

PROJET DE LOI

ENTITLED

The Adoption (Guernsey) Law, 1970 *

[CONSOLIDATED TEXT]

NOTE

This consolidated version of the enactment incorporates all amendments listed in the footnote below. However, while it is believed to be accurate and up to date, it is not authoritative and has no legal effect, having been prepared in-house for the assistance of the Law Officers. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.

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* Ordres en Conseil Vol. XXII, p. 380. This Law is applied, in part, with exceptions, adaptations and modifications to the Island of Alderney by the Alderney (Application of Legislation) (Adoption) Ordinance, 1979 (Recueil d'Ordonnances Tome XXI, p. 273).

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THE STATES, in pursuance of their Resolution of the thirtieth day of April, nineteen hundred and sixty-nine, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Islands of Guernsey, Herm and Jethou.

Interpretation.

1. (1) In this Law, except where the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say –

"adoption order" has the meaning assigned to it by section two of this Law,

"the Convention" means the Convention relating to the adoption of children concluded at the Hague on the fifteenth day of November, nineteen hundred and sixty-five,

"convention adoption" has the meaning assigned to it by subsection (2) of section six of this Law,

"convention country" means any country, excluding the Island and a specified country, for the time being designated by an order of the Secretary of State made under the Adoption Act 1968 as a country in which, in his opinion, the Convention is in force,

"the Court" means the Royal Court sitting as an Ordinary Court,

"Her Majesty's Greffier" includes a Deputy Greffier,

"internal law", in relation to any country, means the law applicable in a case where no question arises as to the law in force in any other country,

"the Island" means the Island of Guernsey and includes the Islands of Herm and Jethou,

"the Law of 1960" means the Adoption (Guernsey) Law, 1960^a,

"overseas adoption" has the meaning assigned to it by subsection (3) of section five of this Law,

"prescribed" means prescribed by rules made under subsection (1) of section twelve of this Law,

"qualified infant" means a person who –

- (a) is under eighteen years of age on such date as the States may by Ordinance specify and is not and has not been married, and
- (b) is a United Kingdom national or a national of a convention country and resides in the Island, a specified country or a convention country,

^a Ordres en Conseil Vol. XVIII, p. 192.

"qualified person" means a person who either resides in the Island and is a United Kingdom national or a national of a convention country or resides in a convention country or a specified country and is a United Kingdom national,

"qualified spouses" means two persons married to each other in a case where –

- (a) both reside in the Island and each is a United Kingdom national or a national of a convention country, or
- (b) both are United Kingdom nationals and each resides in the Island, a specified country or a convention country,

"Registrar" means the Registrar-General of Births and Deaths for the Bailiwick of Guernsey,

"reside" means habitually reside and **"resides"** shall be construed accordingly,

"specified country" means, for the purposes of any provision of this Law, any of the following countries, that is to say, Great Britain, Northern Ireland, the Island of Jersey, the Isle of Man and a colony, being a country designated for the purposes of that provision by the States by Ordinance or, if no country is so designated, any of those countries,

"specified order" means an adoption order made under any enactment in force in a specified country and corresponding to section two of this Law, and

"United Kingdom national" means, for the purposes of any

provision of this Law, a citizen of the United Kingdom and Colonies satisfying such conditions, if any, as the States may by Ordinance specify for the purposes of that provision.

(2) Any reference in this Law to any enactment is a reference to it as amended, and includes a reference to it as applied, by or under any other enactment including this Law.

NOTES

Section 1 is applied to the Island of Alderney by the Alderney (Application of Legislation) (Adoption) Ordinance, 1979, section 1, with effect from 1st June, 1979, subject to the exceptions, adaptations and modifications in Part I of the Schedule to the 1979 Ordinance.

In its application to the Island of Alderney, section 1 is modified in accordance with the provisions of the Alderney (Application of Legislation) (Adoption) Ordinance, 1979, section 1, Schedule, Part I, paragraph 1 and paragraph 2, with effect from 1st June, 1979.

Further power to make adoption orders.

2. (1) Subject to the provisions of this Law, the Court may, upon an application made in the prescribed manner by a qualified person or qualified spouses, make an order under this section (hereafter in this Law referred to as "**an adoption order**") authorising the applicant or applicants to adopt a qualified infant.

(2) An adoption order may be made notwithstanding that the infant is already adopted under an adoption order or otherwise.

Application of Law of 1960, etc. to adoption orders.

3. (1) Subject to the provisions of this section, the Adoption (Guernsey) Law, 1960, shall have effect as if any reference in that Law to an adoption order within the meaning of that Law, other than a reference in the provisions mentioned in subsection (2) of this section, included a reference to an adoption order

within the meaning of this Law.

(2) The aforesaid provisions of the Law of 1960 are subsection (1), subsection (2), subsection (3) and subsection (4) of section two, subsection (1) of section eleven and subsection (2) of section twenty.

(3) The Law of 1960 as modified by subsection (1) of this section shall have effect in relation to an adoption order and a proposed adoption order subject to the following further modifications –

- (a) the following provisions shall be omitted, that is to say, in subsection (1) of section one the definitions of "adoption order" and "infant", subsection (1) and subsection (2) of section ten, and in subsection (3) of section thirteen the words "and be deemed always to have included",
- (b) any reference to rules under that Law shall be construed as a reference to rules under this Law,
- (c) in paragraph (a) of subsection (1) of section eight the reference to the Law of 1960 shall include a reference to this Law and in subsection (3) of section nine the reference to section four of that Law shall include a reference to subsection (1) of section four of this Law,
- (d) for subsection (1) of section eleven there shall be substituted the following subsection –

" (1) In relation to an application for an adoption order made by an applicant who is not or

applicants who are not ordinarily resident in the Island subsection (5) of section two of this Law does not apply."

(4) Section five, section six and section seven of the Law of 1960 shall not apply to an adoption order proposed to be made in respect of an infant who is not a United Kingdom national.

(5) In any enactment passed before the date on which this subsection comes into force, other than the Law of 1960 and the Adoption (Guernsey) Law, 1966^b, any reference to an adoption order within the meaning of the Law of 1960 or to adoption or a person adopted under that Law or such an order shall respectively be construed as including a reference to, or to adoption or a person adopted under, an adoption order within the meaning of this Law.

Restrictions on making of adoption orders.

4. (1) An adoption order shall not be made on the application of a person who is not a United Kingdom national or of spouses who are not United Kingdom nationals if the adoption which would be effected by the order is prohibited by a provision of the internal law of the country of which the person is a national or the spouses are nationals, being a provision specified in an order of the Secretary of State made under the Adoption Act 1968 as one notified to the Government of the United Kingdom in pursuance of the provisions of the Convention relating to prohibitions on an adoption contained in the national law of the adopter.

(2) An adoption order shall not be made in pursuance of an application made at a time when the applicant or applicants and the infant are United Kingdom nationals and reside in the Island or a specified country.

^b Ordres en Conseil Vol. XX, p. 262.

(3) An adoption order shall not be made in respect of an infant who is not a United Kingdom national –

- (a) except in accordance with the provisions, if any, relating to consents and consultations of the internal law relating to adoption of the country of which the infant is a national, and
- (b) where the application for the order is made by one of two spouses, unless the other spouse consents to the application or the Court dispenses with his or her consent on being satisfied as to any of the matters mentioned in subsection (4) of section six of the Law of 1960.

(4) The reference to consents and consultations in paragraph (a) of subsection (3) of this section does not include a reference to consent by and consultation with the applicant for the order and members of the applicant's family, including his or her spouse, and for the purposes of that subsection consents may be proved in the prescribed manner and the Court shall be treated as the authority by whom, under the law mentioned in that paragraph, consents may be dispensed with and the adoption in question may be authorized; and where the provisions there mentioned require the attendance before that authority of any person who does not reside in the Island, that requirement shall be treated as satisfied for the purposes of the said subsection (3) if –

- (a) that person has been given a reasonable opportunity of communicating his opinion on the adoption in question to Her Majesty's Greffier, or to an appropriate authority of the country in question, for transmission to the Court, and

- (b) where he has availed himself of that opportunity, his opinion has been transmitted to the Court.

(5) An adoption order shall not be made unless the applicant for the order is a qualified person or the applicants for the order are qualified spouses not only at the time of the application but also immediately before the order is made.

(6) Except in the case of an adoption by qualified spouses, an adoption order shall not be made authorising more than one person to adopt a qualified infant.

Extension of enactments to certain adoptions made overseas.

5. (1) Subject to section six and section seven of this Law, any provision, however expressed, in any enactment passed before the date on which this section comes into force under which a person adopted in pursuance of an adoption order within the meaning of the Law of 1960 is for any purpose treated as the child of the adopter, or any other relationship is deduced by reference to such an order, shall have effect as respects anything done or any event occurring on or after that date as extending to an overseas adoption.

(2) Subject as aforesaid, the following provisions of the Law of 1960, that is to say, subsection (2) of section thirteen, section fourteen and subsection (3) of section sixteen, shall have effect as if any reference to an adoption order within the meaning of the Law of 1960 included a reference to an overseas adoption.

(3) In this Law "**overseas adoption**" means an adoption of such a description as the States may from time to time by Ordinance specify being a description of adoptions of infants appearing to the States to be effected under the law of any country outside the Island; and an Ordinance under this subsection may contain provision as to the manner in which evidence of an overseas adoption may be

given.

NOTES

Section 5 is applied to the Island of Alderney by the Alderney (Application of Legislation) (Adoption) Ordinance, 1979, section 1, with effect from 1st June, 1979, subject to the exceptions, adaptations and modifications in Part I of the Schedule to the 1979 Ordinance.

In its application to the Island of Alderney, section 5 is modified in accordance with the provisions of the Alderney (Application of Legislation) (Adoption) Ordinance, 1979, section 1, Schedule, Part I, paragraph 1, with effect from 1st June, 1979.

The following Ordinance has been made under section 5:

Adoption (Designation of Overseas Adoptions) Ordinance, 1979.

Recognition of determinations made overseas in adoption proceedings.

6. (1) Where an authority of a convention country or a specified country having power under the law of that country –

- (a) to authorise or review the authorisation of a convention adoption or a specified order, or
- (b) to give or review a decision revoking or annulling a convention adoption, a specified order or an adoption order,

makes a determination in the exercise of that power, then, subject to section seven of this Law and any subsequent determination having effect under this subsection, the determination shall have effect in the Island for the purpose of effecting, confirming or terminating the adoption in question or confirming its termination, as the case may be.

(2) In this Law "**convention adoption**" means an overseas adoption of a description designated by an Ordinance under subsection (3) of the last foregoing section as that of an adoption regulated by the Convention.

Annulment etc. of certain adoptions and determinations made overseas.

7. (1) The Court may, upon an application under this subsection, by order annul a convention adoption –

- (a) on the ground that at the relevant time the adoption was prohibited by a notified provision, if under the internal law then in force in the country of which the adopter was then a national or the adopters were then nationals the adoption could have been impugned on that ground,
- (b) on the ground that at the relevant time the adoption contravened provisions relating to consents of the internal law relating to adoption of the country of which the adopted person was then a national, if under that law the adoption could then have been impugned on that ground,
- (c) on any other ground on which the adoption can be impugned under the law for the time being in force in the country in which the adoption was effected.

(2) Where a person adopted by his father or mother alone by virtue of a convention adoption has subsequently become a legitimated person on the marriage of his father and mother, the Court may, upon an application under this subsection by the parties concerned, by order revoke the adoption.

(3) The Court may, upon an application under this subsection –

- (a) order that an overseas adoption or a determination shall cease to be valid in the Island on the ground that the adoption or determination is contrary to public policy or that the authority which purported to authorise the adoption or make the determination was not competent to entertain the case,
- (b) decide the extent, if any, to which a determination has been effected by a subsequent determination.

(4) Any court in the Island may, in any proceedings in that court, decide that an overseas adoption or a determination shall, for the purposes of those proceedings, be treated as invalid in the Island on either of the grounds mentioned in subsection (3) of this section.

(5) Except as provided by this section, the validity of an overseas adoption or a determination shall not be impugned in proceedings in any court in the Island.

Provisions supplementary to section seven.

8. (1) Any application for an order under the last foregoing section or a decision under paragraph (b) of subsection (3) of that section shall be made in the prescribed manner and within such period, if any, as may be prescribed.

(2) No application shall be made under subsection (1) or subsection (2) of the last foregoing section in respect of an adoption unless immediately before the application is made the person adopted or the adopter resides in the Island or, as the case may be, both adopters reside there.

(3) In deciding in pursuance of the last foregoing section whether

such an authority as is mentioned in subsection (1) of section six of this Law was competent to entertain a particular case, a court shall be bound by any finding of fact made by the authority and stated by the authority to be so made for the purpose of determining whether the authority was competent to entertain the case.

(4) In the last foregoing section and this section –

"determination" means such a determination as is mentioned in subsection (1) of section six of this Law,

"notified provision" means a provision specified in an order of the Secretary of State made under the Adoption Act 1968 as one in respect of which a notification to or by the Government of the United Kingdom was in force at the relevant time in pursuance of the provisions of the Convention relating to prohibitions contained in the national law of the adopter, and

"relevant time" means the time when the adoption in question purported to take effect under the law of the country in which it purports to have been effected.

Registration.

9. (1) The direction contained in an adoption order in pursuance of section eighteen of the Law of 1960 shall include an instruction that the entry made in the Adopted Children Register in consequence of the order shall be marked with the words "Convention order".

(2) If the Registrar is satisfied that an entry in the Register of Births relates to a person adopted under an overseas adoption and that he has sufficient particulars relating to that person to enable an entry in the form set out in the Schedule to the Law of 1960, as modified by this subsection, to be made in the Adopted Children Register in respect of that person, he shall –

- (a) make such an entry in the Adopted Children Register, and
- (b) if there is a previous entry in respect of that person in that register, mark the entry, or if there is more than one such entry, the last of them, with the word "Re-adopted" followed by the name in brackets of the country in which the adoption was effected, and
- (c) unless the entry in the Register of Births is already marked with the word "Adopted", whether or not followed by other words, mark the entry with that word followed by the name in brackets of the country aforesaid;

and for the purposes of this subsection the said Schedule shall have effect as if column 6 were headed "Date and place of adoption".

(3) If the Registrar is satisfied –

- (a) that an adoption order or an overseas adoption has ceased to have effect, whether on annulment or otherwise, or
- (b) that any entry or mark was erroneously made in pursuance of subsection (2) of this section in any register mentioned in that subsection,

he may cause such alterations to be made in any such register as he considers are required in consequence of the cesser or to correct the error; and where an entry in

such a register is amended in pursuance of this subsection, any copy or extract of the entry shall be deemed to be accurate if and only if it shows the entry as amended but without indicating that it has been amended.

NOTE

Subsection (2) and subsection (3) of section 9 are applied to the Island of Alderney by the Alderney (Application of Legislation) (Adoption) Ordinance, 1979, section 1, with effect from 1st June, 1979.

Nationality.

10. (1) If the Secretary of State by order made under the Adoption Act 1968 declares that a description of persons specified in the order has, in pursuance of the Convention, been notified to the Government of the United Kingdom as the description of persons who are deemed to possess the nationality of a particular convention country, persons of that description shall, subject to the following provisions of this section, be treated for the purposes of this Law as nationals of that country.

(2) Subject to subsection (3) of section eight of this Law and subsection (3) of this section, where it appears to the Court in any proceedings under this Law, or to any court by which a decision in pursuance of subsection (4) of section seven of this Law falls to be given, that a person is or was at a particular time a national of two or more countries, then –

- (a) if it appears to the said court that he is or was then a United Kingdom national, he shall be treated for the purposes of those proceedings or that decision as if he were or had then been a United Kingdom national only,
- (b) if, in a case not falling within paragraph (a) above, it appears to the said court that one only of those

countries is or was then a convention country, he shall be treated for those purposes as if he were or had then been a national of that country only,

- (c) if, in a case not falling within paragraph (a) above, it appears to the said court that two or more of those countries are or were then convention countries, he shall be treated for those purposes as if he were or had then been a national of such one only of those convention countries as the said court considers is the country with which he is or was then most closely connected,
- (d) in any other case, he shall be treated for those purposes as if he were or had then been a national of such one only of those countries as the said court considers is the country with which he is or was then most closely connected.

(3) A court in which proceedings are brought in pursuance of section seven of this Law shall be entitled to disregard the provisions of subsection (2) of this section in so far as it appears to that court appropriate to do so for the purposes of those proceedings; but nothing in this subsection shall be construed as prejudicing the provisions of subsection (3) of section eight of this Law.

(4) Where, after such inquiries as the court in question considers appropriate, it appears to the Court in any proceedings under this Law, or to any court by which such a decision as aforesaid falls to be given, that a person has no nationality or no ascertainable nationality, he shall be treated for the purposes of those proceedings or that decision as a national of the country in which he resides or, where that country is one of two or more countries having the same law of nationality, as a

national of those countries.

Supplemental.

11. (1) In any case where the internal law of a country fails to be ascertained for the purposes of this Law by any court and there are in force in that country two or more systems of internal law, the relevant system shall be ascertained in accordance with any rule in force throughout that country indicating which of the systems is relevant in the case in question or, if there is no such rule, shall be the system appearing to that court to be most closely connected with the case.

(2) Except as otherwise expressly provided by this Law, nothing in this Law shall be construed as depriving an adoption effected outside the Island, or a determination made outside the Island with respect to such an adoption, of any recognition falling to be accorded to it under the law of the Island apart from this Law.

(3) In subsection (4) of section two of the Law of 1960 the references to an order previously made and to the previous and last previous order shall be construed as including references to an adoption order under this Law, a specified order and an overseas adoption.

NOTE

Section 11 is applied to the Island of Alderney by the Alderney (Application of Legislation) (Adoption) Ordinance, 1979, section 1, with effect from 1st June, 1979.

Rules and Ordinances.

12. (1) Provision in regard to any matter to be prescribed under this Law, or under Part II of the Law of 1960 in its application to adoption orders and proposed adoption orders, and dealing generally with all matters of procedure and incidental matters arising out of this Law or the said Part II and for carrying this Law

or the said Part II into effect shall be made by rules made by the Royal Court; and the rules may include provision –

- (a) for applications for adoption orders to be heard and determined otherwise than in open court,
- (b) for excluding or restricting the jurisdiction of the Court where an application for an adoption order within the meaning of this Law or the Law of 1960 has been refused by the Court.

(2) An Ordinance made under any provision of this Law may be revoked or varied by a subsequent Ordinance under that provision.

(3) Any Ordinance or rules made under this Law may make different provision for different circumstances and may contain such incidental and transitional provisions as the States or the Royal Court, as the case may be, consider expedient.

NOTES

Section 12 is applied to the Island of Alderney by the Alderney (Application of Legislation) (Adoption) Ordinance, 1979, section 1, with effect from 1st June, 1979, subject to the exceptions, adaptations and modifications in Part I of the Schedule to the 1979 Ordinance.

In its application to the Island of Alderney, section 12 is modified in accordance with the provisions of the Alderney (Application of Legislation) (Adoption) Ordinance, 1979, section 1, Schedule, Part I, paragraph 1 and paragraph 3, with effect from 1st June, 1979.

The following Ordinance has been made under section 12:

Adoption (Designation of Overseas Adoptions) Ordinance, 1979.

Citation and commencement.

13. (1) This Law may be cited as the Adoption (Guernsey) Law, 1970.

(2) This Law shall come into force on such date as the States may by Ordinance appoint, and different dates may be appointed under this subsection for different purposes of this Law.

NOTES

Section 1, section 5, subsection (2) and subsection (3) of section 9, section 11, section 12 and section 13 were brought into force on 1st June, 1979 by the Adoption (Guernsey) Law, 1970 (Commencement) Ordinance, 1979, section 1.

Section 13 is applied to the Island of Alderney by the Alderney (Application of Legislation) (Adoption) Ordinance, 1979, section 1, with effect from 1st June, 1979, subject to the exceptions, adaptations and modifications in Part I of the Schedule to the 1979 Ordinance.

In its application to the Island of Alderney, section 13 is modified in accordance with the provisions of the Alderney (Application of Legislation) (Adoption) Ordinance, 1979, section 1, Schedule, Part I, paragraph 1, with effect from 1st June, 1979.
