263AD
First Western Code**

SPAIN The Great Code of Alphonso X of Seville. Some writers say it was the first adoption code subjected to contemporary research. King Alfonso X 'The Wise'. Reigned 1252-84. Under his command the 'Great Legal Code' was compiled. Spanish title 'Las Siete Partidas' English Trans 'The Seven Divisions of the Law'

Las Siete Partidas "*Las Siete Partidas* constitute one of the outstanding landmarks of Spanish, and indeed of world law, and occupy a unique place in its evolution. For they stand midway between the Forum Judicum of the 7th century and the Civil Code of the 19th, being about six hundred years after the former and before the latter.

Content Five Volumes:

1. The Medieval church.
2. Medieval government.
3. Medieval law.
4. Family, commerce, and the sea.
5. Underworlds.

Background —

Forum Judicum— 600-950AD For about three and a half centuries following its promulgation the *Forum Judicum* remained the sole compilation of general laws in Spain. There were, of courses, the local *fueros* and some of these afford great interest, notably those of Aragon whose *Fueros de Sobrarbe*, composed, supposedly, before the eleventh century, have been called the Magna Charta of the Aragonese nobles. The general opinion of modern historians, however, considers as purely fabulous [Probably a mistranslation more likely 'Fictitious' KCG] this pretended primitive political charter.

Toward end of 10th century

The Fuero Viejo

The Conde de Castilla, Don Sancho Garcia, inaugurated the preparation of a new code which ultimately became known as the *Fuero Viejo*. Additions to it were made at the Cortes of Najera In 1176 and it continued to have a certain force until nearly the middle of the fourteenth century. It was probably composed in Latin and, in its final form, consisted of five books loosely arranged and without logical accumulation of contents. Book III contained some provisions regarding proof and procedure, but the work seems to have been designed primarily to meet the peculiar conditions prevailing in Castile and to adjust the relations between its king and the nobility; and its force appears never to have extended beyond the territory of that kingdom and Leon. This necessarily left the Forum Judicum operative in other parts of Spain with consequent lack of uniformity

Consolidation of Law 1248AD>

The Setenario

The thirteenth century was one of general advance for the Spanish Christian kingdoms and law shared in the

resulta. The surrender of Sevilla to Fernando III in 1248 left that monarch leisure to consider the internal affairs of his dominions and among other evils which confronted him were the diversity and confusion of the laws. To remedy these he conceived a comprehensive scheme of codification which was actually initiated by commencing in the preparation of a new work entitled the *Setenario*. But before this or any other part of his plan could be carried into effect he died.

The Las Seite Partidas— Alfonso X

The son and successor of San Fernando was Alfonso X, commonly known as "el sabio," because of his attainments in science and letters. Almost immediately upon his accession he took up his father's legal project and his reign was marked by a succession of works culmination in the *Partidas*. The work is supposed to have been completed in 1263- "seven books in seven years." At first it was known as *Libro* (or *Fuero*) *de las Leyes*, and it was not until the following century that it came to be called *Las Partidas* or *Leyes de Partidas*.

The compilers

With regard to the compilers of this famous work, the historian Altamira says: "The reduction of the *Partidas* was the work of several jurists whose names are not cited in the text, and was done under the supervision, and subject (how much cannot be determined) to the active intervention of Alfonso, who was himself an author of zeal." Alfonso's part seems to have been less perfunctory than Justinian's—more like that of Napoleon or possibly Hammurabi.

Partidas and Spanish colonies

The expansion of Spain in the sixteenth century had the effect of extending the *Partidas* to the Spanish colonies in the Western hemisphere as well as in Africa and Asia. Such extension gave the *Partidas* the widest territorial force ever enjoyed by any law book. For Justinian's Pandects were practically confined to the Eastern Empire, until long after Rome's rule ended in the west. But in Spanish America, as well as in the Philippines, the *Partidas* were and are the common basic law. Nor has their force been limited., in the Western hemisphere, to Spanish America.

In a considerable group of jurisdictions now under the sovereignty of the United Spates, civilized law began with the *Partidas*. In Louisiana, as late as 1924, the Supreme Court devoted the major part of an opinion to the law of the *Partidas*. Likewise in the territory acquired from Mexico, the Spanish law remained in force in Texas until 1840, and the *Partidas* are frequently cited in the early supreme court reports of that state. In California the Spanish law continued for a decade longer and there, too, the *Partidas* were often invoked by the early judges. That their extension to Spanish colonies was no mere formality will appear from even a casual inspection of the Supreme Court Reports of the Philippines. The series did not commence until 1902, yet in nearly every volume there are citations of the *Partidas*, while as regards at least one important subject—divorce—that collection long contained the only law in force.

Source ‘Las Siete Partidas’ of Alfonso X el Sabio. (Translated by Samuel P. Scott, introduction by Charles Lobingier, New York: Commerce Clearing House, 1931.) Published by Philadelphia: University of Pennsylvania Press c2001.

Las Siete Partidas 1263AD
English Translation of Sections re Adoption

Part 4 Title VII

Law VII. What adoption is, how many kinds there are and how it prevents marriage.

Adoption is a kind of relationship established by the secular *fuero* which is an obstacle to marriage in addition to the other kinds of relationship, both carnal and spiritual, which we mentioned in the preceding law, by means of which impediments arise. A relationship of this kind is called, according to the laws, a legal bond of adoption, which men establish among themselves through the great desire which they have to leave some-one to inherit their property; and for this reason they accept as their son, grandson, or great-grandson a person who is not actually so. An adoption or relationship of this kind is established in two ways.

First, it is done by permission of the king or by the ruling prince of the country, and is called, in Latin, *arrogatio*, which means, in Castilian, the adoption of a man who is by himself, and has no carnal father, or if he has, has left his control and come under that of the party who adopts him. An adoption of this kind is established by the king or prince questioning the party who adopts the other: “Are you willing to- accept this person as your legitimate son,” and he should answer that he is, and he should also ask the party who is to be adopted, “Are you content to be the son of this man who adopts you;” and he should answer that he is. Then the king should say; “I grant my permission;” and then give his letter.

The second kind of adoption is that which is established by the consent of some judge. This is called in Latin, *adoptio*, which means, in Castilian, the adoption of a man who has a carnal father and who is under his control, and for this reason he does not come under that of the party who adopts him. We have thoroughly explained this kind of adoption, in the Title concerning Adoptions.[Part 4 Title XV1]. A relationship of this kind is an impediment to marriage, for a father who adopts some woman, or accepts her as his granddaughter or great-granddaughter, can never marry her, even though the adoption be annulled. The same rule applies where any woman adopts a man by order of the king, as stated in the Title already mentioned. Moreover, carnal children cannot marry those whom their fathers or mothers adopt, as long as the adoption lasts, but if the adoption is annulled they have the right to marry. Where, however, one person adopts many children, so that there are both males and females among them, these have the right to marry one another, whether the said adoption is annulled or not. p911

Law VIII. An adopted son cannot marry the wife of the party who adopted him, nor can the party who adopted another marry the wife of the latter.

Between a person who is adopted and the wife of the party who adopts him affinity arises which prevents marriage, as it also does between the wife of the person who was adopted and the party who adopts him. An affinity of this kind prevents an adopted person from marrying the wife of the party who adopts him, nor can the party who adopts said person marry his wife; whether the adoption is annulled or not, as stated in the preceding law explaining how it could be annulled. And this relationship or affinity, when established as the law directs, not only is an impediment to marriage, but annuls it where it has been contracted. Moreover, this relationship or affinity, arising from adoption and by reason of which marriages are prevented, is not considered to cause an impediment to arise between other persons mentioned in this law and in the preceding one. p912

Part 4 Title XVI.

Concerning adopted children

Adopted children are those called, in Latin, *adoptivi*, and are accepted by men as their, own, although they are not born in marriage, or in any other way. Wherefore, since in the preceding Titles we spoke of legitimate children, and of all the others which men have naturally, we intend to speak here of those whom they obtain ‘by an agreement made with one another, in accordance with some law or *fucro*. In the first place, we shall show what this adoption is; in how many ways it is made; who has power to adopt; who can be adopted; what force adoption has, and for what reasons it can be set aside. p956

Law I. What adoption is and in how many ways it is accomplished

Adoptio, in Latin, means adoption, in Castilian. This adoption is a way established by the laws by means of which some men can become the sons of others, without being so naturally. This can be accomplished in two ways, as stated in the Title concerning the office of godfather and of adoption, by means of which impediments arise to marriage, in the law which begins: “Adoption is a kind of relationship.” And, for the reason that men sometimes give their legitimate and natural sons to others to be adopted, in an adoption of this kind it is necessary for the person adopted to give his consent, either granting it by words, or by keeping silent and not offering opposition. However, when any one is adopted who has no father, or if he has any, is free from his control, in a case of this kind it is absolutely necessary that the said party publicly give his consent, doing so by words. When the adoption is affected, all those other matters should be observed which we mentioned in the Title concerning the office of the godfather, in the laws which treat of this subject, as well as those which we mention in the laws of this Title. p956

Law II. What men have the power of adoption.

Every freeman, who has left the control of his father, has the power of adoption. But he who desires to do this must have the following qualifications, namely; he must be eighteen years older than the party whom he desires to adopt, and he must have the natural capacity for procreation, being physically formed for that purpose, and not being of so cold a nature that he is prevented by it. Moreover, no woman has the power of adoption, except in one way, that is where she has lost a son in battle in the service of the king, or in some transaction in which he was connected with some Council; for if, on this account, she desires to adopt some one to take the place of the son she lost, she can do so with the consent of the king, and in no other way.

If women could do this, of themselves, it might happen that men would deceive them, or be deceived by them, so that great wrong would result. p956

Law III. What men can adopt others, although they cannot beget children.

Ill fortune and serious accident sometimes happen to men, so that they become physically incapable of procreation. This may occur from disease or violence inflicted upon them causing mutilation, or through witchcraft, or some other flagitious action committed against them, or try other casualties which befall men in various ways; and where persons of this kind are naturally capable of procreation, but have been afterwards prevented by some of the causes aforesaid, we do not think they should suffer loss on this account, but that they ought to have the power of adoption, since nature did not deprive them of virility, but it was the result of violence or accident. 956-7

Law IV. What persons men can adopt.

Every boy under seven years of age is called an infant, in Latin, and a child of this kind who has no father cannot be adopted by any one, because he has not sufficient intelligence to consent. A boy who is over seven years of age, and under fourteen, can, however, be adopted with the consent of the king, and in no other way. The reason for this is as follows, namely; a boy of this kind who is under fourteen years of age, and over seven, has no perfect mental capacity, and, on the other hand is not entirely lacking in it, and therefore it is necessary that an adoption of this kind should be perfected by permission of the king, in order that he may take care that the boy is not deceived. However, the king, before he grants permission for the adoption of such a boy, should take into consideration all that follows, namely; who the man is who wishes to adopt him; whether he is rich or poor; whether he is a relative or not; whether he has children who may inherit his property, or whether he is so old that he cannot have any; what kind of a life he leads; and what his reputation is; and he should also ascertain what property the child has. Where all these matters have been considered, and he thinks that the party who desires to adopt the child is influenced by good intentions in doing so, and that it will be for the advantage of the boy, he should grant

permission for it to be done. The King, before he grants permission for the adoption of boys under these circumstances, should, however, provide that their property may not be impaired. This ought to be done in this way; he should cause such security to be given by the party who adopts the child that, if the latter dies before he is fourteen years old, he will surrender all his property to the person or persons who are lawfully entitled to it. This is understood to apply to such as would inherit them, or receive them by bequest, if the boy had not been adopted. Security of this kind should be given by a written instrument drawn up by a notary public. Although the king may not order such an instrument to be drawn, it is understood that the party who adopts the child is bound by law to have this done, as aforesaid. p957

Law V. Men who were slaves and have been emancipated cannot be adopted

All men liberated from slavery by their masters are styled, in Latin, *libertos*, and, in this country, are called enfranchised persons. No one can adopt a person of this kind for the following reason, since, although a master may emancipate his slave, the former always retains an original natural duality, which is indicative of superiority; that is to say, the freedman is always bound to obey him, honour him, and avoid causing him sorrow, and if he violates this rule the master can reduce him to slavery, and therefore no one can adopt him. p957

Law VI. No man has power to adopt a boy of whom he is the guardian

Every man who has charge of a boy and all his property until he reaches the age of fourteen years, is called *tutor*, in Latin. Such a person cannot adopt a boy of this kind, for the reason that he may be suspected of having done so with evil intent, in order to avoid giving an account of his property of which he has charge, and if he did render him such an account, that he would not do so as faithfully, or in the way that he should. However, after the boy has reached the age of twenty-five years, he can be adopted by his guardian, with the consent of the king, and in no other way; and this is the rule in order to enable the king to provide against his being defrauded by such an adoption as this which we have mentioned. p957-8

Law VII. What force adoption has, and for what reason a person who adopts another can liberate the latter from his control, and annul the adoption.

When one man adopts another who has children and who is not under the control of his father, the adoption has such force that his children, as well as himself and all his property, pass under the control of the party who adopts him, just as if he was his legitimate son; and the party who adopts him cannot remove the latter from his control, except for some lawful reason which he must establish before a judge. This can be done for two reasons. First, when the person adopted is guilty of such wrong, or, of such an act that the party who

adopts him is provoked to great rage thereby. Second, where some one else by his will designates as his heir a person adopted in this way, under certain conditions, saying as follows; "I appoint So-and-So my heir, if the party who adopted him removes him from his control." For either of these two reasons the party who adopts can remove the one adopted from his control, but he is bound to restore to him all the property and effects which he had when he came into his power. p958

Law VIII. How much of the property of the party who adopted him the person adopted is entitled to.

No one should wrongfully, and without reason, remove from his control a person whom he has adopted, nor should he disinherit him. If, however, anyone should violate this rule he is bound to return to the party whom he adopted all the property he possessed when he came under his control, and all the increase which he subsequently obtained, excepting the usufruct which he received from the property of the said adopted person, while the latter was under his control. In addition to this, the person who adopted him should give him the fourth part of all he possesses.

What we have stated in this law and the preceding one, is understood to refer to an adoption made in the way called, in Latin, *arrogatio*, which means one effected by permission of the king; but where it is effected in the other way, called *adoptio*, which means an adoption made by permission of some other judge, the person who adopts the other can remove the latter from his control for any reason or without one, and he will not inherit any of the property of the party whom he adopted. This is the case because the adoptive child in this way should not inherit the property of his adoptive father, even though the latter does not remove him from his control, except where the party adopting him dies intestate. p958

Law IX. What portion of the property of his adoptive father the party who is adopted inherits

We have explained in former laws the force of adoption effected by arrogation, and now we desire to show the force which it has when effected by adoption. We decree that where anyone gives his son to be adopted by a man who is not the grandfather, or great-grandfather of the boy on his father's or mother's side, the person adopted in this way shall not pass under the control of the party who adopted him. From an adoption of this kind the following advantage results to the person adopted, namely; he will inherit all the property of his adoptive father, if he dies intestate and has no other children; and if he has any he will share with them, and will have his portion as the rest of them do. Nevertheless, it is not understood that, for this reason, he can inherit the property of the children or of any other relatives of the person who adopted him. p959

Law X. What rights a Grandson, or Great-grandson acquires in the property of his Grandfather or Great-grandfather when he adopts him.

Every man who leaves the control of his father with his

consent is said to be emancipated, and if a man of this kind gives his son, who is under his control, to the grand-father of the latter to be adopted, whether he be on the father's or mother's side of the person whom he adopts, the adoptive son will pass absolutely under the control of the party who adopts him, so as to possess all the rights that an actual child should have in the property of his father by whom he was begotten, not only to be brought up by means of said property, but also to inherit it. This is the case on account of two powers of the law which are united in an adoption of this kind; one on account of the descent and lineage by which the party adopted is connected with the one who adopted him; the other through the regulation of the law which conferred upon men the power of adoption. If, however, his father, or great-grand-father removes the boy aforesaid from his control, he will pass back subsequently under that of his father. p959

ILLEGITIMACY

PART 4 TITLE XV.

Concerning Children Who Are Not Legitimate.

Men sometimes have children who are not legitimate, for the reason that they are not born in wedlock, according to law. And, although the Holy Church does not consider, or accept, such as these as legitimate, nevertheless, since it happens that men beget them, and as, in the preceding Title we spoke of concubines, we desire in this one to speak of children who are born of them. We shall show, in the first place, what is meant by children who are not legitimate; for what reason they are not considered such; how many kinds there are; how children are injured by not being legitimate; how they can be legitimized; and what benefit and advantage results to children through being legitimate. p952

Law I. What is meant by illegitimate children, for what reasons they are considered such, and how many kinds there are.

The wise then of the ancients called children natural and illegitimate who are not born of a marriage according to law; as, for instance, those born of concubines, and bastards born of adultery, or of a female relative, or of women belonging to religious orders. These are not called natural children, for the reason that they are begotten contrary to law, and in opposition to natural order. Moreover, there are children called in Latin, *manzeres*, who derived their names from two Latin words, *Manna scelus*, which means infernal sin. For those called *manzeres*, are born of women who live in prostitution, and give themselves to all who visit them, and for this reason they can not know to whom the children born of them belong. There are men who state that *manger* means contaminated, because a person of this kind was wickedly begotten, and was born in some vile place.

There is another kind of children, called, in Latin, *spurii*, which means those born of women which men keep as concubines outside of their houses, and they are such as give themselves to other men, in addition

to those who keep them, and, for this reason, it is not known who the father of a child born of such a woman is. There is still another kind of children called notos, and these are such as are born in adultery. They are called by this name because they appear to be the acknowledged children of the husband who has them in his house, when they are not so. p952

Law II. For what reasons children should not be considered legitimate, although they be born in marriage.

Some persons marry clandestinely and by stealth, and have children. Where, in the case of persons marrying in this way, any impediment is discovered by reason of which the marriage should be dissolved, the children be gotten by persons of this kind ought not to be considered legitimate; and they cannot excuse themselves by saying that one, or both of them, was not aware of the existence of said impediment. This is the case because the suspicion arises against them that they did not want to know whether an impediment existed which might prevent them from marrying, since they were married clandestinely. Moreover, the children of those who knew that an impediment of this kind existed between them on account of which they should not marry, will not be legitimate, although they may have married openly in the sight of the church, and no other person publicly announced the impediment, and no accusation was brought against them on this account. This is understood to refer to cases where both husband and wife were aware of the existence of said impediment. Moreover, no child born of a father and mother who are not married as the Holy Church directs, are legitimate. Moreover, we decree that where a man has a lawful wife, and has children by a concubine while his wife is living, said children will not be legitimate, even though the lawful wife should die after this and her husband should marry the concubine, and this is the case because they were born in adultery. pp952-3

Law III. What injury results to children by their not being legitimate.

Great injury results to children through their not being legitimate. In the first place, they cannot share the honours of their fathers or grandfathers, and, also, when they are chosen for any high office or honour they may lose it for this reason, and, moreover, they cannot inherit the property of their fathers or grandfathers, or that of any other relatives from whom they are descended, as stated in the laws of the Title concerning Inheritances which treats of this subject. p953

Law IV. In what way Emperors, Kings, and Popes, can legitimize children that are not legitimate.

Men petition emperors and kings in whose dominions they live, as a favour, to make the children which they have by concubines, legitimate; and where they grant such a request, and legitimize such children, the latter are, from that time forth, legitimate, and can enjoy all the honours and advantages which children born in lawful marriage do. Moreover, the Pope can legitimize every free man, whether he is the son of a priest or a

layman, so that those whom he thus renders legitimate call become priests, and attain to, and hold offices of great dignity. And although the Pope may consent that some such persons be priests, it is not understood by this that he grants them permission to hold high ecclesiastical offices, unless he states this specifically in the dispensation; and, although he renders them legitimate, it is not to be presumed that, by the above mentioned proceedings, he grants them authority to hold bishoprics, except where he especially states this in the dispensation. And, although he may grant dispensations to some to have certain orders and the other offices above mentioned, he cannot grant them any with respect to temporal matters, except where they are under his temporal jurisdiction. The same rule applies where an emperor, or king, renders any person legitimate; for although he can exempt them from anything relating to his temporal jurisdiction, he cannot do this in spiritual matters, which priests or curates call do. p953

Law V. How a father may make his son legitimate by devoting him to the service of his Lord's court.

Where a man keeps a mistress who is not a slave, instead of a wife, by whom he has a natural son, and the father takes said son to the court of the emperor or the king or to the Council of the city or town where he is, or within whose district he dwells; or to any other city or town whatsoever, although he may not dwell there or within its district, and states publicly in the presence of all: "This is my son, that I have by Such-and-Such a woman, and I devote him to the service of this Council;" by these words alone he makes him legitimate; provided the son whom he disposes of in this manner gives his consent, and does not oppose him. What is mentioned with regard to a father being able to render a son of this kind legitimate, as above stated, is understood to be in his power to accomplish, whether he has other sons by a lawful wife or not; except where the mistress by whom he had the son is a slave. For he cannot render the son of a female slave legitimate in this way, if he has other legitimate sons, but, if he has none, he then can do this by previously enfranchising her. p953-4

Law VI. In what way a father can render his natural son Legitimate by his Will.

Where a man has natural children by a mistress, and has no legitimate children, he can make the former legitimate by his will, in the following way, by saying: "I desire that So-and-So, or So-and-So, my children, whom I had by Such-and-Such a woman, be my lawful heirs." For if, after the death of their father, the children take this will and show it to the king, and petition him to confirm it, and to grant the favour their father desired to show them; the king, when he knows that the party who made the will had no other children who were legitimate, should give his consent. From that time forth the said children will inherit the property of their father, and will have the Honour of being legitimate. p954

Law VII. In what way fathers can render their children legitimate by a written instrument.

Where a man writes an instrument, or document with his own hand, or orders it to be drawn up by a notary public, and it is confirmed by the testimony of three reliable men, in which document he states that he recognizes a certain child, (mentioning him specifically), as his son, this constitutes a second way in which natural children are made legitimate. In an acknowledgment of this kind, however, he should not state that said child is a natural one, for, if he does, his act will not be valid. Moreover, when anyone has several natural children by one mistress, and recognizes only one of them as his child by means of a document of this kind, and in the way above stated in this law, the other children, by such an acknowledgment, became legitimate and entitled to inherit the property of their father to the same extent as the one in whose name the document is drawn up, although they were not mentioned in the latter. What is stated in this law and in those which precede it is understood to mean that the children who are mentioned in said laws are rendered legitimate to inherit the property of their father and their other relatives, with the exception of any they may have rendered legitimate in the manner previously stated, in the law by which a child may be devoted to the service of the court, of the emperor, or of the king. A child of this kind can inherit the property of his father, but not that of his other relatives if they die intestate. p954

Law VIII. For what reason natural children can be rendered legitimate.

An official in any city or town, who is one of those who holds an important office for his entire lifetime, who marries a daughter of some person who has said daughter by a mistress, she, by the act of her father, who marries her to a man of this kind, becomes legitimate. Moreover, when the natural son of any man devotes himself to the service of the emperor or the king, or of any city or town, as stated in the fourth law preceding this one, stating publicly, in the presence of all, that he is the son of Such-and-Such a man (mentioning him by name), who had him by Such-and-Such a servant; and it is a fact that he is the son of the party whom he mentions, he becomes legitimate for this reason; that is, if his father did not have any legitimate children by another woman, for if he did have any, this one would not become legitimate, even if he devotes himself as aforesaid. p954-5

Law IX. What benefit and what advantage children derive by being legitimate.

Great advantage results to children from legitimacy granted them, for after they become legitimate in any of the ways aforesaid-except where they are made legitimate by the Pope, as stated in the sixth law preceding this one they can inherit all the property of their fathers, where their fathers have no legitimate children, and where they have any they will inherit their share, just as other issue born of lawful wives; except in the

way mentioned in the preceding law, where the rule is established with regard to the son of any man who devotes himself to the service of the court of the emperor, or king, or the council of any city or town. They enjoy another advantage by being made legitimate, for they become eligible to all honours, just as other children who are born of lawful wives do.' p955

Source 'Las Siete Partidas' of Alfonso X el Sabio. (Translated by Samuel P. Scott, introduction by Charles Lobingier, New York: Commerce Clearing House, 1931.) Published by Philadelphia: University of Pennsylvania Press c2001.

CODE NAPOLEON FRENCH CIVIL CODE 1803

Napoleon— “On March 21st, 1804,

There occurred one of the most notable events in all legal history. For it was on that day that the Code Napoleon was voted into law. The French Civil Code is the first great modern codification of the law. It abrogated the law of the *Ancien* Regime-based largely on local custom, and anything but the unified system demanded by a large national State-and substituted for it a coherent code, logically arranged and clear and precise in its terms.

It should be noted that the popular title of this monumental work, the “*Code Napoleon*,” is no mere figure of speech. Attempts at codification had been made for many years, and even the Revolution had not seen them come to fruition. It was the all-powerful will of the First Consul that was the necessary catalyst. It was his energy that brought to completion the work so long awaited.

Napoleon himself realized from the beginning the monumental significance of the codification that bears his name. At Saint Helena, near the end of his life, he wrote: “My glory is not to have won forty battles, for Waterloo’s defeat will destroy the memory of as many victories. But what nothing will destroy, what will live eternally, is my Civil Code.”

The framers of the Code Napoleon were dominated by the desire to present the law in a form readily accessible to all. Like Jeremy Bentham, they sought to be able to say: “Citizen, what is your condition? Are you a farmer? Then consult the chapter on Agriculture.”

Of course, they did not wholly succeed in their aim. But the instrument that they drew up as a codification of all of the private law is remarkable for its brevity and lucidity of style. The entire Code contains only 2,281 sections.”

Source ‘The Code Napoleon & the Common Law World’ B. Schwartz. NY University Press 1956 -Preface.

Historical Background

The French Civil Code may be said to have initiated the contemporary system of the civil law as we know it with its codifications. But it did not result from a flash of inspiration or genius by Napoleon or anyone else. Rather was it the cumulation of centuries of legal history and the interaction of Roman law with the localized and customary laws that evolved in through what are known as the *leges barbarorum*. However, such efforts at ordering legal systems did not thrive in the chaotic conditions that prevailed in the post-Roman period, and they faded into oblivion. Roman law generally ceased to be the law in practice, and was supplanted by localized laws of a customary nature upon which feudal laws became engrafted. Roman law represented a degree of sophistication not in keeping with the rude societies of the early Middle Ages. It became largely an academic kind of law, preserved mostly in monasteries which were the centers of scholarly activity. However, it had some survival in application in Italy and some other heavily Romanized parts of

the former empire. ie., Eastern Roman, or Byzantine centering on Constantinople vigorously continued Roman civilization.

Relationship of Codes and statutes

Neither in France nor in the United States do codes have any special legal force or status beyond any other legislation. They can be amended, repealed or superseded as readily as any other statute, by the same or higher legislative authority which originally enacted them. But both cases represent an assessment that the subject-matters of their codes are in some degree especially important to society and of permanent or at least long enduring significance. While there are no inhibitions against making changes in the code as they may seem to be warranted, it is expected that the legislator should take particular care in doing so, in keeping with the seriousness of the original idea of a code and maintaining its internal consistency and cohesion and its rapport with the law and legislation generally. Thus the distinction between codes and statutes generally is a matter of attitude which expectably accords greater prestige and stability to legislation specially invested with the dignified title of “code.” The degree to which such expectations are realized is indicative of the success or quality of a code.

Codes and Judicial interpretation

“In the French system, as in the civil law generally, legislation is regarded as the primary and ultimate source of law. Given the attitudes and expectations regarding codes, they more than other legislation normally represent the most fundamental legal notions in terms of being the starting point for legal reasoning and setting the tone for the legal system. When articles of a code form the basis of a judicial decision, they are of course interpreted by the court to resolve the particular case at hand. However, such judicial interpretation does not become an authoritative precedent for subsequent interpretations of an article of the code. However persuasive such a judicial decision may be in effect, future decisions are in theory based on reference afresh to the text of the code itself without its being screened by prior judicial interpretations of it. The opposite is true in the American system, where the final word on the meaning of any legislative text is what the courts say it means.” Crabb p9

Source ‘The French Civil Code’ As amended to July 1, 1976 Translated by John H Crabb, published Fred B Rothamn & Co South Hackensack, New Jersey 1997.pp8-9

Code Napoleon - FRENCH CIVIL CODE 1803

Literally Translated from the Original and Official Edition, Published at Paris in 1804

TITLE VIII. Of Adoption and Friendly Guardianship. Decreed 23d March, 1803. Promulgated 2d of April.

Chapter 1. Of Adoption

Section 1 Of Adoption and its effects.

343 “Adoption is not permitted to persons of either sex, except to those above the age of fifty years, and

who at the period of adoption shall have neither children nor legitimate descendants, and who shall be at the least fifteen years older than the individuals whom they propose to adopt.

344 No one can be adopted by more than one person, except by husband and wife. Except in the case in article 366, no married person can adopt without the consent of the other conjunct.

345 The faculty of adoption shall not be exercised except towards an individual, for whom, during minority, and for a period of at least six years, the party shall have supplied assistance, and employed uninterrupted care, or towards one who shall have saved the life of the party adopting, either in a fight, or in rescuing him from fire or water.

It shall suffice, in this latter case, that the adopter have attained majority, be older than the adopted, without children, or lawful descendants, and if married, that his conjunct consent to the adoption.

346 Adoption, shall not, in any case, take place before the majority of the adopted party. If the adopted having father and mother, or one of them, has not completed his twenty-fifth year, he shall be bound to produce the consent of his father and mother, or the survivor, to his adoption ; and if he is more than twenty-five years of age, to require their counsel.

347 The adoption shall confer the name of the adopter on the adopted, in addition to the proper name of the latter.

348 The adopted shall continue in his own family, and shall there retain all his rights : nevertheless, marriage is prohibited,

Between the adopter, the adopted, and his descendants;

Between adopted children of the same individual; Between the adopted, and the children who may be born to the adopter;

Between the adopted and the conjunct of the adopter, and reciprocally between the adopter and the conjunct of the adopted.

349 The natural obligation, which shall continue to exist between the adopted and his father and mother, to supply them with sustenance in cases determined by the law, shall be considered as common to the adopter and the adopted towards each other.

350 The adopted shall acquire no right of succession to the property of relations of the adopter ; but he shall enjoy the same rights with regard to succession to the adopter as are possessed by a child born in wedlock, even though there should be other children of this latter description, born subsequently to the adoption.

351 If the adopted child die without lawful descendants, presents made by the adopter, or acquisitions by inheritance to him, and which shall actually exist at the decease of the adopted, shall return to the adopter or to his descendants, on condition of contributing to debts, without prejudice to third persons.

The surplus of the property of the adopted shall be-

long to his own relations; and these shall exclude always, for the same objects specified in the present article, all the heirs of the adopter other than his descendants.

352 If during the life of the adopter, and after the decease of the adopted, children or descendants left by the latter, shall themselves die without issue, the adopter shall succeed to donations made by him, as is directed in the preceding article ; but this right shall be inherent in the person of the adopter and not transmissible to his heirs, even in the descending line.

SECTION II. Of the Forms of Adoption.

353 The party who shall propose to adopt, with the one who shall be willing to be adopted, shall present themselves before the justice of the peace at the domicil of the adopter, there to pass an act of their mutual consent.

354 A copy of this act shall be transmitted, within ten days following, by the more diligent party, to the commissioner of government in- the court of first instance, within whose jurisdiction the domicil of the adopter shall be found, in order to be submitted to the approbation of that court.

355 The court, being assembled in the chamber of council, and having received suitable testimonials, shall certify, 1st, whether all the conditions of the law are complied with ; 2d, whether the party who proposes to adopt enjoys a good reputation.

356 After having heard the commissioner of government, and without any other form of proceeding, the court shall pronounce without giving its reasons, in these terms : "*There is ground;*" or, "*There is no ground for adoption.*"

357 In the month succeeding the judgment of the court of first instance, this judgment shall, on the prosecution of the more diligent party, be submitted to the court of appeal, which shall deal with it in the same forms as the court of first instance, and shall pronounce without assigning reasons : "*The judgment is confirmed,*" or "*The judgment is reversed ; in consequence there is ground,*" or "*There is no ground for adoption.*"

358 Every judgment of the courts of appeal, which shall establish an adoption, shall be pronounced at the hearing, and posted in such places and in such a number of copies as the court shall judge expedient.

359 Within three months after this judgment, the adoption shall be enrolled, on the requisition of one or other of the parties, on the register of the civil power of the place where the adopter shall be domiciled.

This enrolment shall not take place but upon view of a copy, in form, of the judgment of the court of appeal ; and the adoption shall remain without effect unless it be enrolled within this interval.

360 If the adopter happen to die after the act setting forth his inclination to form a contract of adoption has been received by the justice of peace and carried before the courts, and before these have finally pronounced, the procedure shall be continued and the

adoption admitted if there be ground. The heirs of the adopter may, if they believe the adoption in-admissible, remit to the commissioner of government all memorials and observations on this subject.”

Source ‘Code Napoleon or The French Civil Code’ by a Barrister of the Inner Temple. Literally Translated from the Original and Official Edition, Published at Paris in 1804. A Law Classic Reprint by Beard Books, Washington USA 1999.

Statute: France ‘French Civil Code’ as amended to 1895 and also as amended to 1976 **See Copy in ‘Overseas Adoption Statutes’ Appendix this book.**
