

CHAPTER 54 ADOPTION ACT

Arrangement of Sections

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SCHEDULE

AN ACT

to provide for the making and registration of adoption orders; to provide for the registration and control of adoption societies; to regulate the making of arrangements by adoption societies and other persons in connection with the adoption of children; to provide for the supervision of adopted children by the Commissioner for Juvenile Welfare in certain cases; to restrict the making and receipt of payments in connection with the adoption of children; and to provide for matters incidental to or connected with the foregoing.

[1st August, 1956]

Act 5 of 1956,

Act 32 of 1958,

Act 13 of 1994,

Act 24 of 1997,

GN 276 of 1964,

GN 497 of 1964,

SI 53 of 1965.

PART I PRELIMINARY

1. Short title

This Act may be cited as the Adoption (Amendment) Act, 1997, and shall be read as one with the Adoption Act, in this Act referred to as principal Act.

2. Interpretation

(1) In this Act, unless the context otherwise requires—

“abroad” means in any country outside Zambia;

“adoption order” has the meaning assigned to it by section 3;

“adoption society” means a body of persons whose functions consist of or include the making of arrangements for the adoption of children;

“body of persons” means any body of persons, whether incorporated or unincorporated;

“Commissioner” means the Commissioner for Juvenile Welfare appointed under the provisions of section 5 of the Juveniles Act;

“court” means a court having jurisdiction to make adoption orders under the provisions of section 10;

“custodian” means the person in whose care and possession an infant is or is to be placed in pursuance of any arrangements made under the provisions of this Act;

“father”, in relation to an illegitimate infant, means the natural father of such infant;

“foreign infant” means a person who is below the age of eighteen years and is not a citizen of Zambia, but shall not include a person who is or has been married.

[Ins by s 2 of Act 24 of 1997.]

“infant” means a person who has not attained the age of twenty-one years, but does not include a person who is or has been married;

“interim order” means an order made under the provisions of section 8;

“juveniles inspector” means a person appointed as such under the provisions of section 6 of the Juveniles Act;

“place of safety” has the same meaning as in the Juveniles Act;

“registered adoption society” means an adoption society registered under the provisions of Part V;

“Registrar-General” means the Registrar-General of Births and Deaths appointed under the provisions of section 3 of the Births and Deaths Registration Act;

“relative”, in relation to an infant, means a grandparent, brother, sister, uncle or aunt, whether of the full blood, of the half-blood or by affinity, and includes—

(a) where an adoption order has been made in respect of the infant or any other person under the provisions of this Act, or of the repealed Act, any person who would be a relative of the infant within the meaning of this definition if the adopted person were the child of the adopter born in lawful wedlock;

(b) where the infant is illegitimate, the father of the infant and any person who would be a relative of the infant within the meaning of this definition if the infant were the legitimate child of his mother and father;

“the repealed Act” means the Adoption of Children Act, Chapter 136 of the 1948 Edition of the Laws;

“subordinate court” means a subordinate court of the first or second class as defined in the Subordinate Courts Act.

(2) For the purposes of this Act, a person shall be deemed to make arrangements for the adoption of an infant if, not being a parent or guardian of the infant, he enters into or makes any agreement or arrangement for, or for facilitating, the adoption of the infant by any other person, whether the adoption is effected, or is intended to be effected, in pursuance of an adoption order or otherwise, or if he initiates or takes part in any negotiations of which the purpose or effect is the conclusion of any agreement or the making of any arrangement therefor, or if he causes another to do so.

PART II MAKING OF ADOPTION ORDERS

3. Power to make adoption orders

(1) Subject to the provisions of this Act, the court may, upon an application made in the prescribed manner, make an order (in this Act referred to as an adoption order) authorising the applicant to adopt an infant.

(2) An adoption order may be made on the application of two spouses authorising them jointly to adopt an infant.

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

4. Restrictions on making adoption orders

(1) An adoption order shall not be made in respect of an infant 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 infant; or

(b) has attained the age of twenty-one years and is a relative of the infant; or

(c) is the mother or father of the infant.

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

(3) Except as provided by sub-section (2) of section 3, an adoption order shall not be made authorising more than one person to adopt an infant.

(4) Subject to the provisions of section 5, an adoption order shall not be made—

(a) in any case except with the consent of every person or body of persons who is a parent or guardian of the infant or who is liable by virtue of any order or agreement to contribute to the maintenance of such infant;

(b) on the application of one of two spouses, except with the consent of the other spouse.

(5) An adoption order shall not be made in respect of any infant unless—

(a) the applicant and the infant reside in Zambia; and

(b) the infant has been continuously in the care and possession of the applicant for at least three consecutive months immediately preceding the date of the order; and

(c) the applicant has, at least three months before the date of the order, notified the Commissioner of his intention to apply for an adoption order in respect of the infant.

(6) Notwithstanding sub-section (5) an adoption order shall not be made in respect of a foreign infant—

(a) unless the infant resides in Zambia and the applicant is ordinarily resident in Zambia;

(b) unless the foreign infant has been continuously in the care and possession of the applicant for at least twelve consecutive months immediately preceding the date of the order;

(c) unless the applicant has at least three months before the period referred to in paragraph (b) notified the Commissioner of his intention to apply for an adoption order in respect of the foreign infant; and

(d) if the foreign infant is in Zambia under a temporary or visiting permit issued under the Immigration and Deportation Act.

[S 4(6) ins by s 3 of Act 24 of 1997.]

(7) Sub-sections (1), (2), (3) and (4) shall apply with the necessary modifications to a foreign infant adopted under sub-section (6).

[S 4(7) ins by s 3 of Act 24 of 1997.]

5. Consent to adoption

(1) The court may dispense with any consent required by paragraph (a) of sub-section (4) of section 4 if it is satisfied—

(a) in the case of a parent or guardian of the infant, that he has abandoned, neglected or persistently ill-treated the infant;

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

(c) in any case, that the person whose consent is required cannot be found or is incapable of giving his consent or that his consent is unreasonably withheld.

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

(3) The consent of any person to the making of an adoption order in pursuance of an application may be given, either unconditionally or subject to conditions with respect to the religious persuasion in which the infant is to be brought up, without knowing the identity of the applicant for the order, and where consent so given by any person is subsequently withdrawn on the ground only that he does not know the identity of the applicant, his consent shall be deemed for the purposes of this section to be unreasonably withheld.

(4) While an application for an adoption order in respect of an infant is pending in any court, any parent or guardian of the infant who has signified his consent to the making of an adoption order in pursuance of the application shall not be entitled, except with the

leave of the court, to remove the infant from the care and possession of the applicant, and in considering whether to grant or refuse such leave the court shall have regard to the welfare of the infant.

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6. Evidence of consent of parent or guardian

(1) Where any person whose consent to the making of an adoption order is required by paragraph (a) of sub-section (4) of section 4 does not attend in the proceedings for the purpose of giving such consent, then, subject to the provisions of sub-section (2), a document signifying his consent to the making of such an order shall, if the person in whose favour the order is to be made is named in the document or, where the identity of that person is not known to the consenting party, is distinguished therein in the prescribed manner, be admissible as evidence of such consent, whether executed before or after the commencement of the proceedings.

(2) Where any document mentioned in sub-section (1) is attested by a magistrate in the case of a document executed within Zambia, or is attested in accordance with the provisions of the Authentication of Documents Act in the case of a document executed outside Zambia, such document shall be admissible as provided in sub-section (1) without further proof of the signature of the person by whom it is executed, and for the purposes of this sub-section, a document purporting to be attested as aforesaid shall be deemed to be so attested, and to be executed and attested on the date and at the place specified therein, unless the contrary is proved.

(3) Any License issued under the provisions of section 40 of the Adoption Act, 1950, or section 23 of the Adoption of Children (Northern Ireland) Act, 1950, of the United Kingdom, authorising the care and possession of an infant to be transferred to any British subject resident in Zambia shall be admissible as evidence of the consent of the parent or guardian of the infant to an adoption order being made under the provisions of this Act in respect of such infant and such British subject.

(4) If the consent of the parent or guardian to an adoption has been dispensed with by the Licensing Authority under section 40 (2) of the Adoption Act, 1950, or under section 23 (3) of the Adoption of Children (Northern Ireland) Act, 1950, of the United Kingdom, such consent shall not be required by the court under this Act.

(5) A document signifying the consent of the mother of an infant shall not be admissible under the provisions of this section unless—

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

(b) the document is attested on that date in accordance with the provisions of sub-section (2).

[S 6 am by Act 32 of 1958.]

7. Functions of court as to adoption orders

(1) The court before making an adoption order shall be satisfied—

(a) that every person whose consent is necessary under the provisions of this Act, and whose consent is not dispensed with, has consented to and understands the nature and effect of the adoption order for which application is made, and in particular in the case of any parent understands that the effect of such adoption order will be permanently to deprive him or her of his or her parental rights;

(b) that the adoption order, if made, will be for the welfare of the infant, due consideration being for this purpose given to the wishes of the infant, having regard to the age and understanding of the infant.

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

8. Interim orders

(1) Subject to the provisions of this section, the court may, upon any application for an adoption order, postpone the determination of the application and make an interim order giving the custody of the infant to the applicant for a period not exceeding two years by way of a probationary period upon such terms as regards provision for the maintenance and education and supervision of the welfare of the infant and otherwise as the court may think fit.

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

(3) An interim order shall not be made in any case where the making of an adoption order would be unlawful by virtue of sub-section (5) of section 4.

(4) An interim order shall not be deemed to be an adoption order within the meaning of this Act.

9. Adoption orders in respect of children previously adopted

An adoption order or an interim order may be made in respect of an infant who has already been the subject of an adoption order, whether such order was made under the provisions of this or any other enactment, and, upon any application for such further adoption order, the adopter or adopters under the adoption order last previously made shall, if living, be deemed to be the parent or parents of the infant for all the purposes of this Act.

10. Jurisdiction and procedure

(1) The court having jurisdiction to make adoption orders under this Act shall be the High Court or, at the option of the applicant, but subject to any rules which may be made in that behalf, any Subordinate Court of the first class within the jurisdiction of which either the applicant or the infant resides at the date of the application for the adoption order.

(2) For the purpose of any application under this Act and subject to any rules which may be made in that behalf, the court shall appoint some person or body of persons to act as guardian *ad litem* of the infant upon the hearing of the application with the duty of safeguarding the interests of the infant before the court.

PART III REGISTRATION OF ADOPTION ORDERS

11. Adopted Children Register

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

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

(3) The Registrar-General shall cause an index of the Adopted Children Register to be made and kept in the Office of the Registrar-General and every person shall be entitled to search such index and to have a certified copy of any entry in such Register in all respects upon, and subject to the same terms, conditions and regulations as to payment

of fees or otherwise as are applicable under the provisions of the Births and Deaths Registration Act in respect of searches in registers kept in the Office of the Registrar-General, and in respect of the supply from such office of certified copies of entries in the Registers of Births and Deaths.

(4) The Registrar-General shall, in addition to the Adopted Children Register and the index thereof, keep such other registers and books, and make such entries therein, as may be necessary to record and make traceable the connection between any entry in the Register of Births which has been marked "Adopted" in pursuance of the provisions of this Act, and any corresponding entry in the Adopted Children Register, but the registers and books kept under the provisions of this sub-section shall not be, nor shall any index thereof be, open to public inspection and search, nor, except under an order by the High Court, shall the Registrar-General furnish any person with any information contained in or with any copy or extract from such registers or books.

12. Registrations of adoptions

(1) Every adoption order shall contain a direction to the Registrar-General to make in the Adopted Children Register an entry in the form set out in the Schedule, and, subject to the provisions of sub-section (2), shall specify the particulars to be entered under the headings in columns 2 to 6 of the Schedule.

(2) For the purposes of compliance with the requirements of sub-section (1)—

(a) where the precise date of the infant's birth is not proved to the satisfaction of the court, the court shall determine the probable date of the infant's birth and the date so determined shall be specified in the order as the date of birth of the infant;

(b) where the name or surname which the infant is to bear after the adoption differs from his original name or surname, the new name or surname shall be specified in the order instead of the original;

(c) and where the country of birth of the infant is not proved to the satisfaction of the court, the particulars of that country may, notwithstanding anything in sub-section (1), be omitted from the order and from the entry in the Adopted Children Register.

(3) Where upon any application to a court for an adoption order in respect of an infant, not being an infant who has previously been the subject of an adoption order made under the provisions of this Act or of the repealed Act, there is proved to the satisfaction of the court the identity of the infant with a child to whom an entry in the Register of Births relates, any adoption order made in pursuance of such application shall contain a direction to the Registrar-General to cause the entry in the Register of Births to be marked with the word "Adopted".

(4) Where an adoption order is made by a court in respect of an infant who has previously been the subject of an adoption order made under the provisions of this Act or of the repealed Act, the order shall contain a direction to the Registrar-General to cause the previous entry in the Adopted Children Register to be marked with the word "Re-adopted".

(5) Where an adoption order is made by a court, the prescribed officer of the court shall cause the order to be communicated in the prescribed manner to the Registrar-General, and upon receipt of such communication the Registrar-General shall cause compliance to be made with the directions contained in the order both in regard to marking any entry in the Register of Births with the word "Adopted" and in regard to making the appropriate entry in the Adopted Children Register.

13. Amendment of orders and rectification of Registers

(1) The court by which an adoption order has been made under this Act or under the repealed Act may, on the application of the adopter or of the adopted person, amend the order by the correction of any error in the particulars contained therein, and where an adoption order is so amended, the prescribed officer of the court shall cause the amendment to be communicated in the prescribed manner to the Registrar-General and any necessary correction of or addition to the Adopted Children Register shall be made accordingly.

(2) Where an adoption order was made before the commencement of this Act, the power of the court under sub-section (1) shall include power to amend the order—

(a) by the insertion of the country of the adopted person's birth;

(b) where the order does not specify a precise date as the date of the adopted person's birth, by the insertion of the date which appears to the court to be the date or probable date of his birth;

and the provisions of sub-section (1) shall have effect accordingly.

(3) The court by which an adoption order has been made under the repealed Act shall, on the application of the adopter or of the adopted person, request the Registrar-General to provide for the registration of the adoption in accordance with section 12, as if this Act had been in force at the time of the said adoption.

(4) Where an adoption order is quashed or an appeal against an adoption order allowed, the court which made the order shall give directions to the Registrar-General to cancel any marking of an entry in the Register of Births and any entry in the Adopted Children Register effected in pursuance of the order.

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

PART IV EFFECT OF ADOPTION ORDERS

14. Rights and duties of parents and capacity to marry

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

(2) In any case where two spouses are the adopters, the spouses shall, in respect of the matters mentioned in sub-section (1) and for the purpose of the jurisdiction of any court to make orders as to the custody and maintenance of and right of access to children, stand to each other and to the infant in the same relation as they would have stood if they had been the lawful father and mother of the infant and the infant shall stand to them respectively in the same relation as to a lawful father and mother respectively.

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

15. Intestacies, wills and settlements

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

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

(a) any reference, whether express or implied, to the child or children of the adopter shall, unless the contrary intention appears, be construed as, or as including, a reference to the adopted person;

(b) any reference, whether express or implied, to the child or children of the adopted person's natural parents or either of them shall, unless the contrary intention appears, be construed as not being, or as not including, a reference to the adopted person; and

(c) any reference, whether express or implied, to a person related to the adopted person in any degree shall, unless the contrary intention appears, be construed as a reference to the person who would be related to him in that degree if he were the child of the adopter born in lawful wedlock and were not the child of any other person.

(3) Where under any disposition any real or personal property or any interest in any such property is limited, whether subject to any preceding limitation or charge or not, in such a way that it would, apart from this section, devolve as nearly as the law permits, along with a dignity or title of honour, then, whether or not the disposition contains an express reference to the dignity or title of honour, and whether or not the property or some interest in the property may in some event become severed therefrom, nothing in this section shall operate to sever the property or any interest therein from the dignity or title of honour, but the property or interest shall devolve in all respects as if this section had not been enacted.

16. Industrial insurance, etc.

(1) For the purposes of any enactments for the time being in force relating to friendly societies, collecting societies and industrial insurance companies which enable such societies and companies to insure money to be paid for funeral expenses and which restrict the persons to whom money may be paid on the death of a child under the age of ten, an adopter shall be deemed to be the parent of the infant whom he is authorised to adopt under an adoption order.

(2) Where, before the making of an adoption order in respect of an infant, any such insurance as is mentioned in sub-section (1) has been effected by the natural parent of the infant, the rights and liabilities under the policy shall by virtue of the adoption order be transferred to the adopter, and the adopter shall, for the purposes of the enactments mentioned in sub-section (1), be treated as the person who took out the policy.

17. Affiliation orders, etc

(1) Where an adoption order is made in respect of an infant who is illegitimate, then, subject to the provisions of this section, any affiliation order in force with respect to the

infant, and any agreement whereby the father of the infant has undertaken to make payments specifically for the benefit of the infant, shall cease to have effect, but without prejudice to the recovery of any arrears which are due under the order or agreement at the date of the adoption order.

(2) Where an infant to whom any such order or agreement as is mentioned in sub-section (1) relates is adopted by his mother, and the mother is a single woman, the order or agreement shall not cease to have effect by virtue of sub-section (1) upon the making of the adoption order, but shall cease to have effect if she subsequently marries.

(3) Where an adoption order is made in respect of an infant committed to the care of a fit person by an order in force under the provisions of the Juveniles Act, such last-mentioned order shall cease to have effect.

PART V ADOPTION SOCIETIES

18. Restriction on making arrangements for adoption

(1) It shall not be lawful for any body of persons to make any arrangements for the adoption of an infant unless that body is a registered adoption society.

(2) If any person takes part in the management or control of a body of persons which exists wholly or partly for the purpose of making arrangements for the adoption of infants, and which is not a registered adoption society, he shall be guilty of an offence.

(3) In any proceedings under this section proof of things done or of words written, spoken or published, whether or not in the presence of any party to the proceedings, by any person taking part in the management or control of a body of persons or in making arrangements for the adoption of infants on behalf of that body shall be admissible as evidence of the purpose for which such body of persons exists.

19. Registration of adoption societies

(1) Subject to the following provisions of this part, where application is made in the prescribed manner by or on behalf of an adoption society to the Commissioner and there is furnished therewith the prescribed information relating to the activities of the society, the Commissioner shall register the society under the provisions of this part.

(2) The Commissioner may refuse to register an adoption society under this part if it appears—

(a) that the activities of the society are not controlled by a committee of members of the society who are responsible to the members of the society;

(b) that any person proposed to be employed, or employed, by the society for the purpose of making any arrangements for the adoption of infants on behalf of the society is not a fit and proper person to be so employed;

(c) that the number of competent persons proposed to be employed, or employed, by the society for the purpose aforesaid is, in the opinion of the Commissioner, insufficient having regard to the extent of the activities of the society in connection with that purpose; or

(d) that any person taking part in the management or control of the society or any member of the society has been convicted of an offence under the provisions of this Act or under the provisions of section 49 of the Juveniles Act.

(3) The Commissioner may at any time cancel the registration of an adoption society on any grounds which would entitle him to refuse an application for the registration of the society.

20. Procedure and right of appeal

(1) Where the Commissioner proposes to refuse an application for registration made to him by or on behalf of an adoption society or to cancel the registration of an adoption society, the Commissioner shall give to the society not less than fourteen days' notice in writing of his intention so to do.

(2) Every notice mentioned in sub-section (1) shall state the grounds on which the Commissioner intends to refuse the application or to cancel the registration, as the case may be, and shall contain an intimation that, if within fourteen days after the receipt of the notice the society inform the Commissioner in writing that they desire so to do, the Commissioner will, before refusing the application or cancelling the registration, as the case may be, give to the society an opportunity of causing representations to be made to the Commissioner by or on behalf of the society.

(3) If the Commissioner, after giving to the society an opportunity of causing such representations as are mentioned in sub-section (2) to be made, decides to refuse the application for registration or to cancel the registration, as the case may be, he shall give to the society notice in writing of his decision.

(4) Any adoption society aggrieved by the refusal of an application for registration, or by the cancellation of their registration, by the Commissioner may appeal to the High Court by a notice of appeal given within twenty-one days after notice in writing of the decision has been given to the society.

(5) Where the registration of an adoption society is cancelled by the Commissioner, such society shall, for the purposes of this Part, be deemed to be registered under this Part during the period within which an appeal against the cancellation may be brought under the provisions of this section and, if such an appeal is brought, until the determination or abandonment of such appeal.

21. Inspection of books, etc

(1) The Commissioner may at any time give notice to any registered adoption society or to any officer of such society requiring such society or officer to produce to the Commissioner or to any person duly nominated by him in that behalf such books, accounts and other documents relating to the performance by the society of the function of making arrangements for the adoption of infants as the Commissioner may consider necessary for the exercise of the powers conferred upon the Commissioner by sub-section (3) of section 19.

(2) Any notice given under the provisions of sub-section (1) may contain a requirement that any information to be furnished in accordance with such notice shall be verified by statutory declaration.

(3) Any person who fails to comply with the requirements of a notice given under the provisions of this section shall be guilty of an offence and shall be liable to a fine not exceeding one thousand five hundred penalty units or to imprisonment for a period not exceeding three months, or to both.

[S 21 am by Act 13 of 1994.]

22. Arrangements by adoption societies for adoption

(1) It shall not be lawful for a registered adoption society by whom arrangements are made for the adoption of an infant—

(a) to place the infant in the care and possession of a person resident in Zambia if an adoption order in respect of the infant could not lawfully be made in favour of that person;

(b) to place the infant in the care and possession of a person resident abroad unless the approval of the Minister has been granted in respect of the infant under the provisions of sub-section (2) of section 32.

(2) At any time within three months from the date on which an infant is delivered into the care and possession of a person resident in Zambia in pursuance of arrangements made by a registered adoption society for the adoption of such infant by such person—

(a) such person may give notice in writing to the society of his intention not to adopt the infant; or

(b) the society may cause notice in writing to be given to such person of their intention not to allow the infant to remain in his care and possession.

(3) If, at the expiration of the period of three months mentioned in sub-section (2), no such notice as is mentioned in sub-section (2) has been given, the person into whose care and possession the infant was delivered shall, within six months after the expiration of such period, either—

(a) apply to the court for an adoption order in respect of the infant; or

(b) give notice in writing to the society of his intention not to apply for such an order.

(4) Where any notice is given to a registered adoption society by any person, or by such a society to any person under the provisions of sub-section (2) or (3), or where an application for an adoption order made by any person pursuant to sub-section (3) is refused by the court, that person shall, within seven days after the date on which the notice was given or the application refused, as the case may be, cause the infant to be returned to the society, and the society shall receive the infant accordingly:

Provided that it shall be sufficient compliance with the requirements of this sub-section if the infant is delivered by the said person to, and is received by, a suitable person nominated for the purpose by the society.

(5) Any person who contravenes the provisions of this section shall be guilty of an offence and the court by which an offender is convicted may order any infant in respect of whom the offence is committed to be returned to his parents or guardians or the registered adoption society.

[S 22 am by GN 276 of 1964; SI 53 of 1965.]

PART VI SUPERVISION BY THE COMMISSIONER

23. Application of Part VI

(1) Subject to the provisions of section 24, this Part shall have effect where—

(a) arrangements are made for the placing of an infant who has not attained the age of sixteen years in the care and possession of a person who is resident in Zambia and is not the parent or guardian or a relative of the infant; and

(b) any person, not being the parent or guardian of the infant or the person in whose care and possession the infant is to be placed, participates in the making of the arrangements.

(2) For the purposes of this Part, a person shall be deemed to participate in the making of arrangements for the placing of an infant in the care and possession of another person—

(a) if he enters into or makes any agreement or arrangement for, or for facilitating, the placing of the infant in the care and possession of that other person; or

(b) if he initiates or takes part in any negotiations of which the purpose or effect is the conclusion of any agreement or the making of any arrangement therefor;

or if he causes another to do so.

(3) The person in whose care and possession an infant is or is to be placed in pursuance of such arrangements as are mentioned in this section is in this Part referred to as the custodian of the infant.

24. Exemptions from Part VI

The provisions of this Part shall not have effect where possession of an infant has been, is, or is proposed to be taken—

(a) by any person for a purely temporary purpose;

(b) by a school, hospital, convalescent home or other similar institution;

(c) by an institution to which the infant has been committed under the provisions of the Mental Disorders Act; or

(d) by any reformatory, approved school, house or home approved under the provisions of the Juveniles Act for the reception of juveniles.

25. Duration of application of Part VI

Where this Part has taken effect in relation to an infant, it shall cease to have effect—

(a) if an adoption order or an interim order is made in respect of such infant, upon the making of such order;

(b) if no such order has been made, on the date on which he attains the age of eighteen years or ceases to live apart from his parents with the person with whom he was living when he attained the age of sixteen years, whichever first occurs.

26. Notification of taking possession of an infant

(1) Not less than seven days before possession is taken of an infant pursuant to any arrangements by virtue of which this Part has effect in relation to the infant, any person who participates in the arrangements, not being the parent or guardian of the infant or the custodian of the infant, shall give notice in writing of the arrangements to the Commissioner.

(2) The notice required by this section shall state the name and sex of the infant, the date and place of the infant's birth, and the name and address of the custodian of the infant.

(3) Any person who fails to give any notice required by the provisions of sub-section (1) shall be guilty of an offence.

27. Notification of change of residence, etc.

(1) Where the custodian of an infant in relation to whom this Part has effect changes his residence while the infant is in his care and possession, he shall give to the Commissioner notice of the change at least seven days before doing so:

Provided that, where an immediate change of residence is necessitated by any sudden emergency, the provisions of this sub-section shall be deemed to have been complied with if any notice required thereunder is given at any time within forty-eight hours after the change of residence.

(2) If an infant in relation to whom this Part has effect dies while in the care and possession of his custodian, the custodian shall, within twenty-four hours of the death, give notice in writing of the death to the Commissioner and to the coroner of the District in which the body of the infant lies.

(3) Any person who fails to give any notice required by the provisions of this section shall be guilty of an offence.

28. Summary order for removal of infant

(1) If an infant in relation to whom this Part has effect—

(a) is about to be received or is being kept by any person in any premises which are overcrowded, insanitary or dangerous, or in an environment which is detrimental to the infant; or

(b) is in the care and possession of a custodian who, by reason of old age, infirmity, ill- health, ignorance, negligence, inebriety, immorality or criminal conduct, or for any other reason, is unfit to have care of the infant;

a Subordinate Court may, on an application made by or on behalf of the Commissioner, make an order for the removal of the infant to a place of safety until he can be restored to his parents or guardian or until other arrangements can be made for him.

(2) Upon proof that there is imminent danger to the health or well-being of the infant concerned, any magistrate, acting, if he deems it necessary, ex parte, may exercise the powers conferred upon a Subordinate Court by sub-section (1), upon the application of a juveniles inspector.

(3) Any order made under the provisions of this section may be enforced by a juveniles inspector, and any person who refuses to comply with such an order upon its being produced, or who obstructs a juveniles inspector in the enforcement of such order, shall be guilty of an offence.

29. Removal of infant in respect of offences

Where any person is convicted of an offence under the provisions of this Part, the court may order any infant in respect of whom the offence was committed to be removed to a place of safety until he can be restored to his parents or guardian or until other arrangements can be made for him.

PART VII MISCELLANEOUS AND GENERAL

30. Prohibition of certain payments

(1) It shall not be lawful for an adopter, or for a parent or guardian of an infant, to receive, except with the sanction of the court, any payment or other reward in consideration of the adoption of an infant under the provisions of this Act, or for any person to make or give or agree to make or give to an adopter, parent or guardian any payment or reward, the receipt of which is prohibited by this sub-section.

(2) Any person who, in connection with arrangements by virtue of which Part VI has effect in relation to an infant, gives or receives, or agrees to give or receive, any remuneration or reward whatsoever shall be guilty of an offence.

(3) Subject to the provisions of sub-section (4), any person who makes arrangements for the adoption of an infant and receives or makes, or agrees to receive or make, any payment or reward whatsoever in connection with the making of the arrangements shall be guilty of an offence.

(4) The provisions of sub-section (3) shall not apply—

(a) to any payments the making or receipt of which is sanctioned by the court to which an application for an adoption order in respect of an infant is made;

(b) to any payments the making or receipt of which is authorised by the Commissioner under the provisions of sub-section (3) of section 33;

(c) to any payments made by or on behalf of a registered adoption society in respect of the maintenance of an infant who has been placed at the disposition of the society;

(d) to any payments made to a registered adoption society by the parent or guardian of an infant or by any person in respect of the maintenance of the infant so long as the infant is not in the care and possession of a person who has adopted or proposes to adopt him, whether under an adoption order or otherwise, being payments made weekly and at a rate not exceeding such rate as may be prescribed.

31. Restriction upon advertisements

(1) It shall not be lawful for any advertisement to be published indicating—

(a) that the parent or guardian of an infant desires to cause the infant to be adopted;

(b) that a person desires to adopt an infant; or

(c) that any person, not being a registered adoption society, is willing to make arrangements for the adoption of an infant.

(2) Any person who causes to be published or who knowingly publishes any advertisement in contravention of the provisions of sub-section (1) shall be guilty of an offence and shall be liable to a fine not exceeding one thousand five hundred penalty units.

[S 31 am by Act 13 of 1994.]

32. Restriction on sending infants abroad

(1) It shall not be lawful for any person in connection with any arrangements made for the adoption of an infant who is resident in Zambia to permit or procure the care and possession of the infant to be transferred to any person who is not the guardian or a relative of the infant and who is resident abroad.

(2) It shall not be lawful for any person in connection with any such arrangements as are mentioned in sub-section (1) to permit or procure the care and possession of an infant as mentioned in sub-section (1) to be transferred to a person who is resident abroad, and who is not the guardian or a relative of the infant, unless the approval of the Minister has been granted in respect thereof.

(3) Any person who contravenes the provisions of this section shall be guilty of an offence, and the court by which such person is convicted may order any infant in respect of whom the offence was committed to be returned to his parents or guardian.

[S 32 am by GN 276 of 1964; SI 53 of 1965.]

33. License to send infant abroad for adoption

(1) The Commissioner may grant a License in the prescribed form, and subject to such conditions and restrictions as he may think fit, authorising the care and possession of an infant for whose adoption arrangements have been made to be transferred to a person resident abroad, but, subject to the provisions of this section, no such License shall be granted unless the Commissioner—

(a) is satisfied that the application is made by or with the consent of every person or body of persons who is a parent or guardian of the infant in question, or who has the actual custody of the infant, or who is liable to contribute to the support of the infant; and

(b) is satisfied by the report of a Zambian consular officer, or any other person who appears to the Commissioner to be trustworthy, that the person to whom the care and possession of the infant is proposed to be transferred is a suitable person to be trusted therewith, and that the transfer is likely to be for the welfare of the infant, due consideration being for this purpose given to the wishes of the infant, having regard to the age and understanding of the infant.

(2) The Commissioner may dispense with any consent required by paragraph (a) of sub-section (1) if satisfied that the person whose consent is to be dispensed with has abandoned or deserted the infant or cannot be found or is incapable of giving such consent, or, being a person liable to contribute to the support of the infant, either has persistently neglected or refused to contribute to such support or is a person whose consent ought, in the opinion of the Commissioner and in all the circumstances of the case, to be dispensed with.

(3) Where the Commissioner grants a License under the provisions of this section, he may authorise the making or receipt by any person of any payments in consideration of the transfer of the care and possession of the infant in respect of whom the License is granted.

[S 33 am by SI 53 of 1965.]

34. Service of notices

Any notice under this Act may be served by registered post, and such service shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

35. Offences by bodies corporate

Where any offence under the provisions of Part V, VI or VII committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, member of the committee, secretary or other officer of the body, he, as well as the body, shall be deemed to be guilty of such offence and shall be liable to be proceeded against and punished accordingly.

36. Penalties

Any person who is guilty of an offence under the provisions of this Act shall, unless some other penalty is specifically provided therefor, be liable to a fine not exceeding five hundred thousand penalty units or to imprisonment for a period not exceeding six months, or to both.

[S 36 am by Act 13 of 1994, s 4 of Act 24 of 1997.]

37. Regulations

The Minister may, by statutory instrument, make regulations—

(a) prescribing the manner in which application for registration shall be made by an adoption society;

(b) providing for the conduct of negotiations entered into by or on behalf of any registered adoption society with persons who, having the care and possession of infants, are desirous of causing such infants to be adopted;

(c) prescribing the maximum rate at which payments may be made under the provisions of paragraph (d) of sub-section (4) of section 30;

(d) with respect to the application for and grant of Licenses under the provisions of section 33, and prescribing the form of application for such Licenses;

(e) prescribing anything to be prescribed under this Act.

[S 37 am by GN 276 of 1964.]

38. Rules

The High Court may, by statutory instrument, make rules—

(a) prescribing the manner in which applications shall be made for adoption orders;

(b) for the purposes of section 10;

(c) prescribing the officers of courts who shall be responsible for communicating adoption orders to the Registrar-General;

(d) dealing with all matters of court procedure and all matters incidental thereto arising out of this Act and for carrying this Act into effect, and such rules may provide for applications for adoption orders being heard and determined otherwise than in open court and, where applications are made to a Subordinate Court of the first class, for the hearing and determination thereof in a juvenile court as defined in the Juveniles Act.

SCHEDULE

[Sch subs by s 5 of Act 24 of 1997.]

[Section 12]

FORM OF ENTRY IN ADOPTED CHILDREN REGISTER

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No. of entry

Date and country of birth of parents and child

Name and surname of child

Sex of child

Name, address, occupation and nationality of adoptor(s)

Status of child

District where adoption order is made

Town where adoption is made and description of court

Date of entry

Signature of officer deputed by Registrar- General to attest to entry