



Jersey

ADOPTION (AMENDMENT No. 7) (JERSEY) LAW 2015

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A LAW to amend further the Adoption (Jersey) Law 1961

Adopted by the States 23rd June 2015

Sanctioned by Order of Her Majesty in Council 8th October 2015

Registered by the Royal Court 16th October 2015

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 Interpretation

In this Law a reference to an Article by number only is to the Article of that number in the Adoption (Jersey) Law 1961¹ (“the Law”).

2 Article 1 amended, and references to “infant” etc. substituted

(1) In Article 1(1) –

(a) in the definition “approved adoption society” –

(i) for sub-paragraph (b) there shall be substituted –

“(b) an adoption agency within the meaning given to that expression by section 2 of the Adoption and Children Act 2002 (c. 38) of the United Kingdom; and”,

(ii) in sub-paragraph (c) for the word “Committee” there shall be substituted the word “Department”;

(b) before the definition “civil partnership couple” there shall be inserted the following definition –

“ ‘child’ means a person under the age of majority, but does not include a person who has been married, or who is or has been a civil partner;”;

(c) the definition “infant” shall be deleted.

(2) Throughout the Law (including the headings to Articles of the Law) –

- (a) for the words “an infant” or “an infant’s” in each place in which they occur there shall be substituted respectively the words “a child” or “a child’s”;
- (b) for the word “infant” in each place in which it occurs without an indefinite article there shall be substituted the word “child”;
- (c) for the word “infants” in each place in which it occurs there shall be substituted the word “children”; and
- (d) for the words “the infant’s” in each place in which they occur there shall be substituted the words “the child’s”.

3 Article 3 substituted

For Article 3 there shall be substituted the following Articles –

“3 Welfare of child to be paramount

- (1) In reaching any decision relating to the adoption of a child, the paramount consideration of the Court, the Minister and the Adoption Service must be the welfare of the child throughout his or her life.
- (2) Without derogation from paragraph (1) or from the specific provisions as to agreement by a child in Article 3A, the Court, the Minister and the Adoption Service shall, in reaching any decision relating to the adoption of a child, have regard to all the circumstances of the case and shall in particular –
 - (a) so far as practicable, ascertain the wishes and feelings of the child regarding a decision or proposed decision relating to his or her adoption; and
 - (b) give due consideration to the child’s wishes and feelings, having regard to his or her age and understanding.
- (3) The Minister may by Order prescribe other matters, in addition to those mentioned in paragraph (2) and in all cases without derogation from paragraph (1), to which the Court, the Minister and the Adoption Service must have regard in reaching any decision relating to the adoption of a child.

3A Agreement of child having sufficient understanding

- (1) This Article applies in relation to children aged 14 or over.
- (2) A child in relation to whom this Article applies shall, subject to paragraph (5), be deemed to have sufficient understanding to give his or her agreement in accordance with paragraphs (3) and (4).
- (3) Where the Court proposes to make an order authorizing the adoption of such a child, the order shall not be made unless the Court is satisfied that the child freely, and with full understanding of what is involved, agrees to the adoption.

- (4) For the purposes of paragraph (3), the child's agreement must be given in writing or be evidenced by writing.
- (5) If in all the circumstances the Court considers that a child in relation to whom this Article would otherwise apply is incapable of giving agreement, the Court may proceed to make the proposed order without seeking to obtain such agreement.
- (6) If the Court proceeds to make an order without agreement in pursuance of paragraph (5), the Court shall record that it has done so and its reasons for so doing.
- (7) The Minister may by Order amend paragraph (1) for the purpose of specifying a different age.”.

4 Article 10 amended

In Article 10 –

- (a) for paragraph (1)(b) there shall be substituted the following paragraph –
 - “(b) subject to paragraph (1A), by 2 persons jointly, at least one of whom is domiciled in the British Islands,”;
- (b) for the words “2 spouses, or both partners of a civil partnership,” there shall be substituted the words “2 persons jointly,”;
- (c) after paragraph (1) there shall be inserted the following paragraphs –
 - “(1A) A joint application may be made only where the 2 persons in question are –
 - (a) married to each other;
 - (b) in a civil partnership with each other; or
 - (c) otherwise living as partners in an enduring family relationship (and for this purpose it is irrelevant whether the 2 persons are of different genders or the same gender).
 - (1B) Sub-paragraph (1A)(c) does not include 2 persons one of whom is related to the other as a parent, grandparent, sister, brother, aunt or uncle, and relationship for this purpose –
 - (a) means relationship of full or half blood or, in the case of an adopted person, such a relationship as would exist except for the adoption; and
 - (b) includes the relationship of a child with his or her adoptive or former adoptive parents, but does not include any other adoptive relationship.”.

5 Article 10A inserted

After Article 10 there shall be inserted the following –

“10A Consent of spouse or civil partner of adoptive parent

- (1) Where, on the application of a person made in accordance with Article 10(1)(a), the Court proposes to make an order authorizing the adoption of a child, the order shall not be made unless the Court is satisfied that –
 - (a) the spouse or civil partner of the person making the application freely, and with full understanding of what is involved, agrees to the making of the order;
 - (b) the spouse’s or civil partner’s agreement to the making of the order should be dispensed with on a ground specified in paragraph (2).
- (2) The grounds mentioned in paragraph (1)(b) are that –
 - (a) the spouse or civil partner cannot be found;
 - (b) the spouse or civil partner is incapable of giving agreement;
 - (c) the spouse or civil partner is unreasonably withholding agreement; or
 - (d) the welfare of the child, as the paramount consideration, justifies the making of the order without the agreement of the spouse or civil partner.
- (3) For the purposes of paragraph (1)(a), the spouse’s or civil partner’s agreement must be given in writing or be evidenced by writing.”.

6 Article 30 amended

In Article 30 –

- (a) in paragraph (1) for the words “Subject to this Article,” there shall be substituted the words “Subject to paragraph (3),”;
- (b) for paragraphs (3) and (4) there shall be substituted the following paragraphs –
 - “(3) Where an application for information is made under paragraph (1) –
 - (a) where the applicant was adopted prior to 1st January 2007, paragraph (4) shall apply;
 - (b) in any other case, paragraph (5) shall apply.
 - (4) Where this paragraph applies –
 - (a) it shall be the duty of the Minister to provide counselling services to the applicant, if requested by the applicant to do so; and
 - (b) the Superintendent Registrar shall not supply the information unless the applicant has attended a counselling interview so provided.
 - (5) Where this paragraph applies –
 - (a) before supplying any information to the applicant, the Superintendent Registrar shall inform the applicant that

- counselling services provided by the Minister are available to the applicant; and
- (b) it shall be the duty of the Minister to provide such services to the applicant if requested by the applicant to do so.”.

7 Part 4A inserted

After Part 4 there shall be inserted the following –

“PART 4A
RESTRICTIONS ON DISCLOSURE OF INFORMATION RELATING
TO ADOPTION”

32A Restriction on disclosure of certain information

- (1) In this Part, ‘restricted information’ means information about a person (the ‘subject’) of a description to which either paragraph (4) or paragraph (5) applies.
- (2) Restricted information of a description to which paragraph (4) applies shall not be disclosed to any person other than the subject, except as expressly permitted by this Part.
- (3) Subject to paragraph (9), restricted information of a description to which paragraph (5) applies shall not be disclosed to any person except as expressly permitted by this Part.
- (4) This paragraph applies to information kept by the Adoption Service –
- (a) which relates to an adopted person or any other person; and
- (b) which is, or includes, identifying information.
- (5) This paragraph applies to information kept by the Adoption Service –
- (a) in or in relation to an entry in respect of an adopted person in the Adopted Children Register; or
- (b) which would enable an adopted person to obtain a certified copy of the record of his or her birth (whether the Adoption Agency obtained the information from the Superintendent Registrar, or otherwise).
- (6) For the purposes of paragraph (4), ‘identifying information’ in relation to any person means information by which, whether taken on its own or together with any other information, identifies that person or enables that person to be identified.
- (7) The Adoption Service may, for the proper exercise of any of its functions, disclose information which is not restricted information to any person, in accordance with such arrangements as the Minister may direct.

- (8) The Minister may by Order authorize or require the Adoption Service to disclose restricted information to a person who is not the subject.
- (9) The prohibitions in paragraphs (2) and (3) shall not prejudice any right to disclosure of information conferred on a person by Article 30 or by any other enactment.
- (10) Where a person discloses restricted information in contravention of the prohibition in paragraph (2) or (3), the person is guilty of an offence and liable on conviction to a fine not exceeding level 4 on the standard scale.

32B Right of adopted person to obtain documents from Court

- (1) An adopted person may, by an application made for the purpose in the prescribed form, apply to the Court for copies of any documents relating to his or her adoption, including Orders of the Court, such as may be prescribed.
- (2) On an application duly made under paragraph (1) the Court shall, as soon as reasonably practicable, supply to the adopted person (subject to paragraph (3)) copies of the documents requested.
- (3) A document shall not be supplied under paragraph (2) if or to the extent that it contains restricted information about any person other than the applicant, unless restricted information of a prescribed description is redacted from the document so that it cannot be read or otherwise retrieved.

32C Disclosure in certain circumstances of restricted information about adults

- (1) This Article applies where a person makes a request to the Adoption Service, by an application in such form as the Adoption Service may publish for the purpose, for disclosure to him or her of restricted information about –
 - (a) himself or herself; or
 - (b) another person, who is not a child at the date on which the application is made.
- (2) The Adoption Service is not required to proceed with an application under paragraph (1) unless, having regard to all the circumstances and in particular to –
 - (a) the welfare of the adopted person concerned; and
 - (b) any further matters such as may be prescribed by the Minister by Order,it is considered appropriate to do so.
- (3) If the Adoption Service does proceed with the application it must take such steps as are reasonable to obtain the subject's views as to the proposed disclosure.

- (4) If, having regard to all the circumstances and in particular –
- (a) the welfare of the adopted person concerned;
 - (b) any views obtained under paragraph (3); and
 - (c) any further matters such as may be prescribed by the Minister by Order,
- it is considered appropriate to do so, and subject to Article 32E, the Adoption Service may disclose the information requested.
- (5) For the avoidance of doubt this Article does not apply –
- (a) to a request for information under any other provisions as to disclosure in or under this Law; nor
 - (b) to a request for information which the Adoption Service may be authorized or required to provide by any Order made under Article 42(2)(f).

32D Disclosure in certain circumstances of restricted information about children

- (1) This Article applies where a person makes a request to the Adoption Service, by an application in such form as the Adoption Service may publish for the purpose, for disclosure to him or her of restricted information about another person (the ‘subject’) who is a child at the date on which the application is made.
- (2) The Adoption Service is not required to proceed with an application under paragraph (1) unless it is considered appropriate to do so, having regard to all the circumstances and in particular to –
- (a) the welfare of any adopted person concerned; and
 - (b) any further matters such as may be prescribed by the Minister by Order.
- (3) If the Adoption Service does proceed with the application it must take such steps as are reasonable to obtain the views of the following persons as to the proposed disclosure, namely –
- (a) in a case where the subject is still a child –
 - (i) any parent or guardian of the subject, and
 - (ii) the subject, if the Adoption Service considers it appropriate to do so having regard to the subject’s age, understanding and all other circumstances;
 - (b) in a case where the subject has attained the age of 18 years, the subject.
- (4) Subject to Article 32E, the Adoption Service may disclose the information requested if it is considered appropriate to do so, having regard to all the circumstances and in particular to –
- (a) the welfare of any child (which shall be the paramount consideration);

- (b) any views obtained under paragraph (3); and
- (c) any further matters such as may be prescribed by the Minister by Order.

(5) For the avoidance of doubt this Article does not apply –

- (a) to a request for information under any other provisions as to disclosure in or under this Law; nor
- (b) to a request for information which the Adoption Service may be authorized or required to provide by any Order made under Article 42(2)(f).

32E Counselling services to be provided

- (1) Before supplying any information to an applicant under this Part, the Adoption Service shall inform the applicant that counselling services provided by the Minister are available to the applicant.
- (2) Where an adopted person applies for information under this Part it shall be the duty of the Minister to provide counselling services for that person if requested by him or her to do so.”

8 Article 42 amended

In paragraph (2) of Article 42 –

- (a) at the end of sub-paragraph (b) the word “and” shall be deleted; and
- (b) at the end of sub-paragraph (c) there shall be added –
 - “(d) the information which the Adoption Service must keep in relation to an adoption and the form and manner in which it must be kept;
 - (e) the transfer of information held by the Adoption Service to any other approved adoption society;
 - (f) the circumstances in which the Adoption Service may be authorized or required to disclose restricted information to a person who is not an adopted person; and
 - (g) the amounts of any fees, and the circumstances in which any fees are payable, in relation to requests for disclosure of information under Part 4A.”

9 Citation

This Law may be cited as the Adoption (Amendment No. 7) (Jersey) Law 2015.

M.N. DE LA HAYE, O.B.E.

Greffier of the States

¹ *chapter 12.050*