

CAYMAN ISLANDS



ADOPTION ACT, 2024

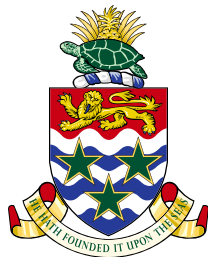
(Act 30 of 2024)

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CAYMAN ISLANDS

(Act 30 of 2024)

I Assent,

**Jane Owen**
Governor

Date: 9th January, 2025

ADOPTION ACT, 2024

(Act 30 of 2024)

AN ACT TO REPEAL AND REPLACE THE ADOPTION OF CHILDREN ACT, 2013 AND THE ADOPTION OF CHILDREN ACT (2021 REVISION); TO CLARIFY THE PROCEDURE REGARDING ADOPTIONS IN THE ISLANDS; TO PROVIDE FOR INTERCOUNTRY ADOPTIONS; AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

PART 1 - PRELIMINARY**Short title and commencement**

1. (1) This Act may be cited as the Adoption Act, 2024.
- (2) This Act comes into force on the date appointed by Order made by the Cabinet and different dates may be appointed for different provisions of this Act and in relation to different matters.

Interpretation

2. (1) In this Act —
“**abuse**”, in relation to a child, has the meaning assigned by section 2(1) of the *Children Act (2012 Revision)*;



“Adopted Children and Young Persons Register” means the register established at section 63;

“adoptee” means a child or young person who is adopted;

“adopter” means a person who has been granted an adoption order;

“adoption order” means an order under this Act authorizing the adoption of a child or young person;

“applicant”, unless the context otherwise requires, means a person who applies for an adoption order;

“Board” means the Adoption Board of the Cayman Islands established under section 5;

“caregiver” means —

- (a) a relative of a child;
- (b) a departmental foster parent of a child; or
- (c) a residential care home;

“Caymanian” means a person who possesses Caymanian status under the repealed *Immigration Act (2015 Revision)* or any earlier law providing for the same or similar rights, and includes a person who acquired that status under Part 5 of the *Immigration (Transition) Act (2022 Revision)*;

“central authority” —

- (a) means a central authority referred to in the Convention; and
- (b) in relation to the Islands, has the meaning given by section 4;

“Chief Medical Officer” has the meaning assigned by section 2 of the *Public Health Act (2021 Revision)*;

“child”, except where used to express a relationship, and subject to subsection (2), has the meaning assigned by section 2(1) of the *Children Act (2012 Revision)*;

“civil partner” has the meaning assigned by section 2 of the *Civil Partnership Act, 2020*;

“civil partnership” has the meaning assigned by section 2 of the *Civil Partnership Act, 2020*;

“competent authority” means a competent authority referred to under the Convention;

“Convention” means —

- (a) in relation to the Islands, the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption concluded at The Hague on 29th May, 1993 as extended to the Islands; and



(b) in relation to a place other than the Islands, the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption concluded at The Hague on 29th May, 1993 as applied to that place;

“**counselor**” means a person qualified to practise as such and registered and licensed to practise under the *Health Practice Act (2021 Revision)*;

“**Court**” means the Grand Court of the Cayman Islands;

“**Court of Appeal**” means the Cayman Islands Court of Appeal;

“**de facto adoption**” has the meaning assigned by section 30;

“**Department**” means the Department of Children and Family Services;

“**departmental foster parent**” has the meaning assigned by section 2 of the *Children Act (2012 Revision)*;

“**Director**” means the Director of the Department;

“**Director of Customs and Border Control**” has the meaning assigned to the word “**Director**” by section 2 of the *Customs and Border Control Act (2024 Revision)*;

“**Director of Workforce, Opportunities and Residency Cayman Office**” has the meaning assigned to the words “**Director of WORC**” by section 2 of the *Immigration (Transition) Act (2022 Revision)*;

“**father**” means the natural father;

“**guardian**”, in relation to a child, has the meaning given to the words “**guardian of a child**” in section 2(1) of the *Children Act (2012 Revision)*;

“**guardian ad litem**” means the person so appointed under section 43 of the *Children Act (2012 Revision)*;

“**health and human services**” means services in the disciplines or fields of counselling, psychiatry, psychology, social work or therapy;

“**home study assessment**” means an assessment of an applicant and the applicant’s home environment undertaken by the Department for the purposes of determining the applicant’s suitability to become an adopter and the suitability of the applicant’s home environment;

“**home study report**” means the report prepared by the Department based on a home study assessment;

“**legal and ordinary residence**” has the meaning assigned by section 2 of the *Immigration (Transition) Act (2022 Revision)*;

“**marriage**” has the meaning assigned by section 2 of the *Marriage Act (2010 Revision)*;

“**medical doctor**” means a person qualified to practise as such and registered and licensed to practise under the *Health Practice Act (2021 Revision)*;

“**member**”, in relation to the Board, means a member of the Board;

“**Minister**” means the member of Cabinet charged with responsibility for social development;

“**Ministry**” means the Ministry with responsibility for social development;

“**mother**” means the natural mother;

“**natural parent**” means a mother or a father;

“**neglect**”, in relation to a child, has the meaning assigned by section 2(1) of the *Children Act (2012 Revision)*;

“**parent**” in relation to a father or mother, as the circumstances require, includes an adoptive father or mother;

“**parental responsibility**” has the meaning assigned by section 5 of the *Children Act (2012 Revision)*;

“**police officer**” has the meaning assigned by section 2 of the *Police Act (2021 Revision)*;

“**registered and licensed practitioner**” means a person qualified to practise any of the professions specified in the *Health Practice Act (2021 Revision)* and registered and licensed to practise under that Act;

“**Registrar-General**” has the meaning assigned by section 2 of the *Births and Deaths Registration Act (2021 Revision)*;

“**relative**”, in relation to a child or young person —

(a) means a grandparent, brother, sister, aunt or uncle, whether of the full blood or half blood or by affinity, by marriage or civil partnership; and

(b) includes —

(i) further to section 3(2) of the *Status of Children Act, 2003*, a person referred to in paragraph (a) in relation to the child by virtue of an adoption order; and

(ii) a person referred to in paragraph (a) in relation to a young person by virtue of an adoption order;

“**repealed Acts**” means the *Adoption of Children Act, 2013* and the *Adoption of Children Act (2021 Revision)*;

“**resident**”, in relation to the Islands, means a person whose legal and ordinary residence is in the Islands;

“**Rules Committee**” means the Rules Committee established under section 19 of the *Grand Court Act (2015 Revision)*;

“**Rules of Court**” means, as the context requires —

(a) the Rules of Court made by the Rules Committee of the Grand Court referred to in section 19 of the *Grand Court Act (2015 Revision)*; or

(b) the Rules of Court made by the Rules Committee of the Court of Appeal referred to in section 35 of the *Court of Appeal Act (2023 Revision)*;



“**safeguard**”, in relation to a child, has the meaning assigned by section 2(1) of the *Children Act (2012 Revision)*;

“**specified offence**” means an offence set out in Schedule 1;

“**spouse**” means the male or female party to a marriage;

“**supervision report**” means a report containing information and observations of the placement of a child during —

(a) the interim placement period referred to in section 19; or

(b) any other period as the Court accepts or directs,

in order to determine the suitability of a person to be an adopter and the capability of the person to assume responsibility as a parent;

“**therapist**” means a person qualified to practise as such and registered and licensed to practise under the *Health Practice Act (2021 Revision)*;

“**young person**” means a person who has attained the age of eighteen years but who has not yet attained the age of twenty-five years; and

“**youth adoption order**” means an order authorizing the adoption of a young person.

- (2) References in this Act to a child, in connection with any proceedings (whether or not concluded) for adoption include a person who has attained the age of eighteen years before the proceedings are concluded.
- (3) References in this Act to a member of a person’s immediate family, means the person’s parent, brother, sister and child.

Adoption principles

3. (1) In making a decision about the placement or adoption of a child under this Act, other than in the case of intercountry adoptions, the Board, the Court and any other relevant person shall act in accordance with the following principles —
 - (a) the best interests of the child shall be the paramount consideration;
 - (b) priority shall be given to the placement and adoption of children who are resident in the Islands, where it is reasonable to do so; and
 - (c) there should be an opportunity for openness and transparency in adoption, but choice of anonymity of a natural parent, adopter and child shall be respected.
- (2) In determining the best interests of a child under subsection (1), the decision-maker shall have regard to the following matters —
 - (a) the child’s safety;
 - (b) the child’s —
 - (i) maturity;
 - (ii) level of understanding; and

- (iii) other characteristics which the decision-maker considers relevant;
 - (c) the child's physical and emotional needs, including any special need for care and treatment, and the child's level of development;
 - (d) the child's need for continuing parental care and guidance, taking into account the importance of continuity in the child's care and the possible effect on the child of disruption of that continuity;
 - (e) any views or preferences expressed by the child;
 - (f) the relationship that exists between the child and each person to whom the custody of the child is or might be entrusted;
 - (g) the capacity of the parties involved to properly discharge parental obligations;
 - (h) continuity of the child's cultural or religious background;
 - (i) the relationship that the child has with relatives;
 - (j) the effect on the child if there is delay in making a decision; and
 - (k) any other rights of the child under the United Nations Convention on the Rights of the Child, as extended to the Islands.
- (3) For the purpose of subsections (1) and (2) —
- (a) references to relationships are not confined to legal relationships; and
 - (b) references to a relative, in relation to a child, includes the child's mother and father.
- (4) The Court shall always consider all options available to it under this Act or any other law.

Application of the Convention

4. (1) The Board, the Court and any other relevant person shall have regard to the Convention in respect of matters pertaining to the intercountry adoption of children.
- (2) The Ministry is the central authority for the Islands to discharge the duties which are imposed by the Convention on a central authority and for the purposes of this Act.
- (3) The Minister shall carry out the functions of the central authority for the Islands under this Act whether acting alone or through a person designated by the Minister to act for any specific purpose.
- (4) The Department and the Board are the competent authorities for the purposes of the Convention and this Act.



PART 2 - ADOPTION BOARD

The Adoption Board of the Cayman Islands

5. The Adoption Board of the Cayman Islands is continued under this Act.

Duties of the Board

6. The duties of the Board are —

- (a) to make arrangements for the adoption of children in accordance with this Act and any applicable regulations;
- (b) to request the undertaking of home assessments and the submission of home study reports and to request supervision reports by the Department, with a view to making recommendations on an applicant's suitability to adopt;
- (c) to submit to the Court, as required, the Board's recommendations and any other documents or information relating to applications for adoption orders;
- (d) where required by the Court, to enquire into and report to the Court on any matter concerning an application for an adoption order;
- (e) to collaborate or work in co-operation with any entity as the Cabinet considers necessary for the Board to carry out its functions; and
- (f) to perform any other functions related to the adoption of children as the Cabinet may assign or as may be necessary to carry out the provisions of this Act.

Appointment and constitution of the Board

7. (1) The Board consists of the following persons —

- (a) the chairperson, who shall be a Caymanian and an attorney-at-law who has at least five years call to the Bar;
 - (b) a deputy chairperson, who shall be a person with at least five years' experience in health and human services;
 - (c) an attorney-at-law who has at least three years call to the Bar;
 - (d) a medical doctor of at least three years' experience;
 - (e) a person with at least three years' experience in education;
 - (f) two other persons; and
 - (g) the Director or a designate of the Director, who shall be an *ex officio* member and who does not have the right to vote.
- (2) The members under subsection (1)(a) to (f) shall be appointed by the Cabinet and notice of each appointment shall be published in the *Gazette*.
- (3) The chairperson, or in the chairperson's absence, the deputy chairperson, shall preside over meetings of the Board.

- (4) In the absence of both the chairperson and the deputy chairperson, the members present and forming a quorum shall elect one of their number to preside as chairperson over that meeting.
- (5) The quorum for meetings of the Board is a simple majority of the members who are entitled to vote.
- (6) The decisions of the Board shall be by a simple majority of the members who are entitled to vote.
- (7) Where the votes are equally divided, the chairperson or the person presiding as such shall exercise a casting vote.
- (8) Subject to this Act, the Board may make rules as it thinks fit to regulate its procedures and its own internal management.
- (9) For the purposes of this section, a person who is employed with the Ministry shall not be eligible to be appointed by the Cabinet as a member.

Term of appointment

- 8.** (1) Subject to section 9, a member, other than an *ex officio* member —
- (a) shall hold office for a term not exceeding three years, as specified in the member's instrument of appointment; and
 - (b) may be re-appointed for additional terms.
- (2) To ensure continuity of the Board, no more than five members who are entitled to vote shall be replaced at any one time unless special circumstances arise.

Termination of office

- 9.** (1) Subject to subsections (2), (3) and (4), a member shall hold and vacate office in accordance with the terms of the member's appointment which shall be specified by Cabinet.
- (2) The chairperson may resign office by notice in writing addressed to the Cabinet.
 - (3) A member other than the chairperson may resign office by notice in writing addressed to the Cabinet and copied to the chairperson.
 - (4) The Cabinet may terminate a member's appointment if it is satisfied that the member —
 - (a) is failing, without reasonable excuse, to carry out that member's duties in a reasonable or timely manner;
 - (b) is absent from three consecutive meetings of the Board —
 - (i) in the case of the deputy chairperson or other member, without leave of the chairperson; or
 - (ii) in the case of the chairperson, without leave of the Cabinet;
 - (c) fails to make a declaration in accordance with section 11;



- (d) fails to make a disclosure in accordance with section 12;
- (e) has, in the opinion of the Cabinet, an unacceptable conflict of interest;
- (f) is of unsound mind or is incapable of carrying out that member's duties;
- (g) has engaged in —
 - (i) serious misconduct in relation to that member's duties;
 - (ii) conduct that is detrimental to the effective governance of the Board;
or
 - (iii) conduct that brings the Board into disrepute;
- (h) becomes bankrupt, suspends payment to or compounds with that member's creditors; or
- (i) is convicted of an offence for which that member is sentenced by a court to a term of imprisonment.

Secretary to the Board

- 10.** (1) The Cabinet shall appoint a person employed by the Ministry as secretary to the Board.
- (2) The secretary shall —
- (a) record and keep minutes of the meetings, proceedings and decisions of the Board; and
 - (b) be responsible for the carrying out of the administrative duties of the Board.
- (3) The secretary does not have the right to vote.
- (4) The secretary may resign office by notice in writing addressed to the Cabinet and copied to the chairperson.
- (5) The Cabinet may terminate the appointment of the secretary if it is satisfied that the secretary —
- (a) is failing, without reasonable excuse, to carry out the secretary's duties in a reasonable or timely manner;
 - (b) is absent from three consecutive meetings of the Board, without leave of the Cabinet;
 - (c) is of unsound mind or is incapable of carrying out the secretary's duties;
 - (d) has engaged in —
 - (i) serious misconduct in relation to the secretary's duties;
 - (ii) conduct that is detrimental to the effective governance of the Board;
 - (iii) conduct that brings the Board into disrepute; or
 - (e) is convicted of an offence for which the secretary is sentenced by a court to a term of imprisonment.

Requirement to make a declaration

- 11.** On assuming the functions of a member, the member shall make a declaration of that member's interests in accordance with the *Standards in Public Life Act (2021 Revision)*.

Disclosure of interests

- 12.** (1) Where a member has any actual or potential personal or pecuniary interest, whether directly or indirectly, in a matter which is to be determined by the Board, the member shall disclose the nature of the member's interest at a meeting of the Board as soon as possible after the relevant circumstances have come to the member's knowledge.
- (2) Where a member discloses an interest in a matter in accordance with subsection (1), the member —
- (a) shall leave the meeting as soon as the matter comes up for discussion;
 - (b) shall not participate, directly or indirectly, in the deliberations, consideration or discussion of the matter;
 - (c) shall not vote on a question with respect to the matter; and
 - (d) shall not return to the meeting while the matter is under discussion until a decision has been taken by the Board.
- (3) If the chairperson leaves a meeting in accordance with subsection (2)(a), the deputy chairperson shall preside over the meeting for the period during which the chairperson remains absent.
- (4) If both the chairperson and the deputy chairperson leave a meeting in accordance with subsection (2)(a), the members present and forming a quorum shall elect one of their numbers to preside as chairperson over that meeting for the period during which the chairperson and the deputy chairperson remain absent.

Duty of confidentiality by the Board and the secretary

- 13.** (1) The facts and particulars of, or relating to, any matter falling for consideration by the Board or any decision of the Board —
- (a) shall be treated as confidential by each member of, and the secretary to, the Board; and
 - (b) shall not be disclosed otherwise than in the proper performance of duties under this Act, in compliance with an order of a court or tribunal of competent jurisdiction, or where required by law.
- (2) An allegation of a breach of subsection (1) shall be fully investigated by a police officer of the rank of Inspector or above.



- (3) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of ten thousand dollars or to imprisonment for a term of two years, or to both.

PART 3 - ROLE OF THE DEPARTMENT

Provision of services related to adoptions

- 14.** (1) The Department shall establish and maintain a service in the Islands that provides for the needs of —
- (a) children and young persons who have been adopted and who are in the process of being adopted;
 - (b) adopters and applicants; and
 - (c) the former parents or former guardians of children and young persons who were adopted and the parents or guardians of children and young persons who are in the process of being adopted.
- (2) The Department shall —
- (a) where applicable, conduct home study assessments and provide home study reports and as required, provide supervision reports;
 - (b) make arrangements for assessing children, young persons and applicants;
 - (c) make arrangements for placing children for adoption in accordance with the direction of the Board;
 - (d) make its best efforts to provide counselling, where necessary, for persons involved in the adoption process, including before, during and after the adoption;
 - (e) make its best efforts to provide appropriate accommodation for children and young persons placed for adoption;
 - (f) conduct reviews throughout the adoption process to ensure the safeguarding of a child or young person who is the subject of the adoption process;
 - (g) advocate on behalf of the child and, if applicable, the young person;
 - (h) co-ordinate with central authorities throughout the intercountry adoption process;
 - (i) ensure that it is represented at any stage of proceedings before the Court where the supervision report is being considered, or where otherwise required by the Court or the Court of Appeal to attend;
 - (j) where required by the Court or the Court of Appeal, inquire into and report to the Court or the Court of Appeal on any matter concerning an application for an adoption order that the Court considers necessary or on

- any matter concerning an appeal under this Act to the Court of Appeal;
and
- (k) carry out any other duties as are imposed on the Department by or under this Act or any other law.

PART 4 - EXPRESSION OF INTEREST IN ADOPTING AND ARRANGEMENTS BY THE BOARD

Application of Part 4

15. This Part applies to adoptions other than —

- (a) *de facto* adoptions and adoptions by departmental foster parents, except where the Court directs that an application be first made to the Board under section 30 or 31;
- (b) adoptions of young persons; and
- (c) intercountry adoptions.

Application expressing interest in adopting

- 16.** (1) A person who is desirous of applying for an adoption order in respect of a child shall first make an application to the Board —
- (a) in the prescribed form and manner expressing an interest to adopt the child; and
 - (b) accompanied by —
 - (i) an affidavit in the prescribed form stating —
 - (A) that the person has not been convicted of a specified offence;
 - (B) whether the person has ever been convicted of an offence in respect of which the person served a custodial sentence of one year or more;
 - (C) whether the person has ever been convicted of an offence under the *Children Act (2012 Revision)*;
 - (D) whether the person has ever been convicted of an offence under this Act;
 - (E) whether the person has ever had a child removed from the person's care; and
 - (F) that the person is a fit and proper person to adopt the child and has adequate means to maintain and look after the child in an appropriate manner;
 - (ii) a medical assessment in the form approved by the Board, after consultation with the Chief Medical Officer;



- (iii) any prescribed information or documents;
 - (iv) any other relevant details as the Board may reasonably require for the purposes of assessing the application; and
 - (v) the prescribed fee.
- (2) Where the Board has to seek verification of any of the matters referred to in subsection (1), any act reasonably required for the verification is at a cost to the applicant.

Approval to bring child into the Islands for certain types of adoption

- 17.** (1) The applicant shall apply to the Court in accordance with the applicable Rules of Court for the Court's approval to bring the child into the Islands for the purposes of the adoption if —
- (a) the child is not a resident of the Islands; and
 - (b) the child is being brought into the Islands for —
 - (i) adoption by a person who is a relative of the child and the person is applying for an adoption order pursuant to section 30; or
 - (ii) adoption by a person who will become an adoptive parent jointly with a natural parent of the child or jointly with a relative of the child who is applying for an adoption order pursuant to section 30.
- (2) On making the application under subsection (1), the applicant shall send a copy of the application to the Director of the Workforce, Opportunities and Residency Cayman Office and the Director of Customs and Border Control.
- (3) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of thirty thousand dollars or to imprisonment for a term of six years, or to both.

Home study assessment and report

- 18.** (1) Where the Board receives an application under section 16 and the Board is satisfied that the application is complete, the Board shall request in writing that the Department —
- (a) undertakes a home study assessment; and
 - (b) prepares a home study report which is to be submitted to the Board, in order for the Board to determine the suitability of the applicant and the applicant's home environment for an adoption.
- (2) The Department shall conduct a home study assessment and submit the home study report to the Board within ninety calendar days after receiving the written request from the Board under subsection (1).

- (3) Where the Board is satisfied with the results of the home study report, the Board shall make the relevant arrangements for the child to be placed with the applicant, in accordance with section 19.
- (4) Where the Board —
 - (a) is not satisfied with the results of the home study report; and
 - (b) decides not to make the relevant arrangements for the child to be placed with the applicant in accordance with section 19,the applicant may appeal the decision of the Board to a Judge in Chambers.
- (5) The Board shall keep a record of each home study assessment conducted by, and each home study report submitted by, the Department.

Supervision report

- 19.** (1) Where arrangements are made by the Board for the placement of a child, the applicant under section 16 with whom the child is placed shall not apply to the Court for an adoption order in respect of the child until the expiration of a period of three months (the “interim placement period”) from the date on which the child is delivered into the care and custody of the applicant pursuant to the Board’s arrangements.
- (2) The Board shall appoint one or more persons, including officers of the Department, to keep the child who has been placed with the applicant under close supervision.
 - (3) A person appointed by the Board under subsection (2) shall —
 - (a) as soon as reasonably practicable after the end of the interim placement period, complete a supervision report; and
 - (b) provide the supervision report to the Board for its consideration.
 - (4) Where the Board is satisfied with the supervision report, the Board shall —
 - (a) notify the person with whom the child is placed of the satisfactory supervision report; and
 - (b) advise the person that he or she may make an application to the Court for an adoption order in the prescribed manner.
 - (5) At any time during the interim placement period —
 - (a) the person with whom the child is placed may give notice in writing to the Board of the person’s intention not to adopt the child; or
 - (b) the Board may cause notice in writing to be given to the person with whom the child is placed of the Board’s intention not to allow the child to remain in the care and custody of the person, with the reasons for the Board’s intention included in the notice.



- (6) Subject to subsection (10), where notice is given under subsection (5), the person or the Board shall, as soon as practicable, but no more than seventy-hours after the notice is given —
 - (a) cause the child to be returned to the Board or the Department for the purposes of restoring the child to the person who previously had care and custody of the child; or
 - (b) where the person who previously had care and custody of the child is the applicant, cause the child to be returned to the Board or the Department for the purposes of restoring the child to the person in whose care and custody the child was prior to the applicant.
- (7) A person with whom a child is placed and who is aggrieved by the decision of the Board to issue a notice under subsection (5)(b) may appeal the decision of the Board to a Judge in Chambers.
- (8) If a notice has not been given under subsection (5), after the date on which the interim placement period expires, the person with whom the child is placed shall —
 - (a) apply to the Court for an adoption order in respect of the child; or
 - (b) give notice in writing to the Board of the person's intention not to apply for an adoption order.
- (9) Subject to subsection (10), where —
 - (a) an application for an adoption order in respect of the child is refused by the Court; or
 - (b) notice is given in accordance with subsection (8)(b),the applicant shall, as soon as practicable, but no more than seventy-two hours after the application is refused or the notice under subsection (8)(b) is given —
 - (i) cause the child to be returned to the Board or the Department for the purposes of restoring the child to the person who previously had care and custody of the child; or
 - (ii) where the person who previously had care and custody of the child is the applicant, cause the child to be returned to the Board or the Department for the purposes of restoring the child to the person in whose care and custody the child was prior to the applicant.
- (10) Where, under subsection (6) or (9), returning the child to the person who previously had care and custody of the child would result in concerns relating to the safeguarding of the child, the child shall be placed in the care and custody of the Department.
- (11) Where the child is placed in the care and custody of the Department, the Department may —
 - (a) transfer care and custody of the child to another applicant; or

- (b) place the child in the care of a caregiver.

PART 5 - JURISDICTION AND PROCEDURE REGARDING ADOPTION ORDERS

Jurisdiction and procedure

- 20.** The court having jurisdiction to make adoption orders under this Act is the Grand Court of the Cayman Islands.

Power of the Court to make adoption orders relating to a child

- 21.** (1) The Court has jurisdiction to make an adoption order relating to a child if —
- (a) the child to be adopted is a resident of the Islands or was born in the Islands;
 - (b) the parent of the child is a Caymanian or a resident of the Islands;
 - (c) the applicant is a Caymanian or a resident of the Islands; or
 - (d) the child has been freed for adoption under the *Children Act (2012 Revision)*.
- (2) Notwithstanding section 19(1), the Court, in special circumstances, may make an adoption order if a child has been in the care of the applicant for less than three months prior to the application to the Court for an adoption order.
- (3) Where, pursuant to subsection (2), a child has been in the care of the applicant for less than three months prior to the application to the Court for an adoption order, the relevant supervision report shall cover the period during which the child is in the care of the applicant.
- (4) Where a person applies to the Court for an adoption order relating to a child —
- (a) the Court may request the Board to transmit all or any of the records relevant to the matter of the adoption, including —
 - (i) the home study assessment and home study report;
 - (ii) the supervision report; and
 - (iii) the Board's recommendation in respect of the prospective adoption;
 - (b) the records referred to in paragraph (a) shall be admissible as evidence before the Court in the adoption proceedings; and
 - (c) the Court may accept any record received from the Board without further proof.

Power of the Court to make youth adoption orders

- 22.** The Court has jurisdiction to make a youth adoption order if —



- (a) the young person to be adopted is a resident of the Islands or was born in the Islands;
- (b) the parent of the young person is a Caymanian or a resident of the Islands; or
- (c) the applicant is a Caymanian or a resident of the Islands.

PART 6 - ADOPTION ORDERS RELATING TO CHILDREN

Application of Part 6

23. This Part applies to adoptions relating to children.

Eligibility to adopt a child

- 24.** (1) An adoption order shall not be made in respect of a child unless —
- (a) in the case of an application by a sole applicant, the applicant is at least twenty-five years of age; or
 - (b) in the case of a joint application, each of the applicants is at least twenty-five years of age.
- (2) Notwithstanding subsection (1)(a), the Court, after having regard to the views of the Board and the findings of the Department, if applicable, may make an adoption order in favour of an applicant who has not attained the age of twenty-five years but who is at least eighteen years of age, where —
- (a) the applicant is a relative of the child and the person is applying for an adoption order pursuant to section 30; and
 - (b) the adoption order would be in the best interests of the child.
- (3) Notwithstanding subsection (1)(b), the Court, after having regard to the views of the Board and the findings of the Department, if applicable, may make an adoption order in favour of joint applicants who have not attained the age of twenty-five years but who are at least eighteen years of age, where —
- (a) one of the applicants is —
 - (i) the natural parent of the child; or
 - (ii) a relative of the child and the person is applying for an adoption order pursuant to section 30; and
 - (b) the adoption order would be in the best interests of the child.
- (4) Subject to section 25, an adoption order shall not be made —
- (a) without the consent of every person who is a parent or guardian of the child or who is liable by virtue of any order or agreement to contribute to the maintenance of the child;

- (b) without the consent of the other spouse or civil partner of the applicant, where the application is made by a spouse or civil partner;
- (c) without the consent of the child;
- (d) with the consent of the mother or father of the child alone unless the Court is satisfied that —
 - (i) the other natural parent is deceased or cannot be found; or
 - (ii) there is some other reason justifying the exclusion of the other natural parent, such as, that person is an unfit parent, and where an adoption order is made, the reason justifying the exclusion of the other natural parent shall be recorded by the Court; or
- (e) unless —
 - (i) the child is free for adoption by virtue of an order made under the *Children Act (2012 Revision)*; or
 - (ii) in the case of each parent or guardian of the child whose consent has been given, the Court is satisfied that the parent or guardian freely, and with understanding of what is involved, agrees unconditionally to the making of an adoption order whether or not the parent or guardian knows the identity of the applicant.

Court's power to dispense with consent to adoption

- 25. (1)** The Court may dispense with the consent required by section 24(4)(a) if it is satisfied —
- (a) in the case of a parent or guardian of the child, that the parent or guardian has abandoned, neglected or abused the child or has persistently failed without reasonable cause to —
 - (i) discharge the obligations of a parent or guardian of the child; or
 - (ii) demonstrate interest in the child;
 - (b) in the case of a person liable by virtue of an order or agreement to contribute to the maintenance of the child, that the person has persistently neglected or refused to contribute as ordered or agreed;
 - (c) in any case, that the person whose consent is required —
 - (i) does not have clear entitlement to consent, or to withhold consent;
 - (ii) is incapable of giving consent;
 - (iii) does not wish to be involved;
 - (iv) cannot be found or contacted, despite reasonable efforts to do so; or
 - (v) is unreasonably withholding consent; or
 - (d) for any other reason, that person's consent should be dispensed,



and the welfare of the child should override any entitlement of the person whose consent is required, to be involved.

- (2) The Court may dispense with the consent required by section 24(4)(b) if it is satisfied that —
 - (a) the spouse or civil partner of the applicant for the adoption order cannot be found;
 - (b) the spouse or civil partner of the applicant for the adoption order is incapable of giving consent; or
 - (c) the spouses or civil partners have separated and are living apart and that the separation is likely to be permanent.
- (3) The Court may dispense with the consent required by section 24(4)(c) if it is satisfied that, having regard to the age and understanding of the child, the child is unable to give that consent.
- (4) Subject to subsection (5), when an application for an adoption order in respect of a child is pending in the Court, a parent or guardian of the child who has signified consent to the making of an adoption order shall not be entitled, except with leave of the Court, to remove the child from the care and custody of the applicant.
- (5) In considering whether to grant or refuse leave under subsection (4), the Court shall have regard to the welfare of the child.
- (6) For the purposes of an application for an adoption order, the Court may appoint —
 - (a) a person to act as guardian *ad litem* of the child, who is responsible for safeguarding the interests of the child; and
 - (b) an officer of the Department who —
 - (i) is responsible for ensuring that any relevant assessments or reports prepared by the Department are submitted to the Court as required; and
 - (ii) may represent the Department where a representative of the Department is required to attend proceedings.

Consent to adoption - natural parents under eighteen years

- 26.** (1) A natural parent who is under eighteen years of age may give valid consent to the adoption of that natural parent's child.
- (2) A parent, guardian, grandparent, or other person with legal standing in respect of the custody of the child, may apply to the Court for directions in respect of whether consent given under subsection (1) is valid or whether that consent should be dispensed with, having regard to the best interests of the child if —
- (a) there is an objection to the consent given under subsection (1); or

- (b) there is a question as to whether the consent given is in the best interests of the child.

Interim orders

- 27.** (1) On an application for an adoption order, the Court may postpone the determination of the application and make an interim order giving custody of the child to the applicant for a period not exceeding two years.
- (2) The two-year period of custody referred to in subsection (1) shall serve as a probationary period and shall be made on any terms regarding —
- (a) provision for the maintenance, education and supervision of the child;
 - (b) provision of support to the applicant, including support in the form of counselling and parenting programmes; and
 - (c) any other provision as the Court thinks fit.
- (3) All consents required for an adoption order shall be necessary for an interim order under this section but subject to the power of the Court to dispense with any consent.
- (4) An interim order is not an adoption order.

Evidence of consent of parent or guardian

- 28.** (1) Subject to subsection (3), where any person whose consent to the making of an adoption order is required by section 24(4)(a) does not attend the proceedings for the purpose of giving consent, a document signifying that person's consent or lack of consent to the making of the adoption order shall be admissible as evidence of that consent or lack of consent —
- (a) where the person in whose favour the order is to be made is named in the document; or
 - (b) where the identity of that person is not known to the party whose consent is required but is distinguished in the document, in the prescribed manner, whether the document is executed before or after the commencement of the proceedings.
- (2) Where any document referred to in subsection (1) is attested by a Justice of the Peace —
- (a) the document shall be admissible without further proof of the signature of the person by whom it is executed; and
 - (b) for the purposes of this subsection, a document purporting to be attested as previously stated shall be presumed to be so attested, and to be executed and attested on the date and at the place specified in the document, unless the contrary is proved.



- (3) A document signifying the consent of a parent of a child shall not be admissible under this section unless the child is at least six weeks old on the date of the execution of the document and the document is attested on that date by a Justice of the Peace.

Functions of the Court as to adoption orders

- 29.** (1) The Court, before making an adoption order, shall satisfy itself —
- (a) that every person whose consent is necessary under section 24(4), having not been dispensed with, has consented to, and understands that the effect of the adoption order will be to permanently deprive that parent of parental rights;
 - (b) that the order, if made, will be for the welfare of the child, and consideration will be given to the wishes of the child, having regard to child's age and understanding; and
 - (c) that the applicant has not received or agreed to receive, and that no person has made or given or agreed to make or give to the applicant, any payment or other reward in consideration of the adoption except a payment referred to in section 69(1)(a) or (b).
- (3) Where the consent of a person cannot be obtained under section 24(4), the Court may still proceed to make the adoption order after having assessed and considered the particular circumstances which preclude the person from giving consent.
- (4) The Court may impose any terms and conditions as the Court thinks fit in an adoption order, and in particular may require the applicant or any other person by bond or otherwise to make for the child any provision, if any, as in the opinion of the Court is just and expedient.
- (5) An adoption order or interim order may be made in respect of a child who has already been the subject of an adoption order.

De facto adoptions

- 30.** (1) The Court may regard a *de facto* adoption as having taken place where a relative of a child, or a relative of a child and the spouse or civil partner of the relative, shows that —
- (a) the child was in the custody of the relative, or the relative and the spouse or civil partner, as applicable, for at least two consecutive years; and
 - (b) for the period referred to in paragraph (a), the relative, or the relative and the spouse or civil partner, as applicable, assumed the role of parent of the child by bringing up, caring for, educating and maintaining the child.
- (2) Where a relative, or the relative and the spouse or civil partner of the relative, as applicable, claims to have assumed the role of the parent of a child under a

de facto adoption, the relative, or the relative and the spouse or civil partner, as applicable, shall —

- (a) make an application to the Court for an adoption order in accordance with the procedure set out in the Rules of Court; and
 - (b) submit to the Court —
 - (i) a statement signed by the parent or guardian of the child, in the prescribed form, which provides that the parent or guardian understands the effect of the adoption;
 - (ii) a statement, in the prescribed form, with respect to the identity of the child; and
 - (iii) any other document or information that the Court requires for the purposes of the application.
- (3) Before a child who is not a resident of the Islands is brought into the Islands for the purposes of a *de facto* adoption, the applicant for the adoption order shall —
- (a) apply to the Court in accordance with the applicable Rules of Court for the Court's approval for the child to enter the Islands for the purposes of the adoption; and
 - (b) on making the application under paragraph (a), send a copy of the application to the Director of the Workforce, Opportunities and Residency Cayman Office and the Director of Customs and Border Control.
- (4) The Court shall make enquiries and obtain reports —
- (a) in relation to any matters as are prescribed by the Rules of Court; and
 - (b) generally, on all matters concerning the welfare of the child.
- (5) Where there is a report submitted on the health of the child, the report shall be signed by a registered and licensed practitioner.
- (6) Where an application is made to the Court for an adoption order pursuant to this section, the Court shall direct the Department to —
- (a) supervise the child for a period determined by the Court; and
 - (b) at the end of that period, complete a supervision report.
- (7) Notwithstanding this section, the Court may direct the applicant to first make an application to the Board under section 16 expressing an interest to adopt the child, where it considers it to be in the best interests of the child.
- (8) Where the Court directs the applicant to make an application pursuant to subsection (7), the Board shall only request that a supervision report be completed by the Department.
- (9) Where the Board becomes involved in an application for an adoption order pursuant to subsection (7), the Board shall lodge with the Court the Board's



recommendation in respect of the prospective adoption and any other documents as the Board or the Court consider relevant to the proceedings.

- (10) The Court may accept any record received from the Board without further proof.
- (11) A person who contravenes subsection (3)(a) commits an offence and is liable on summary conviction to a fine of thirty thousand dollars or to imprisonment for a term of six years, or to both.

Adoption by departmental foster parents

- 31.** (1) Where a child is placed with a departmental foster parent by the Department under the *Children Act (2012 Revision)*, the departmental foster parent may apply to the Court in accordance with this section for an adoption order where —
- (a) the child was in the custody of the departmental foster parent for at least two consecutive years; and
 - (b) for the period referred to in paragraph (a), the departmental foster parent brought up, cared for, educated and maintained the child.
- (2) Where a departmental foster parent wishes to adopt a child under subsection (1), the departmental foster parent shall—
- (a) make an application to the Court for an adoption order in accordance with the procedure set out in the Rules of Court; and
 - (b) submit to the Court —
 - (i) a statement signed by the parent or guardian of the child, in the prescribed form, which provides that the parent or guardian understands the effect of the adoption;
 - (ii) a statement, in the prescribed form, with respect to the identity of the child;
 - (iii) where applicable, a notification, in writing, of any change in the circumstances of the departmental foster parent since the submission of the application under paragraph (a), including —
 - (A) a change of address;
 - (B) a change of living arrangements;
 - (C) a change relating to the person's employment; and
 - (D) any other change that may have an impact on the application; and
 - (iv) any other document or information that the Court requires for the purposes of the application.
- (3) The Court shall make enquiries and obtain reports —
- (a) in relation to any matters as are prescribed by the Rules of Court; and
 - (b) generally, on all matters concerning the welfare of the child.

- (4) Where there is a report submitted on the health of the child, the report shall be signed by a registered and licensed practitioner.
- (5) Where an application is made to the Court for an adoption order pursuant to this section, the Court shall direct the Department to —
 - (a) supervise the child for a period determined by the Court; and
 - (b) at the end of that period, complete a supervision report.
- (6) Notwithstanding this section, the Court may direct the applicant to first make an application to the Board under section 16 expressing an interest to adopt the child, where it considers it to be in the best interests of the child.
- (7) Where the Court directs the applicant to make an application pursuant to subsection (6), the Board shall only request that a supervision report be completed by the Department.
- (8) Where the Board becomes involved in an application for an adoption order pursuant to subsection (6), the Board shall lodge with the Court the Board's recommendation in respect of the prospective adoption and any other documents as the Board or the Court consider relevant to the proceedings.
- (9) The Court may accept any record received from the Board without further proof.

PART 7 - YOUTH ADOPTION ORDERS

Application of Part 7

32. This Part applies to adoptions relating to young persons.

Application for youth adoption order

- 33.** (1) A person who is interested in adopting a young person shall apply to the Court for a youth adoption order in accordance with the procedure under this Part and the applicable Rules of Court.
- (2) An application for a youth adoption order shall be —
- (a) made in the prescribed form and manner; and
 - (b) accompanied by —
 - (i) an affidavit in the prescribed form stating —
 - (A) that the applicant is not in a romantic or sexual relationship with the young person and that to the applicant's knowledge, no member of the applicant's immediate family is in a romantic or sexual relationship with the young person;
 - (B) that the applicant has not been convicted of a specified offence;



- (C) whether the applicant has ever been convicted of an offence in respect of which the applicant served a custodial sentence of one year or more;
 - (D) whether the applicant has ever been convicted of an offence under the *Children Act (2012 Revision)*;
 - (E) whether the applicant has ever been convicted of an offence under this Act;
 - (F) whether the applicant has ever had a child removed from the applicant's care; and
 - (G) that the applicant is a fit and proper person to adopt the young person and has adequate means to maintain and look after the young person in an appropriate manner;
 - (ii) a medical assessment in the form approved by the Board, after consultation with the Chief Medical Officer;
 - (iii) any prescribed information or documents;
 - (iv) any other relevant details as the Court may reasonably require for the purposes of assessing the application; and
 - (v) the prescribed fee.
- (3) Where the Board has to seek verification of any of the matters referred to in subsection (1), any act reasonably required for the verification is at a cost to the applicant.

Eligibility to adopt a young person

- 34.** (1) A youth adoption order shall not be made in respect of a young person unless —
- (a) the person was in foster care in the Islands prior to attaining the age of eighteen years old; and
 - (b) in the case of —
 - (i) an application for a youth adoption order by a sole applicant, the applicant is at least twenty-five years of age and at least sixteen years older than the young person to be adopted; or
 - (ii) a joint application for a youth adoption order, each of the applicants is at least twenty-five years of age and at least sixteen years older than the young person to be adopted.
- (2) Notwithstanding subsection (1)(b), the Court, in its discretion, may make an adoption order in favour of a sole applicant or joint applicants who are less than sixteen years older than the young person to be adopted, but no less than ten years older than the young person to be adopted.
- (3) Subject to section 35, a youth adoption order shall not be made —

- (a) without the consent of the other spouse or civil partner of the applicant, where the application is made by a spouse or civil partner; or
- (b) without the consent of the young person.

Court's power to dispense with consent to adoption of young person

- 35.** (1) The Court may dispense with the consent required by section 34(3)(a) if it is satisfied that —
- (a) the spouse or civil partner of the applicant for the youth adoption order cannot be found; or
 - (b) the spouse or civil partner of the applicant for the youth adoption order is incapable of giving consent; or
 - (c) the spouses or civil partners have separated and are living apart and that the separation is likely to be permanent.
- (2) The Court may dispense with the consent required by section 34(3)(b) if it is satisfied that, having regard to the mental capacity of the young person, the young person is unable to give that consent.
- (3) For the purposes of an application for a youth adoption order, the Court may appoint —
- (a) in the case of a young person who lacks mental capacity, a person to act as guardian *ad litem* of the young person, and the person shall have the duty of safeguarding the interests of the young person; and
 - (b) an officer of the Department who —
 - (i) is responsible for ensuring that any relevant assessments or reports prepared by the Department are submitted to the Court as required; and
 - (ii) may represent the Department where a representative of the Department is required to attend proceedings.

Functions of the Court as to youth adoption orders

- 36.** (1) The Court shall make a youth adoption order if it is satisfied —
- (a) that the order, if made, will be for the welfare and wellbeing of the young person, and consideration will be given to the wishes of the young person, having regard to the young person's mental capacity;
 - (b) that the applicant has not received or agreed to receive, and that no person has made or given or agreed to make or give to the applicant, any payment or other reward in consideration of the adoption except a payment referred to in section 69(1)(a) or (b);
 - (c) that there is no romantic or sexual relationship between the applicant or any member of the applicant's immediate family.



- (2) The Court, in deciding whether to make a youth adoption order, shall also consider any relevant or exceptional circumstances, including whether the young person was in the custody of the applicant immediately before attaining the age of eighteen years and whether, during that time, the applicant assumed the role of parent, by bringing up, caring for, educating and maintaining the person.
- (3) Where the consent of a person cannot be obtained under section 34(3), the Court may still proceed to make the youth adoption order after having assessed and considered the particular circumstances which preclude the person from giving consent.
- (4) The Court may impose any terms and conditions as the Court thinks fit in a youth adoption order, and in particular may require the applicant or any other person by bond or otherwise to make for the young person any provision, if any, as in the opinion of the Court is just and expedient.
- (5) A youth adoption order may be made in respect of a young person who has already been the subject of a youth adoption order.

PART 8 - INTERCOUNTRY ADOPTION

Approval for intercountry adoption - Caymanians and residents

- 37.** (1) A Caymanian or a resident of the Islands (“applicant”) may make an application to the Board expressing an interest to adopt a child from overseas who is not a resident of the Islands as provided for in this Part.
- (2) An application under subsection (1) shall be —
- (a) made by the applicant in the prescribed form and presented either personally or through an attorney-at-law; and
 - (b) accompanied by an affidavit in the prescribed form stating —
 - (i) that the applicant has not been convicted of a specified offence;
 - (ii) whether the applicant has ever been convicted of an offence in respect of which the applicant served a custodial sentence of one year or more;
 - (iii) whether the applicant has ever been convicted of an offence under the *Children Act (2012 Revision)*;
 - (iv) whether the applicant has ever been convicted of an offence under this Act;
 - (v) whether the applicant has ever had a child removed from the applicant’s care;

- (vi) that the applicant is a fit and proper person to adopt the child and has adequate means to maintain and look after the child in an appropriate manner; and
 - (vii) that the applicant has a current recommendation from the competent authority responsible for adoption in the prospective adopted child's country of origin; and
- (c) accompanied by a medical assessment in the form approved by the Board, after consultation with the Chief Medical Officer.
- (3) For the purposes of an application to which this section applies, where the Board has to seek written verification —
 - (a) of the matters referred to in subsection (2)(b); and
 - (b) that the prospective adopted child's country of origin will respect and recognize an adoption order made under this Act,any act reasonably required for the verification is at a cost to the applicant.
- (4) After receiving the verification referred to in subsection (3), the Board shall request in writing that the Department —
 - (a) undertakes a home study assessment; and
 - (b) prepares a home study report which is to be submitted to the Board,in order for the Board to determine the suitability of the applicant and the applicant's home environment for an adoption.
- (5) The Department shall conduct a home study assessment and submit the home study report to the Board within ninety days after receiving the written request from the Board under subsection (1).
- (6) Where the Board is satisfied with the results of the home study report, the Board shall —
 - (a) prepare a report including information about the applicant's identity, eligibility and suitability to adopt, background, family and medical history, social environment, reasons for adoption, ability to undertake an intercountry adoption, as well as the characteristics of the child for whom the applicant would be qualified to care; and
 - (b) submit the report to the central authority for the Islands for onward transmission to the central authority of the prospective adopted child's country of origin.
- (7) Where the central authority of the prospective adopted child's country of origin is satisfied that a child is adoptable, that central authority shall —
 - (a) prepare a report including information about the child's 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 the child's ethnic, religious and cultural background;
 - (c) ensure that consents have been obtained in accordance with Article 4 of the Convention;
 - (d) determine, on the basis in particular of the reports relating to the child and the prospective adoptive parent, whether the envisaged placement is in the best interests of the child; and
 - (e) transmit to the central authority for the Islands 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 prospective adopted child's country of origin, these identities may not be disclosed.
- (8) Where, based on the reports under subsections (6) and (7), the central authority for the Islands is not satisfied of the applicant's eligibility and suitability to adopt and the adoptability of the child, the central authority shall advise the Board to write to the applicant, informing the applicant of the central authority's determination.
- (9) An applicant who is aggrieved by a decision of the central authority may appeal the decision of the central authority to a Judge in Chambers.
- (10) Where, based on the reports under subsections (6) and (7), the central authority for the Islands is satisfied of the applicant's eligibility and suitability to adopt and the adoptability of the child, the central authority shall advise the Board to write to the applicant, recommending that the applicant make an application to the Court for an adoption order.
- (11) Sections 24, 25, 26, 28, 29 and Parts 9 and 10 as well as any relevant Rules of Court shall apply in respect of an application to the Court for an adoption order relating to a child under this section.
- (12) Where, an applicant applies to the Court —
- (a) the Court may request the Board to transmit all or any of the records relevant to the matter of the adoption;
 - (b) the records referred to in paragraph (a) shall be admissible as evidence before the Court in the adoption proceedings; and
 - (c) the Court may accept any record received from the Board without further proof.
- (13) The Court may require some other person or authority to submit a report in respect of the application for an adoption order made pursuant to this Part.
- (14) Prior to determining the application for an adoption order, the Court, on being satisfied that it is in the best interests of the child to do so, shall first make a

provisional order giving custody of the child to the applicant for a period not exceeding twelve months.

- (15) The provisional order referred to in subsection (14) —
 - (a) shall be made on any terms regarding provision for the maintenance, education and supervision of the child, and any other provision as the Court thinks fit; and
 - (b) is not an adoption order.
- (16) During the period referred to in subsection (14), reports on the status and progress of the child shall be submitted to the Court by the relevant competent authority in the country where the child lives, and the reports shall be submitted at such intervals as the Court specifies.
- (17) On the expiration of the period referred to in subsection (14), the Court shall grant the adoption order on being satisfied that it is in the best interests of the child to do so.
- (18) Where, during the period referred to in subsection (14), the Court is not satisfied that, based on the reports, the adoption would be in the best interests of the child, the child shall be placed with a person or a relevant competent authority as the Court considers to be in the best interests of the child.
- (19) The Court may make any exceptions or dispense with any requirement or formalities as it may consider necessary for the transfer of the child from abroad, if the Court is satisfied that it is in the best interests of the child and that under the circumstances the case should be disposed of expeditiously.
- (20) If the transfer of a child does not take place under this section, the reports referred to in subsections (6) and (7) shall be returned to the relevant central authority who transmitted it.

Approval for intercountry adoption - non-Caymanians and non-residents

- 38.** (1) A person who is not a Caymanian or resident of the Islands (“overseas applicant”) may make an application to the Board expressing an interest to adopt a child who is a resident of the Islands or who was born in the Islands as provided for in this Part.
- (2) An application under subsection (1) shall be —
- (a) made by the overseas applicant in the prescribed form and presented either by the overseas applicant or the competent authority, or through an attorney-at-law representing the overseas applicant or the competent authority; and
 - (b) accompanied by an affidavit by the overseas applicant in the prescribed form stating —
 - (i) that the overseas applicant has not been convicted of a specified offence;



- (ii) whether the overseas applicant has ever been convicted of an offence in respect of which the applicant served a custodial sentence of one year or more;
 - (iii) whether the overseas applicant has ever been convicted of an offence under the *Children Act (2012 Revision)*;
 - (iv) whether the overseas applicant has ever been convicted of an offence under this Act;
 - (v) whether the overseas applicant has ever had a child removed from the applicant's care;
 - (vi) that the overseas applicant is a fit and proper person to adopt the child and has adequate means to maintain and look after the child in an appropriate manner; and
 - (vii) that the overseas applicant has a current recommendation from the competent authority responsible for adoption in the applicant's country of origin; and
- (c) accompanied by a medical assessment in the form approved by the Board, after consultation with the Chief Medical Officer.
- (3) For the purposes of an application to which this section applies, where the Board has to seek written verification —
 - (a) of the matters referred to in subsection (2)(b); and
 - (b) that the overseas applicant's country of origin will respect and recognize an adoption order made under this Act,any act reasonably required for the verification is at a cost to the applicant.
- (4) After receiving the verification referred to in subsection (3), the Board shall, by notice in writing, advise the central authority for the Islands that the Board is satisfied that next steps may be taken with respect to the application of the overseas applicant.
- (5) After receiving the notification under subsection (4), the central authority for the Islands shall write to the central authority for the place of origin of the overseas applicant, requesting a report on the overseas applicant, and the central authority for the place of origin of the overseas applicant shall —
 - (a) prepare a report including information about the applicant's identity, eligibility and suitability to adopt, background, family and medical history, social environment, reasons for adoption, ability to undertake an intercountry adoption, as well as the characteristics of the child for whom the applicant would be qualified to care; and
 - (b) transmit the report to the central authority for the Islands.

- (6) After receiving the report under subsection (5), where the central authority for the Islands is satisfied that a child is adoptable, the central authority for the Islands shall —
- (a) prepare a report including information about the child’s 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 the child’s ethnic, religious and cultural background;
 - (c) ensure that consents have been obtained in accordance with Article 4 of the Convention;
 - (d) determine, on the basis in particular of the reports relating to the child and the prospective adoptive parent, whether the envisaged placement is in the best interests of the child; and
 - (e) transmit to the central authority for the place of origin of the overseas applicant 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.
- (7) Where, based on the reports under subsections (5) and (6), the central authority for the Islands is not satisfied of the applicant’s eligibility and suitability to adopt and the adoptability of the child, the central authority shall advise the Board to write to the applicant, informing the applicant of the central authority’s determination.
- (8) An applicant who is aggrieved by a decision of the central authority may appeal the decision of the central authority to a Judge in Chambers.
- (9) Where, based on the reports under subsections (5) and (6), the central authority for the Islands is satisfied of the applicant’s eligibility and suitability to adopt and the adoptability of the child, the central authority shall advise the Board to write to the applicant, recommending that the applicant make an application to the Court for an adoption order.
- (10) Sections 24, 25, 26, 28, 29 and Parts 9 and 10 as well as any relevant Rules of Court shall apply in respect of an application to the Court for an adoption order relating to a child under this section.
- (11) Where an overseas applicant applies to the Court —
- (a) the Court may request the Board to transmit all or any of the records relevant to the matter of the adoption;
 - (b) the records referred to in paragraph (a) shall be admissible as evidence before the Court in the adoption proceedings; and
 - (c) the Court may accept any record received from the Board without further proof.



- (12) The Court may require some other person or authority to submit a report in respect of the application for an adoption order made pursuant to this Part.
- (13) Prior to determining the application for an adoption order, the Court, on being satisfied that it is in the best interests of the child to do so, shall first make a provisional order giving custody of the child to the applicant for a period not exceeding twelve months.
- (14) The provisional order referred to in subsection (13) —
 - (a) shall be made on any terms regarding provision for the maintenance, education and supervision of the child, and any other provision as the Court thinks fit; and
 - (b) is not an adoption order.
- (15) During the period referred to in subsection (13), reports on the status and progress of the child shall be submitted to the Court by the relevant competent authority in the country where the child lives, and the reports shall be submitted at such intervals as the Court specifies.
- (16) On the expiration of the period referred to in subsection (13), the Court shall grant the adoption order on being satisfied that it is in the best interests of the child to do so.
- (17) Where, during the period referred to in subsection (13), the Court is not satisfied that, based on the reports, the adoption would be in the best interests of the child, the child shall be placed with a person or a relevant competent authority as the Court considers to be in the best interests of the child.
- (18) The Court may make any exceptions or dispense with any requirement or formalities as it may consider necessary, for the transfer of the child abroad, if the Court is satisfied that it is in the best interests of the child and that under the circumstances the case should be disposed of expeditiously.
- (19) If the transfer of a child does not take place under this section, the reports referred to in subsections (5) and (6) shall be returned to the relevant central authority who transmitted it.

Non-application of section 37 to certain adoptions

39. Section 37 does not apply to a child who is brought into the Islands for —

- (a) a *de facto* adoption; or
- (b) adoption by a person who will become an adoptive parent jointly with a natural parent of the child, or jointly with a relative of the child under a *de facto* adoption.

Approval to bring child into the Islands for adoption under section 37

- 40.** (1) Before a child who is not a resident of the Islands is brought into the Islands for the purposes of consideration for adoption or anticipated adoption under section 37, the applicant shall apply to the Court in accordance with the applicable Rules of Court, for the Court's approval to bring the child into the Islands for the purposes of the adoption.
- (2) At the time of making the application under subsection (1) for approval to bring the child into the Islands for the purposes of adoption, the applicant shall send a copy of the application to the Director of the Workforce, Opportunities and Residency Cayman Office and the Director of Customs and Border Control.
- (3) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of thirty thousand dollars or to imprisonment for a term of six years, or to both.

Approval of overseas adoption of Caymanian child

- 41.** (1) Except under the authority of an order made by the Court, a person shall not place a Caymanian child, or permit, or cause or procure the care and custody of a Caymanian child to be transferred from the Islands to a person resident outside of the Islands ("overseas applicant") for the purpose of the adoption of the Caymanian child.
- (2) The Court may make an order, subject to any conditions and restrictions as the Court thinks fit, authorizing the Caymanian child to be placed with or transferred to an overseas applicant for the purpose of the adoption of the Caymanian child by the overseas applicant, but that order shall not be made unless the Court is satisfied that —
- (a) the consents required by section 24(4) have been given or the Court has dispensed with those consents;
- (b) the overseas applicant is a suitable person; and
- (c) the transfer is likely to be in the best interests of the Caymanian child, consideration being for this purpose given to the wishes of the child, having regard to the age and understanding of the child.
- (3) An order under subsection (2) may only be made in respect of a Caymanian child who is to be transferred from the Islands to an approved jurisdiction.
- (4) Subsection (3) does not apply in the case of a Caymanian child who is to be transferred from the Islands for the purpose of adoption by a relative of the child or by a person who will become an adopter jointly with the child's parent.
- (5) Any person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of thirty thousand dollars or to a term of imprisonment of six years, or to both.
- (6) For the purposes of this section —



- (a) “**approved jurisdiction**” means —
 - (i) a jurisdiction referred to in Schedule 2;
 - (ii) an overseas jurisdiction which is a party to the Convention, but does not include a country or territory, whether a party to the Convention or not, which is for the time being a restricted country; and
 - (iii) any other jurisdiction designated by the Cabinet by Order as an approved jurisdiction; except that where a designated jurisdiction becomes a restricted country that jurisdiction ceases to be an approved jurisdiction; and
- (b) “**restricted country**” means a country or territory, whether a party to the Convention or not, which is for the time being restricted under this Act from engaging in intercountry adoptions under the Convention pursuant to section 9(4) to (9) of the *Children and Adoption Act 2006* of the United Kingdom.

Licence to send non-Caymanian child abroad for adoption

- 42.** (1) The Court may grant a licence authorizing the care and custody of a non-Caymanian child for whom adoption arrangements have been made and for the non-Caymanian child to be transferred to a citizen of a prescribed country, who is resident outside the Islands, subject to subsection (2) and any other conditions and restrictions which may be imposed by the Court, having regard to the Convention.
- (2) The Court may refuse to grant a licence to send a non-Caymanian child abroad for adoption in accordance with subsection (1), if the Court is not satisfied —
- (a) that the application is made by or with the consent of —
 - (i) every person who is a parent or guardian of the child in question;
 - (ii) who has the actual custody of the child; or
 - (iii) who is liable to contribute to the support of the child; and
 - (b) by a report of a British consular officer or any other person who appears to the Court to be trustworthy, that —
 - (i) the person to whom the care and custody of the child is transferred is a suitable person to be entrusted with the care and custody of the child; and
 - (ii) the transfer is likely to be for the welfare of the child, consideration being given to the wishes of the child, having regard to the child’s age and understanding.
- (3) The Court may dispense with any consent required by subsection (2)(a) —
- (a) if the non-Caymanian child has already been freed for adoption in accordance with the *Children Act (2012 Revision)*; or

- (b) if the non-Caymanian child has not been freed for adoption and the Court is satisfied that the person whose consent is to be dispensed with —
 - (i) has abandoned or deserted the child;
 - (ii) cannot be found;
 - (iii) is incapable of giving that consent; or
 - (iv) being a person liable to contribute to the support of the child —
 - (A) has persistently neglected or refused to contribute to that support; or
 - (B) is a person whose consent ought, in the opinion of the Court and in all the circumstances of the case, to be dispensed with.
- (4) Where the Court grants a licence under subsection (1), the Court may authorize the making or receipt by any person of any payments in consideration of the transfer of the care and custody of the non-Caymanian child in respect of whom the licence is granted.
- (5) Rules of Court governing the application for and grant of licences may be prescribed and those rules may be varied or revoked.
- (6) In any proceedings under this section, a report by a British consular officer or a deposition made before a British consular officer and authenticated under the signature of that officer is admissible in evidence, and it is not necessary to prove the signature or official character of the person who appears to have signed that report or deposition.

Memoranda of Understanding

- 43.** The Secretary of State of the United Kingdom, on behalf of the Islands, may enter into a memorandum of understanding or other arrangement with the Government of another State in order to allow for —
- (a) the collaboration and exchange of information with competent authorities in that State who are responsible for adoption; and
 - (b) the establishment of safeguards to ensure that intercountry adoptions take place in the best interests of the child and in accordance with the fundamental rights of the child as recognized by law.

Provision and exchange of information

- 44.** (1) The central authority for the Islands may, subject to the *Data Protection Act (2021 Revision)* and in accordance with the prescribed requirements —
- (a) furnish a person with information relating to the safety, welfare and wellbeing of a child; and



- (b) direct a person to furnish the central authority for the Islands with information relating to the safety, welfare and wellbeing of a particular child or class of children.
- (2) The person to whom a direction is given under subsection (1)(b) shall comply promptly with the requirements of the direction.
- (3) If information is furnished under subsection (1) —
 - (a) the furnishing of the information is not, in any proceedings before a court, tribunal or committee, to be held to constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct;
 - (b) liability for defamation is not incurred because of the furnishing of the information; and
 - (c) the furnishing of the information does not constitute a ground for civil proceedings for malicious prosecution or for conspiracy.
- (4) A reference in subsection (3) to information furnished under subsection (1) extends to any information so furnished in good faith and with reasonable care.

PART 9 - COURT PROCEEDINGS

Rules of Court

- 45.** (1) The Rules Committee referred to in section 19 of the *Grand Court Act (2015 Revision)* shall exercise the powers set out in that section for the making of rules for the Court, as appear to the Rules Committee to be necessary or expedient for the purposes of giving effect to this Act.
- (2) The Rules Committee of the Court of Appeal referred to in section 35 of the *Court of Appeal Act (2023 Revision)* shall exercise the powers set out in that section for the making of rules for the Court of Appeal, as appear to the Rules Committee to be necessary or expedient for the purposes of regulating appeals to the Court of Appeal under this Act.
- (3) The rules may, in particular, make provision —
- (a) with respect to the procedure to be followed in any relevant proceedings, including the manner in which applications to the Court or appeals to the Court of Appeal are to be made;
 - (b) as to the persons entitled to participate in any relevant proceedings, whether as parties to the proceedings or by being given the opportunity to make representations to the Court or the Court of Appeal, as applicable;
 - (c) with respect to the documents and information to be furnished in connection with any relevant proceedings; and

- (d) with respect to dealing generally with all matters of procedure and incidental matters related to court proceedings arising out of this Act.

Hearings to be in private

- 46.** An application under this Act for an adoption order, or an appeal from that order, shall be heard and dealt with in private.

Persons entitled to be heard

- 47.** (1) The applicant, or in the case of an appeal, the appellant, and any other person entitled to notice where an application or an appeal referred to in section 46 is made shall be entitled to be heard at the hearing, personally or through an attorney-at-law.
- (2) For the purposes of subsection (1), the following persons are entitled to notice and therefore entitled to be heard —
- (a) an adoptive parent;
 - (b) a natural parent —
 - (i) in the case of an adoption relating to a child; and
 - (ii) in the case of an adoption relating to a young person where there is a guardianship order in effect or the Court determines that the natural parent is entitled to notice and therefore entitled to be heard;
 - (c) a guardian;
 - (d) the child or the young person;
 - (e) the Board;
 - (f) the Department; and
 - (g) any other person who the Court or the Court of Appeal considers relevant or expedient to the determination of the application or the appeal.

Duties of Court on making an adoption order

- 48.** (1) Where an adoption order is made, the Court shall —
- (a) seal and sign the order and send a certified copy of the order to —
 - (i) the applicant;
 - (ii) the Registrar-General;
 - (iii) the Board, where the Board was involved in the adoption; and
 - (iv) the Director, where the Department was involved in the adoption; and
 - (b) ensure that the former parent or former guardian of the child or young person is notified in writing that an adoption order has been made in respect of the child or young person.
- (2) On receipt of a certified copy of an adoption order under subsection (1)(a), the Registrar-General shall register the adoption order pursuant to this Act.



Right of access to reports

- 49.** A prospective adopter is entitled to have access to the reports provided under this Act unless the Court otherwise directs or imposes conditions or restrictions relating to access.

Order for medical information to be provided to adopters

- 50.** The Court may make an order directing the natural parents of a child or young person to provide the adopters of that child or young person with information about the medical history of the natural parents.

Secrecy of previous identity

- 51.** (1) Where the previous identity or parentage of the child or young person has not been provided to any person prior to the adoption order, the adoption order shall not show the previous surname, but shall identify the child or young person by the given name prior to the adoption and a number or other code referring to the registration of the birth of the child or young person.
- (2) Where the person being adopted is a child, subsection (1) does not apply if the court is satisfied that —
- (a) the person or persons who gave the child up for placement subsequently agreed to the revealing of the child's previous identity and parentage, and the prospective adopter agrees; and
 - (b) revealing the child's previous identity and parentage would not be contrary to the best interests of the child.
- (3) Where the person being adopted is a young person, subsection (1) does not apply if the court is satisfied that —
- (a) the young person agrees to the revealing of his or her previous identity and parentage; and
 - (b) revealing the young person's previous identity and parentage would not be detrimental to the young person's wellbeing.

Change of name

- 52.** (1) An applicant for an adoption order may apply to the Court to change the given name or the surname, or both the given name and the surname, of the child or young person.
- (2) Where an application is made under subsection (1), the Court may grant the application for the change, if the child or young person gives consent.
- (3) The Court may dispense with the requirement to obtain the consent of the child under subsection (2) if, having regard to the age and understanding of the child, the child is unable to give that consent.

- (4) The Court may dispense with the requirement to obtain the consent of the young person under subsection (2) if, having regard to the mental capacity of the young person, the young person is unable to give that consent.
- (5) The consent of the child or young person shall be obtained separately in relation to this matter even though the Court dispensed with the child's or young person's consent for the purposes of the adoption.
- (6) The Court shall consider factors that it considers relevant, including the level of maturity of the child and the level of understanding of the child or young person, in determining the weight that it should give to the views of the child or young person before changing the given name or surname of —
 - (a) a child; or
 - (b) a young person who lacks mental capacity.

Supervision in exceptional circumstances

- 53.** Where the Court refuses to make an adoption order, the Court may make an order which provides that the child or young person is to be placed under the supervision of the Department or another specified person if it appears to the Court that there are exceptional circumstances making it desirable to do so.

Confidentiality of court files

- 54.** An application for an order under this Act or any document filed in court in connection with the application may be searched only —
- (a) by order of the Court;
 - (b) at the request of the Director; or
 - (c) at the request of the chairperson of the Board.

Appeals to the Court of Appeal

- 55.** A person who is aggrieved by a decision of the Court in relation to an application for an adoption order, or a decision of the Court or a Judge in Chambers in relation to any matter relating to an adoption or intended adoption, may appeal to the Court of Appeal in accordance with the Rules of Court made by the Court of Appeal for the purpose of regulating appeals to the Court of Appeal under this Act.

PART 10 - OPENNESS AND DISCLOSURE

Disclosure of information

- 56.** (1) The Board, the Department, the Court or a person involved in the adoption of a child, may, if the circumstances warrant, provide information concerning the background of the child at the request of a party to a placement or an adoption.



- (2) Where a natural parent or a guardian —
 - (a) places his or her child up for adoption; and
 - (b) does not wish for the identity of the natural parent or the guardian to be disclosed,
the natural parent or the guardian shall indicate this in writing to the Board or the Department when the child is being placed for adoption, or to the Court where the child is freed for adoption under the *Children Act (2012 Revision)*.
- (3) Where a registered and licensed practitioner requires health-related information concerning a child for the purposes of the child's health care, if it is in the best interests of the child, the Board, the Department, the Court or the person involved in the adoption process shall provide the requested information to the registered and licensed practitioner.
- (4) Where the adoption was effected in the Islands before the commencement of this Act, if it is in the best interests of the child, the Board, the Department, the Court, or the person involved in the adoption process, may provide background information of the child and any health-related information about the child referred to in this section to —
 - (a) an adopter; or
 - (b) the adopted child.
- (5) For the purposes of subsection (1), “**a party to a placement or an adoption**” refers to —
 - (a) the applicant;
 - (b) the parent or guardian of the child who is the subject of the adoption process; or
 - (c) a person with parental responsibility for the child who is the subject of the adoption process;
 - (d) the child who is the subject of the adoption process.

Request by adoptee for information regarding original registration of birth

- 57.** (1) Where an adoptee wishes to be issued a certified copy of the adoptee's original registration of birth, the adoptee shall apply to the Court in the prescribed form for an order to that effect.
- (2) Where the adoptee is a minor, the written consent of the adoptee's adoptive parent is required for an application under subsection (1), unless the Court is satisfied that such consent should be dispensed with.
 - (3) In considering an application under subsection (1), the Court —
 - (a) shall, where feasible, attempt to ensure that the adoptive parents are consulted concerning the application; and

- (b) may request information regarding the adoption from the Board, the Department or any other relevant person.
- (4) The Court may require a person to whom information may be provided under this section to receive counselling from a counselor or therapist before the information is provided.
- (5) Notwithstanding subsection (4), where the Court refuses to grant an application under this section, the Court may direct the applicant to receive counselling from a counselor or therapist, if the Court sees it fit.

PART 11 - EFFECT OF ADOPTION ORDERS

Effect of adoption order

- 58.** (1) Where an adoption order is made in respect of a child or young person, the adoptee is in law the child of the adoptive parents as if the adoptive parents were the natural parents, that is to say that —
- (a) the adoptee becomes the child of the adoptive parent and the adoptive parent becomes the parent of the adoptee;
 - (b) the adoptee has the same rights in relation to the adoptive parent as a child born to the adoptive parent;
 - (c) the adoptive parent has the same parental responsibility as a parent of a child born to the adoptive parent;
 - (d) the adoptee ceases to be regarded as the child of the natural parent and the natural parent ceases to have parental responsibility with respect to the adoptee, except a natural parent who remains as a parent jointly with the adoptive parent;
 - (e) a person having custody of the child or young person before the adoptive parent ceases to have that custody; and
 - (f) a person whose consent is required under this Act ceases to have a right or obligation to consent to any matter with respect to that child or young person.
- (2) Where a child or young person is adopted for a subsequent time, the child or young person is in law the child of the subsequent adoptive parents as if the subsequent adoptive parents were the natural parents, that is to say that —
- (a) the adoptee becomes the child of the subsequent adoptive parent;
 - (b) the subsequent adoptive parent becomes the parent of the adoptee;
 - (c) the adoptive parent immediately before the subsequent adoptive parent ceases to have parental responsibilities with respect to the adoptee except an adoptive parent who remains as a parent jointly with the subsequent adoptive parent; and



- (d) a person having custody of the child or young person before the subsequent adoptive parent ceases to have that custody.
- (3) An adoption order shall not affect an interest in property which was expressly given to the adoptee before the date of the adoption order.
- (4) For the purposes of laws related to incest and the prohibited degrees of marriage, subsections (1) and (2) shall not remove a person from a relationship in consanguinity which, except for this section, would have existed between that person and another person.
- (5) Subject to this section, where an adoption order is made in respect of a child or young person, any order in force with respect to the maintenance of or support for the child or young person, and any agreement whereby the natural parent of the child or young person has undertaken to make payments specifically for the benefit of the child or young person, 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.

Intestacies, wills and settlements

- 59.** (1) Where, at any time after the making of an adoption order, the adopter or the adoptee 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 adoptee were the child of the adopter 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, any reference (whether express or implied) —
- (a) to a child of the adopter shall, unless the contrary intention appears, be construed as, or as including, a reference to an adopted child;
 - (b) to a child of the adoptee'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 adoptee; and
 - (c) to a person related to the adoptee in any degree shall, unless the contrary intention appears, be construed as a reference to the person who would be related to the adoptee in that degree if that person were the child of the adopter and were not the child of any other person.
- (3) In a will or other document made at any time before or after the commencement of this Act, whether or not the maker of the will or document is alive on that day, a reference to a person or group of persons described in terms of relationship by blood or marriage to another person shall be deemed to refer to or include a person who comes within the description as a result of an adoption, unless the contrary is expressed in the will or document.

Provisions supplementary to section 59

- 60.** (1) For the purposes of the devolution of any property in accordance with section 59, and for the purposes of the construction of any such disposition as is mentioned in that section, an adoptee shall be deemed to be related to any other person being the child or adopted child of the adopter or (in the case of a joint adoption) of either of the adopters —
- (a) where the adoptee was adopted by two spouses or civil partners jointly, and that other person is the child or adopted child of both of them, as brother or sister of the whole blood; and
 - (b) in any other case as brother or sister of the half-blood.
- (2) For the purposes of subsection (4) and section 59(2) a disposition made by will or codicil shall be treated as made on the date of the death of the testator.
- (3) Notwithstanding section 59 —
- (a) trustees or personal representatives may convey or distribute any real or personal property to or among the persons entitled to the property without having ascertained that no adoption order has been made by virtue of which any person is or may be entitled to any interest in the property; and
 - (b) the trustees or personal representatives shall not be liable to any such person of whose claim they have not had notice at the time of the conveyance or distribution,
- but nothing in this subsection shall prejudice the right of any such person to follow the property, or any property representing it, into the hands of any person, other than a purchaser, who may have received it.
- (4) Where an adoption is made in respect of a person who has been previously adopted, the previous adoption shall be disregarded for the purposes of section 59, in relation to the devolution of any property on the death of a person dying intestate after the date of the subsequent adoption order and in relation to any disposition of property made or taking effect on the death of a person dying after that date.

Revocation of adoption order

- 61.** (1) An adoption order may not be revoked except —
- (a) as a result of an appeal of a decision of the Court; or
 - (b) where the order was obtained as a result of fraud, but only if the Court considers it to be in the child's best interests to revoke the order.
- (2) Where an adoption order is revoked under this section, the Court or the Court of Appeal, as applicable, shall cause notice of the revocation to be communicated to —
- (a) an adoptive parent;



- (b) a natural parent;
 - (c) a guardian;
 - (d) the child or the young person;
 - (e) the Registrar-General;
 - (f) the Board, where the Board was involved in the adoption;
 - (g) the Director, where the Department was involved in the adoption; and
 - (h) any other person whom the Court or the Court of Appeal is satisfied should be notified of the revocation of the adoption order.
- (3) On being notified of the revocation of an adoption order, the Registrar-General shall cause to be cancelled —
- (a) the entry in the Adopted Children and Young Persons Register relating to the adoptee; and
 - (b) the marking with the word “Adopted” of any entry relating to the adoptee in the general register of births,
- and the Registrar-General shall record the words “Adoption order revoked” in relation to the cancelled entry.
- (4) A copy or extract of any entry in any register, being an entry in respect of which the marking is cancelled under this section, shall be deemed to be an accurate copy if the marking is omitted from it.

Care and custody of child in the event of refusal of application or revocation of adoption order

- 62.** (1) If the Court refuses an application for an adoption order in respect of a child or the Court or the Court of Appeal revokes an adoption order in respect of a child, the Court or the Court of Appeal, as applicable, may make any orders for the care and custody of the child concerned as it thinks fit including an order declaring the child to be in the care and custody of the Department.
- (2) Where an order has been made under subsection (1) declaring the child to be in the care and custody of the Department, the Department may —
- (a) transfer care and custody of the child to another applicant; or
 - (b) place the child in the care of a caregiver.

PART 12 - REGISTER OF ADOPTIONS

Adopted Children and Young Persons Register

- 63.** (1) The Registrar-General shall maintain at the Registrar-General’s office a register called the Adopted Children and Young Persons Register, in which only entries further to adoption orders shall be made.



- (2) Adoption orders shall contain a direction to the Registrar-General to make in the Adopted Children and Young Persons Register any entry recording the adoption in the form approved by the Registrar-General for that purpose.
- (3) For the purposes of compliance with subsection (2) —
 - (a) where the precise date of the child's or young person's birth is not proved to the satisfaction of the Court, the Court shall determine the probable date of the child's or young person's birth and the date so determined shall be specified in the order as the date of birth;
 - (b) where the name or surname which the child or young person is to bear after the adoption differs from the child's or young person's original name or surname the new name or surname shall be specified in the order instead of the original name; and
 - (c) where the country of birth of the child or young person is not proved to the satisfaction of the Court, the particulars of that country may be omitted from the order and from the entry in the Adopted Children and Young Persons Register.
- (4) The Court shall cause every adoption order to be communicated to the Registrar-General, and on receipt of that communication the Registrar-General shall cause compliance to be made with the directions contained in the adoption order in regard both to marking an entry in the Register of Births with the word "Adopted" and in regard to making the appropriate entry in the Adopted Children and Young Persons Register.
- (5) A certified copy of any entry in the Adopted Children and Young Persons Register if purporting to be signed by the Registrar-General, without any further or other proof of that entry where the entry is made in accordance with subsection (4), shall be received not only as evidence of the adoption to which it relates but also as evidence of the date of the birth of the child or young person to which it relates in all respects as though the same were a certified copy of an entry in the Register of Births.
- (6) The Registrar-General shall cause an index of the Adopted Children and Young Persons Register to be made and kept in the Registrar-General's office.
- (7) The Registrar-General shall, in addition to the Adopted Children and Young Persons Register and the index for that register, keep any other registers and books, and make any entries in it as may be necessary, to record and make traceable the connection between an entry in the Register of Births which has been marked "Adopted" pursuant to this Act and any corresponding entry in the Adopted Children and Young Persons Register —
 - (a) but the registers and books previously referred to in this subsection (including the Adopted Children and Young Persons Register), and any index of them, shall not be open to public inspection or search; and



- (b) unless by order of a court of competent jurisdiction, the Registrar-General shall not furnish any person with any information contained in, or with any copy or extract from, any of the registers or books referred to in this subsection.

PART 13 - OFFENCES AND PENALTIES

Restriction on making arrangements for placement or adoption

- 64.** (1) A person other than the Board, the Department, the Court or a person referred to in subsection (2) shall not make arrangements for placement or adoption, whether or not for gain or reward.
- (2) For the purposes of subsection (1), other than the Board, the Department and the Court, the following persons may make arrangements for placement or adoption in accordance with the procedure provided for in this Act —
- (a) the parent or guardian of the child;
 - (b) a prospective adopter of the child;
 - (c) any other person prescribed in regulations made under this Act as being able to make arrangements for placement or adoption, including an administrative body prescribed as such in regulations made under section 72(2)(d); and
 - (d) an attorney-at-law hired by or on behalf of a person referred to in paragraph (a), (b) or (c).
- (3) For the purposes of subsection (1), a person is considered to make arrangements for placement or adoption if that person, not being a person referred to in subsection (1) —
- (a) performs any of the following actions —
 - (i) enters into or makes any agreement or arrangement for the placement or adoption of the child or young person by any other person;
 - (ii) facilitates the placement or adoption of the child or young person by any other person;
 - (iii) takes part in the management or control of a body of persons which exist wholly or in part for the purpose of making arrangements for the placement or adoption of the child or young person by any other person; or
 - (iv) 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 for the placement or adoption of the child or young person by any other person,

- whether the placement or adoption is effected or is intended to be effected, in pursuance of an adoption order or otherwise; or
- (b) causes another person to perform any of the actions specified in paragraph (a).
 - (4) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of thirty thousand dollars or to imprisonment for a term of six years, or to both.
 - (5) If it is in the best interests of the child, the court by which a person who contravenes subsection (1) is convicted may order that the child in respect of whom the offence is committed be returned to the Board or the Department for the purpose of restoring the child to the parents or guardian.

Restriction on advertisements

- 65.** (1) A person shall not publish or cause to have published in any form or manner an advertisement indicating that —
- (a) the parent or guardian of a child or young person is desirous of causing the child or young person to be adopted;
 - (b) in the case of a young person, the young person desires to be adopted;
 - (c) a person is desirous of adopting a child or a young person; or
 - (d) any person, other than the Board, is willing to make arrangements for the adoption of a child.
- (2) A person who knowingly publishes or causes to be published an advertisement in contravention of subsection (1) commits an offence and is liable on summary conviction to a fine of thirty thousand dollars or to imprisonment for a term of six years, or to both.

Restrictions on sending children abroad for adoption

- 66.** (1) A person, in connection with any arrangements made for the adoption of a child who is a British subject or British Overseas Territory Citizen, shall not permit, cause or procure, the care and custody of the child to be transferred to a person who is not a citizen of a country prescribed for the purposes of section 42 or the guardian or a relative of the child and who is resident outside the Islands.
- (2) A person, in connection with any arrangements made under subsection (1), shall not permit, cause or procure, the care and custody of a child referred to in subsection (1) to be transferred to a person who is a citizen of a country prescribed for the purposes of section 42, resident outside the Islands, and who is not the guardian or relative of the child, unless a licence has been granted in respect of the child under section 42.



- (3) A person who contravenes subsection (1) or (2) commits an offence and is liable on summary conviction to a fine of thirty thousand dollars or to imprisonment for a term of six years, or to both.
- (4) In proceedings under this section —
 - (a) a report by a British consular officer or a deposition made before a British consular officer and authenticated under the signature of that officer is admissible in evidence; and
 - (b) it is not necessary to prove the signature or official status of the person who appears to have signed the report or deposition under paragraph (a).

Unlawful disclosure of confidential information

- 67.** (1) A person shall not disclose any information that is deemed confidential under this Act unless the disclosure is made with lawful authority.
- (2) For the purposes of subsection (1) a disclosure of information is made with lawful authority if —
- (a) the disclosure is made with the consent of the person to whom the information relates;
 - (b) the disclosure is authorized by law or by an order of the court;
 - (c) the disclosure is made for the purposes of any proceedings, whether criminal or civil and whether arising under, or by virtue of, this Act or otherwise; or
 - (d) having regard to the rights and freedoms or legitimate interests of any person, the disclosure is necessary in the public interest.
- (3) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of fifteen thousand dollars or to imprisonment for a term of three years, or to both.

Making a false or misleading statement

- 68.** (1) A person shall not make a statement or give any information that the person knows to be false or misleading —
- (a) in an application expressing an interest to adopt a child;
 - (b) in an application for an adoption order; or
 - (c) in connection with any other application or matter pursuant to this Act.
- (2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction —
- (a) in respect of a first offence, to a fine of five thousand dollars or to imprisonment for a term of one year, or to both; or
 - (b) in respect of a second or subsequent offence, to a fine of ten thousand dollars or to imprisonment for a term of two years, or to both.



Prohibition on payment for adoptions

- 69.** (1) A person who offers or receives payment or any other reward for an adoption, with the exception of —
- (a) an excepted payment; or
 - (b) any other payment which the Court sanctions,
- commits an offence and is liable on summary conviction to a fine of thirty thousand dollars or to imprisonment for a term of six years, or to both.
- (2) For the purposes of subsection (1), “**excepted payment**” means —
- (a) a payment made under the authority of this Act or any other Act in respect of a matter related to the adoption or proposed adoption of a child or young person;
 - (b) a payment made in respect of any legal or medical expenses incurred or to be incurred by any person in connection with an application to a court which the person has made or proposes to make for an order under this Act; or
 - (c) a payment made in respect of the travel and accommodation expenses reasonably incurred in the relocation of a child for the purposes of adoption.

PART 14 - GENERAL**Delegation by Director**

- 70.** (1) The Director may delegate to a suitably qualified officer in the Department by instrument in writing any function of the Director under this Act or any other law, other than the power to delegate under this section.
- (2) The instrument referred to in subsection (1) may provide for the extent of the delegation and the delegation may be revoked by instrument in writing at any time.

Amendment of Schedules

- 71.** The Cabinet may amend the Schedules by Order.

Regulations

- 72.** (1) The Cabinet may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.
- (2) Without limiting the generality of the power contained in subsection (1), the Cabinet may make regulations with respect to —
- (a) transitional arrangements relating to the transfer of a child to an applicant;



- (b) intercountry adoptions;
 - (c) the care and supervision of children or young persons, as applicable, who have been placed by their parents or guardians under the responsibility of the Board or the Department;
 - (d) the creation, duties, and powers, of administrative bodies that may be involved in the adoption process;
 - (e) the countries to which children may be transferred for the purpose of section 42;
 - (f) reports that may be required in relation to adoption matters and the content of those reports;
 - (g) prescribing forms for the purposes of this Act;
 - (h) prescribing any fees payable under this Act; and
 - (i) respecting any other matter the Cabinet considers necessary or advisable to carry out effectively the purposes of this Act.
- (3) The power of the Cabinet to make regulations under this section includes the power to provide for such exceptions, limitations and conditions, and make such supplementary, incidental, consequential or transitional provisions as the Cabinet considers necessary or expedient.
- (4) Regulations under this section may prescribe that the contravention of the regulations constitutes an offence for which a person is liable on summary conviction to a fine of twenty thousand dollars or to imprisonment for a term of four years, or to both.

Repeal

73. The *Adoption of Children Act, 2013* and the *Adoption of Children Act (2021 Revision)* are repealed.

Transitional provisions

74. (1) Where before the commencement of this Act —

- (a) an application has been made under the repealed Acts for an order authorizing the adoption of a child and the application has not been finally determined; or
- (b) a child has been placed in the custody of a person for the purpose of adoption, the consents to adoption required under the repealed Acts have been given and any other necessary consent has been given,

the application for an order authorizing the adoption of that child shall continue to be dealt with and completed or otherwise determined in all respects as if this Act had not been brought into force.

- (2) Any approval, decision, appeal or other matter in progress under the repealed Acts that has not been wholly dealt with by the Board or other person or body when this Act comes into force shall be handled as the respective matter would have been handled under the repealed Acts until the matter is wholly dealt with.
- (3) A person who immediately before the coming into force of this Act was a member of the Board continues as a member of the Board until the termination of the person's appointment.
- (4) At the end of the term of a member of the Board referred to in subsection (3), depending on the circumstances surrounding the termination, the person may be eligible for appointment to the Board under this Act.
- (5) Where, on the commencement of this Act —
 - (a) a child is in the custody of a relative, or a relative and the spouse or civil partner of the relative; and
 - (b) the relative, or the relative and the spouse or civil partner, assumed the role of parent of the child for at least two consecutive years,the relative, or the relative and the spouse or civil partner, may apply to the Court under section 30 for an adoption order.
- (6) Where, on the commencement of this Act —
 - (a) a child is in the custody of a departmental foster parent; and
 - (b) the departmental foster parent assumed the role of parent of the child for at least two consecutive years,the departmental foster parent may apply to the Court under section 31 for an adoption order.
- (7) Nothing in this Act affects any determination concerning the parentage of a child made by a court before the commencement of this Act.



SCHEDULE 1

(section 2)

Specified Offences

1. Murder.
2. Offences relating to children under Part VII of the *Penal Code (2024 Revision)* or any equivalent or similar offences under the law of another jurisdiction.
3. Offences under the law of the Islands where the victim of the offence is an older person as defined under the *Older Persons Act, 2017* or a person with a disability as defined under the *Disabilities (Solomon Webster) Act, 2016* or any equivalent or similar offences under the law of another jurisdiction where the victim of the offence is such a person, however described under the law of that jurisdiction.
4. The offence of trafficking in persons under the *Trafficking in Persons (Prevention and Suppression) Act (2015 Revision)*.

SCHEDULE 2*(section 41)***Approved jurisdictions**

1. Commonwealth Countries
2. United States of America
3. Switzerland
4. Honduras

Passed by the Parliament the 16th day of December, 2024.

Hon. Sir Alden McLaughlin
Speaker

Zena Merren-Chin
Clerk of the Parliament

