



BERMUDA

ADOPTION OF CHILDREN AMENDMENT ACT 2011

2011 : 17

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WHEREAS it is expedient to amend the Adoption of Children Act 2006;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Citation

1 This Act, which amends the Adoption of Children Act 2006 (the "principal Act"), may be cited as the Adoption of Children Amendment Act 2011.

Amends section 2

2 Section 2 of the principal Act is amended—

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(a) by repealing and replacing the following definitions—

“prescribed” means prescribed by Rules or Regulations, as the case may be, made under this Act;

“Rules” means the Rules made under this Act;

(b) by inserting after subsection (2) the following—

“(3) For the purposes of this Act, a resident of Bermuda is a person who, under the Bermuda Immigration and Protection Act 1956—

(a) possesses Bermudian status;

(b) is deemed to possess Bermudian status or is the spouse of a person who possesses Bermudian status; or

(c) holds a permanent resident’s certificate.”.

Amends section 6

3 Section 6 of the principal Act is amended by inserting after subsection (6) the following—

“(7) The provisions of section 55 of the Children Act 1998 apply, with the necessary changes, in respect of an application made to the Director under subsection (2) of this section.”.

Amends section 11

4 Section 11 of the principal Act is repealed and replaced with the following—

“Placement overseas

11 (1) No person shall place a child for adoption overseas without the permission of the Director (in accordance with such criteria and conditions as the Director may require) and the authority of an order made by the court under section 48.

(2) A person who contravenes subsection (1) is liable to conviction under section 48(3).”.

Amends section 44

5 Section 44 of the principal Act is amended—

(a) by renumbering the section as subsection (1); and

(b) by inserting after subsection (1) the following—

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“(2) Where an order has been made under subsection (1) declaring the child to be in the care and custody of the Director, the Director may—

- (a) transfer care and custody of the child to another prospective adoptive parent; or
- (b) place the child in the care of a caregiver.”.

Amends section 46

6 Section 46 of the principal Act is amended—

- (a) in subsection (1) by deleting the word “overseas” and substituting “approved”; and
- (b) by repealing and replacing subsection (2) with the following—

“(2) For the purposes of this Part, “approved jurisdiction” means—

- (a) an overseas jurisdiction which is a party to the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption (The Hague, 29 May 1993); 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” pursuant to subsections (4) to (9) of section 9 of the Children and Adoption Act 2006 (UK); and
- (b) any other jurisdiction designated by the Minister, by order published in the Gazette, as an approved jurisdiction; except that where a designated jurisdiction becomes a “restricted country” that jurisdiction ceases to be an approved jurisdiction.

(3) An order made under subsection (2)(b) is subject to the negative resolution procedure.”.

Amends section 47

7 Section 47 of the principal Act is amended—

- (a) in subsection (2)—
 - (i) by deleting the word “and” at the end of paragraph (c);
 - (ii) by deleting the full stop at the end of paragraph (d) and substituting a semicolon; and
 - (iii) by inserting after paragraph (d) the following—

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“(e) approval has been granted by a court under the law of the jurisdiction in which the child resides for the child to be transferred to Bermuda for the purpose of adoption; and

(f) the specific permission has been granted under the Bermuda Immigration and Protection Act 1956 for the child to enter Bermuda for the purpose of adoption.”; and

(b) by repealing and replacing subsection (4) with the following—

“(4) Approval may only be granted by a court in respect of a child who is to be brought into Bermuda from an approved jurisdiction.

(5) Subsection (2)(a) and (b) and subsections (3) and (4) do not apply in the case of a child who is to be brought into Bermuda for the purpose of adoption by a relative of the child or by a person who will become an adoptive parent jointly with the child’s parent.”.

Amends section 48

8 Section 48 is amended—

(a) in subsection (1)—

(i) by inserting after “shall” the word “place a child, or ”; and

(ii) by deleting the words “by that person”; and

(b) in subsection (2) by inserting after the words “authorizing the child to be” the words “placed with or”;

(c) by inserting after subsection (2) the following—

“(2A) An order under subsection (2) may only be made in respect of a child who is to be transferred from Bermuda to an approved jurisdiction.

(2B) Subsection (2A) does not apply in the case of a child who is to be transferred from Bermuda for the purpose of adoption by a relative of the child or by a person who will become an adoptive parent jointly with the child’s parent.”.

Inserts section 62A

9 The principal Act is amended by inserting after section 62 the following—

“Transitional provision

62A Notwithstanding section 62, where an application together with the required documents is filed with the court before the coming into operation of this Act, the court may proceed under the former Act if it determines that it would be in the best interest of the child to do so.”.

Minor amendments to the principal Act

- 10 The principal Act is amended—
- (a) in sections 27(3) and 37 by deleting the words “11 and 12” and substituting “16 and 17”;
 - (b) in section 40 by deleting the word “rules” and substituting “requirements”;
and
 - (c) in section 61(2) by deleting the words “8 of the Adoptions Rules 1964” and substituting “14 of the Rules”.

Consequential amendments

- 11 The following are amended—
- (a) The Court Fees and Expenses Rules 1972 are amended in the First Schedule in paragraph 3 (“Magistrates Act 1948”) by deleting “Adoption of Children Act 1963” and substituting “Adoption of Children Act 2006”;
 - (b) The Children Act 1998 is amended—
 - (i) in section 2 under the definition of “family proceedings” in paragraph (c)(iii) by deleting the word “1963” and substituting “2006, or any previous enactment relating to the adoption of children”; and
 - (ii) in section 18A(2) by deleting the word “1963” and substituting “2006 or any previous enactment relating to the adoption of children”;
 - (c) The Matrimonial Causes Act 1974 is amended in section 1 in the definition of “adopted” by deleting the word “1963” and substituting “2006”;
 - (d) The Matrimonial Proceedings (Magistrates’ Courts) Act 1974 is amended in section 1 in the definition of “adopted” by deleting the word “1963” and substituting “2006”;
 - (e) The Non-Contentious Probate Rules 1974 are amended in section 20(6) by deleting the word “1963” and substituting “2006”; and
 - (f) The Succession Act 1974 is amended in section 25 by deleting the word “1963” and substituting “2006”.

Commencement

- 12 This Act comes into operation on such day as the Minister may appoint by notice published in the Gazette.

[Assent Date: 09 June 2011]