

ADOPTION BILL

EXPLANATORY NOTE

THIS Bill consolidates and amends the provisions regarding the adoption of children now contained in Part III of the Infants Act 1908 and Part IX of the Maori Affairs Act 1953. It makes substantial changes in the law and practice in respect of adoption. It follows with only minor modifications the Adoption Bill which was introduced into Parliament at the end of last session.

Marginal notes alongside each clause of the Bill show where there are corresponding provisions in the present New Zealand legislation or in the Adoption Act 1950 of the United Kingdom.

Clauses 1 and 2 relate to the Short Title and interpretation of the Bill. The effect of the definition of the term "child" is to enable persons to be adopted while they are under the age of twenty-one years, as at present.

Clause 3 gives the Court power to make adoption orders whatever may be the domicile of the parties concerned. It provides that an adoption order may be made in favour of a husband and wife, or of one of them with the consent of the other.

Clause 4 specifies the minimum age of an adopting parent and the minimum difference in age between an adopting parent and the child who is being adopted. The clause forbids adoptions by more than one person except where they are husband and wife. Adoption orders made in contravention of the clause are to be valid, but may be discharged by the Court under *clause 20*. Where an adoption order is made in contravention of *clause 4* in favour of more than one person (e.g., where there has been an invalid marriage of the adopting parents) the Supreme Court is empowered to make an order in respect of the custody of the child.

Clause 5 provides that, except in special circumstances, the initial order in respect of the adoption of a child is to be an interim order.

Clause 6 forbids the placing or keeping of a child in the home of any person for the purpose of adoption unless prior approval has been given by a Child Welfare Officer or an interim order has been made in respect of the proposed adoption. An approval by a Child Welfare Officer will last for only one month unless application is made to the Court in respect of the adoption in the meantime. The provision does not apply in cases where a child is lawfully in a home under a licence or warrant of exemption or otherwise.

Clause 7 specifies the cases where a consent to an adoption must be given by the parents and guardians of a child. The consent of the other spouse is necessary in any case where the application for adoption is by a husband or a wife alone. A parent who desires to have his or her child adopted may appoint the Superintendent of Child Welfare as guardian for the purpose of giving that parent's consent. Conditions with respect to the religion in which the applicant intends to bring up the child may be attached to a consent, and the party consenting need not know the name of the applicant for the adoption order. A consent by the mother is not to be admissible unless the child is at least four weeks old at the date of the consent.

Clause 8 specifies the circumstances in which a consent may be dispensed with by the Court.

Clause 9 provides that any consent to an adoption may be withdrawn at any time while no interim order or adoption order has been made.

Clause 10 provides that the Court must give a Child Welfare Officer a reasonable opportunity to report on any proposed adoption, and must consider the report. The Child Welfare Officer is entitled to appear and be heard at the hearing.

Clause 11 provides that, before making an interim order or an adoption order, the Court must be satisfied that the adopting parent is a fit and proper person to have the custody of the child, and of sufficient ability to bring up, maintain, and educate the child; also that the welfare and interests of the child will be promoted by the adoption, due consideration being for this purpose given to the wishes of the child, having regard to the child's age and understanding.

Clause 12 provides that the Court may revoke an interim order on such terms as it thinks fit, including an order for the refund of money spent by the proposed adopter for the child's benefit.

Clause 13 provides that the persons in whose favour an interim order has been made may apply to the Court for the adoption order if the interim order is in force at the date of the application and has been in force for not less than the prescribed period (normally six months) and the adopting parents have had the care of the child during the period in question. Unless the Court otherwise directs, no hearing is to be necessary if a Child Welfare Officer reports in favour of the adoption, and a Child Welfare Officer is to be given the opportunity to report and be heard in cases where he has not reported in favour of the adoption.

In any case where an adoption order could issue in favour of one person only, the Court may, upon application by that person and his or her spouse and after further hearing, issue the adoption order in favour of that person and his or her spouse jointly without requiring any further consents to the adoption.

Clause 14 provides that an adoption order made after the commencement of this Act is to be deemed to be made,—

- (a) In any case where it issues following an interim order and without further hearing, on the date on which it issues:
- (b) In any other case, on the date of the actual making of the order by the Court, whether or not a formal order is ever signed.

Subclause (2) provides that, where before the commencement of the Bill an adoption order has been granted in New Zealand by any Court but no adoption order in the prescribed form has ever been signed, the order shall be deemed to have been signed and to have become effective from the date of the actual granting of the order by the Court. A proviso is added that, for the purposes of any deed or

instrument (except a will) made before the commencement of the Bill, or of the will or intestacy of any testator or intestate who died before the commencement of the Bill, or of any vested or contingent right of the adopted child or any other person under any such deed, instrument, will, or intestacy, subclause (2) shall not apply to any adoption order which has been made before the commencement of the Bill.

Clause 15 specifies the effect of an interim order. Such an order—

- (a) May require that the adoption order shall not issue without a further hearing:
- (b) Shall not effect any change in the child's names, but may specify how they are to be changed by the adoption order:
- (c) Shall lapse after one year:
- (d) Shall not be deemed to be an adoption order.

While an interim order remains in force—

- (a) The adopting parents are entitled to the custody of the child:
- (b) The Child Welfare Officer may visit the home where the child resides:
- (c) The child must not be taken outside New Zealand without leave of the Court:
- (d) The adopting parents must give a Child Welfare Officer notice if they change their residence.

Clause 16 specifies the effect of an adoption order in respect of the name of the child, the relationships acquired and lost in consequence of the adoption, and the effect of the adoption on rights of succession and property, race, nationality, citizenship, domicile, appointments of guardians, and affiliation orders and maintenance orders.

Clause 17 provides that overseas adoptions are to be given the same force as adoption orders made under the Bill in cases where—

- (a) The adoption is legally valid according to the law of the place where it was made; and
- (b) In consequence of the adoption, the adoptive parents had, or would (if the adopted person had been a young child) have had, immediately following the adoption, according to the law of that place, a right superior to that of any natural parent in respect of the custody of the child; and
- (c) Either—
 - (i) The adoption was made by an order of a Court of a Commonwealth country or of the United States of America; or
 - (ii) In consequence of the adoption, the adoptive parents or any adoptive parent had, immediately following the adoption, according to the law of the place where the adoption was made, a right superior to or equal with that of any natural parent in respect of any property of the adopted person which is capable of passing to the parents or any parent of the person in the event of the person dying intestate without other next of kin and domiciled in the place where the adoption was made and a national of the State which had jurisdiction in respect of that place.

The clause does not restrict the effect of overseas adoptions to which it does not apply.

Clause 18 provides that an adoption order may be made in favour of any person, whether a Maori or not, in respect of any child, whether a Maori or not.

Clause 19 provides that adoptions according to Maori custom are not to be operative except where they were made before the commencement of the Native Land Act 1909.

Clause 20 gives the Court power to vary or discharge an adoption order or an adoption according to Maori custom which was made before the commencement of the 1909 Act. Restricted power is also given to discharge overseas adoptions where the persons concerned are domiciled in New Zealand. The clause specifies the effect of the discharge of any such adoption order or adoption.

Clause 21 provides that, where the applicant or one of the applicants for an adoption order is a Maori, and the child is a Maori, the application is to be to the Maori Land Court; and that all other applications are to be to a Magistrate's Court of civil jurisdiction. An adoption order is not to be invalid by reason of the fact that it was made in the wrong Court.

Clause 22 gives power, similar to that contained in section 27 (2) of the Child Welfare Act 1925, to appoint associate members of Magistrates' Courts in connection with adoption applications.

Clause 23 provides that applications under the Bill are not to be heard in open Court.

Clause 24 provides that adoption records are not to be open for inspection except by order of a Court in very special circumstances. The adoption order itself is to be open for inspection by an executor or administrator or trustee who requires to see it for some purpose in connection with the administration of an estate or trust.

Clause 25 provides that in connection with adoption applications the Court may admit evidence that is not normally admissible.

Clause 26 prohibits the making of payments in consideration of adoption, except with the consent of the Court.

Clause 27 imposes restrictions on the publication of advertisements relating to adoptions.

Clause 28 specifies offences against the Bill and penalties therefor.

Clause 29 authorizes the making of regulations for giving effect to the provisions of the Bill and for the due administration thereof.

Clauses 30 and 31 and the Schedules provide for consequential amendments and repeals. Where proceedings are pending at the date of the commencement of the Bill, the Court may allow them to be completed under either the existing legislation or the new legislation.

Hon. Mr Marshall

ADOPTION

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A BILL INTITULED

AN ACT to consolidate and amend certain enactments of the General Assembly relating to the adoption of children.

No. 21--1

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

- Short Title. 1. This Act may be cited as the Adoption Act 1955. 5
- Interpretation. 2. In this Act, unless the context otherwise requires,—
- Infants Act 1908, No. 86, s. 15
(Reprint of Statutes, Vol. III, p. 1073)
1939, No. 39, s. 34
- “Adopted child” means any person concerning whom an adoption order is in force:
- “Adoptive parent” means any person who adopts a child in accordance with an adoption order; and, in the case of an order made in favour of a husband and wife on their joint application, means both the husband and wife; but does not include a spouse who merely consents to an adoption: 10
- “Adoption order” means an adoption order made by a Magistrate’s Court or the Maori Land Court under this Act; and does not include an interim order: 15
- “Child” means a person who is under the age of twenty-one years; and includes any person in respect of whom an interim order is in force, notwithstanding that the person has attained that age: 20
- “Child Welfare Officer”,—
- (a) In relation to any application or proposed application to the Maori Land Court, means a Welfare Officer appointed under section four of the Maori Social and Economic Advancement Act 1945; and includes, where that Court so directs, a Child Welfare Officer appointed under the Child Welfare Act 1925; and 25 30
- (b) In relation to any application or proposed application to a Magistrate’s Court for an adoption order, means a Child Welfare Officer appointed under the Child Welfare Act 1925; and includes, where that Court so directs, a Welfare Officer appointed under section four of the Maori Social and Economic Advancement Act 1945; and 35 40
- (c) In any other case, includes a Child Welfare Officer appointed under the Child Welfare Act 1925, and a Welfare Officer appointed under section four of the Maori Social and Economic Advancement Act 1945: 45
- 1945, No. 43
- See Reprint of Statutes, Vol. III, p. 1091

- 5 “Commonwealth country” means a country that is a member of the British Commonwealth of Nations; and includes every territory for whose international relations the Government of that country is responsible; and also includes the Republic of Ireland as if that country were a member of the British Commonwealth of Nations:
- 10 “Commonwealth representative” means an Ambassador, High Commissioner, Minister, Chargé d’Affaires, Consular Officer, Trade Commissioner, or Tourist Commissioner of a Commonwealth country (including New Zealand); and includes any person lawfully acting for any such officer; and also includes any diplomatic secretary on the staff of any such Ambassador, High Commissioner, Minister, or Chargé d’Affaires:
- 15 “Court” means—
- 20 (a) The Maori Land Court where the term is used in relation to any application for an adoption order which is required by section *twenty-one* of this Act to be made to that Court, or where the term is used in relation to any application in respect of an adoption order made by that Court:
- 25 (b) A Magistrate’s Court of civil jurisdiction in any other case:
- 30 “Father”, in relation to an illegitimate child, means the natural father:
- “Interim order” means an interim order made under this Act:
- 35 “Maori” means a person who is a Maori within the meaning of the Maori Affairs Act 1953: 1953, No. 94
- “Publish”, in relation to any advertisement, means—
- 40 (a) Insert in any newspaper or other periodical publication printed and published in New Zealand; or
- (b) Bring to the notice of members of the public in New Zealand in any other manner whatsoever:
- “Registrar”, in relation to any Court, means the Registrar of that Court:

“Relative”, in relation to any child, means a grandparent, brother, sister, uncle, or aunt, whether of the full blood, of the half blood, or by affinity; and includes, where the child is illegitimate, any person who would be a relative of the child within the meaning of this definition if the child were the legitimate child of his mother and father: 5

“Superintendent of Child Welfare” means the Superintendent of the Child Welfare Division of the Department of Education. 10

Making of Adoption Orders

Power to make adoption orders. 1908, No. 86, ss. 16, 17
Adoption Act 1950 (U.K., 14 Geo. 6, ch. 26), s. 1

3. (1) Subject to the provisions of this Act, a Court may, upon an application made by any person whether domiciled in New Zealand or not, make an adoption order in respect of any child, whether domiciled in New Zealand or not. 15

(2) An adoption order may be made on the application of two spouses jointly in respect of a child.

(3) An adoption order may be made in respect of the adoption of a child by the mother or father of the child, either alone or jointly with his or her spouse. 20

Restrictions on making adoption orders. 1908, No. 86, ss. 16, 17, 19
Adoption Act 1950 (U.K.), s. 2

4. (1) An adoption order shall not be made in respect of a child unless the applicant or, in the case of a joint application, one of the applicants— 25

(a) Has attained the age of twenty-five years and is at least twenty-one years older than the child; or

(b) Has attained the age of twenty-one years and is a relative of the child; or 30

(c) Is the mother or father of the child.

(2) An adoption order shall not be made in respect of a child who is a female in favour of a sole applicant who is a male unless the Court is satisfied that the applicant is the father of the child or that there are special circumstances which justify the making of an adoption order. 35

(3) Except as provided in subsection *two* of section *three* of this Act, an adoption order shall not be made providing for the adoption of a child by more than one person. 40

(4) Any adoption order made in contravention of this section shall be valid, but may be discharged by the Court under section *twenty* of this Act.

5 (5) Where any adoption order made in contravention of this section provides for the adoption of a child by more than one person, the Supreme Court may, on the application of any such person made at any time while the adoption order remains in force, make such provision as appears just with respect to the custody, maintenance,
10 and education of the child.

5. Upon any application for an adoption order, if the Court considers that the application should be granted, it shall in the first instance make an interim order in favour of the applicant or applicants:

Interim orders to be made in first instance.

15 Provided that the Court may in any case make an adoption order without first making an interim order, if—

(a) All the conditions of this Act governing the making of an interim order have been complied with; and

20 (b) Special circumstances render it desirable that an adoption order should be made in the first instance.

6. (1) It shall not be lawful for any person to place or receive or keep any child under the age of fifteen
25 years in the home of any person for the purpose of adoption, unless—

Restrictions on placing or keeping a child in a home for adoption.

(a) Prior approval has been given by a Child Welfare Officer, and that approval is for the time being in force; or

30 (b) An interim order in respect of the proposed adoption is for the time being in force.

(2) Any approval granted by a Child Welfare Officer for the purposes of this section shall remain in force for one month after it is granted:

35 Provided that, where application to the Court for an adoption order is made before the expiration of one month from the date of the grant of the approval, the approval shall remain in force until the application is abandoned or dismissed or an order is made by the Court on the
40 application.

(3) An interim order may be made by the Court in respect of a child notwithstanding that a Child Welfare Officer has refused to grant an approval under this section.

(4) This section shall not apply in any case where the child is—

- (a) Already in the home for care under a licence or warrant of exemption granted under section forty-one of the Infants Act 1908; or
- (b) Otherwise lawfully in the home.

See Reprint
of Statutes,
Vol. III,
p. 1086

Consents to
adoptions.
1908, No. 86,
s. 18
1947, No. 60,
s. 26
1948, No. 48,
s. 10

Adoption Act
1950 (U.K.),
s. 3 (3)

7. (1) Before the Court makes any interim order, or makes any adoption order without first making an interim order, consents to the adoption by all persons (if any) whose consents are required in accordance with this section shall be filed in the Court. 10

(2) The persons whose consents to any such order in respect of any child are required as aforesaid, unless they are dispensed with by the Court under section *eight* of this Act, shall be— 15

- (a) The parents and guardians of the child as provided in subsections *three* to *five* of this section; and
- (b) The spouse of the applicant in any case where the application is made by either a husband or a wife alone. 20

(3) The parents and guardians whose consents to any such order in respect of any child are required as aforesaid, unless they are dispensed with by the Court under section *eight* of this Act, shall be,— 25

- (a) If the child is legitimate and there is no adoption order in force in respect of the child, the surviving parents or parent and the surviving guardians or guardian appointed by any deceased parent: 30
- (b) If the child is illegitimate and there is no adoption order in force in respect of the child, the mother, or (if she is dead) the surviving guardians or guardian appointed by her: 30

Provided that the Court may in any case require the consent of the father if in the opinion of the Court it is expedient to do so: 35

- (c) If there is an adoption order in force in respect of the child, the surviving adoptive parents or parent and the surviving guardians or guardian appointed by any deceased adoptive parent. 40

(4) Subject to the prior consent of the Superintendent of Child Welfare, any parent who desires to have his or her child adopted may in writing appoint the Superintendent of Child Welfare as the guardian of the child
5 until such time as the child is legally adopted, and the Superintendent, when so appointed, may give such consent to the adoption of the child as is required from the person who appointed him as guardian of the child:

10 Provided that any such appointment by the mother of a child shall be void unless the child is at least four weeks old at the date of the appointment:

Provided also that nothing in this subsection shall relieve the parent from any liability for the maintenance of the child until the child is adopted.

15 (5) In the case of a refugee child within the meaning of Part I of the Child Welfare Amendment Act 1948, 1948, No. 48, a consent by the Superintendent of Child Welfare, or by any other person who has been granted the guardianship of the child under that Act, shall take the place of every
20 other consent by a parent or guardian of the child.

(6) The consent by any parent or guardian of a child to an adoption may be given (either unconditionally or subject to conditions with respect to the religion in which the applicant intends to bring up the child) with-
25 out the parent or guardian knowing the identity of the applicant for the order.

(7) A document signifying consent by a mother of a child to an adoption shall not be admissible unless the child is at least four weeks old at the date of the
30 execution of the document.

(8) Except where it is given by the Superintendent of Child Welfare, a document signifying consent to an adoption shall not be admissible unless,—

35 (a) If given in New Zealand, it is witnessed by a Magistrate, a Registrar of the Supreme Court or of a Magistrate's Court, or a Solicitor, or a Judge or Commissioner or Registrar of the Maori Land Court:

40 (b) If given in any other country, it is witnessed by and sealed with the seal of office of a Notary Public or Commonwealth representative who exercises his office or functions in that country.

(9) Except where it is given by the Superintendent of Child Welfare, the form of the document signifying
45 consent to an adoption shall contain an explanation of

the effect of an adoption order, and shall have endorsed thereon a certificate by the witness that he has personally explained the effect of an adoption order to the person who is giving the consent.

(10) Every person who is an applicant for an adoption order shall be deemed to consent to the adoption, and it shall not be necessary for him or her to file a formal consent under this section. 5

Cases where consent may be dispensed with.
1908, No. 86, s. 23
1941, No. 26, s. 36
1951, No. 81, s. 15
Adoption Act 1950 (U.K.), s. 3

8. (1) The Court may dispense with the consent of any parent or guardian to the adoption of a child in any of the following circumstances: 10

(a) If the Court is satisfied that the parent or guardian has abandoned, neglected, persistently failed to maintain, or persistently ill-treated the child; and that reasonable notice of the application for an adoption order has been given to the parent or guardian where the parent or guardian can be found: 15

(b) If the Court is satisfied that the parent or guardian is unfit, by reason of any physical or mental incapacity, to have the care and control of the child; that the unfitness is likely to continue indefinitely; and that reasonable notice of the application for an adoption order has been given to the parent or guardian: 20 25

(c) If a licence has been granted in respect of the child under section forty of the Adoption Act 1950 of the Parliament of the United Kingdom, or under the corresponding provisions of any former or subsequent Act of that Parliament. 30

14 Geo. 6, ch. 26

(2) The Court may dispense with the consent of the spouse of an applicant for an adoption order if it is satisfied that the spouses are living apart and that their separation is likely to be permanent.

(3) In any case where a mentally defective person is a parent or guardian of a child in respect of whom an application for an adoption order has been made, service of notice of the application on the committee or administrator of the estate of the parent or guardian, or on the person with whom the parent or guardian resides or under whose care he is, shall (unless the Court otherwise orders) be sufficient service thereof for the purposes of this section. 35 40

(4) Any person whose consent is dispensed with under this section may, on notice to every applicant for the adoption order and within one month after the making of the interim order, make application for the
 5 revocation of that order to the Supreme Court if the order was made by a Magistrate's Court, or to the Maori Appellate Court if the order was made by the Maori Land Court; and the Court to which the application is so made may in its discretion revoke that order.

10 (5) In any case where the Court has made an adoption order without first making an interim order or has made an adoption order within one month after making the interim order, any person whose consent is dispensed with under this section may, on notice to every
 15 adoptive parent and within one month after the making of the adoption order, make application for the discharge of the adoption order to the Supreme Court if the order was made by a Magistrate's Court, or to the Maori Appellate Court if the order was made by the Maori
 20 Land Court; and the Court to which the application is so made may in its discretion discharge the order. All the provisions of section *twenty* of this Act, so far as they are applicable and with the necessary modifications, shall apply in connection with any such discharge of an
 25 adoption order.

(6) In any case where the Supreme Court or the Maori Appellate Court revokes any interim order or discharges any adoption order in accordance with this section, that Court may include in its order an order for
 30 the refund by some person specified in the order of money spent by any adopter or proposed adopter for the child's benefit. Any such order for the refund of money shall be enforceable as a judgment of the Court which made the order in favour of the person to whom the money has to
 35 be repaid.

9. Any consent to an adoption, and any appointment of the Superintendent of Child Welfare as the guardian of a child under subsection *four* of section *seven* of this Act, may be withdrawn at any time while neither an
 40 interim order nor an adoption order has been made in connection with the adoption, but shall not be withdrawn after any such order has been made. Where any such appointment of the Superintendent of Child Welfare is so withdrawn, any consent given by him shall lapse.

Withdrawal
of consents.

Child Welfare
Officer to
report.

10. (1) Before the Court makes any interim order, or makes any adoption order without first making an interim order,—

- (a) The Registrar of the Court shall require a Child Welfare Officer to furnish a report on the application; 5
- (b) Reasonable time shall be allowed to enable the Child Welfare Officer to furnish a report, and the Court shall consider any report which the Child Welfare Officer may furnish; and 10
- (c) The Registrar shall give the Child Welfare Officer reasonable notice of the hearing of the application.

(2) The Child Welfare Officer shall be entitled to appear at the hearing of the application, and to cross-examine, call evidence, and address the Court. 15

Restrictions on
making of
orders in
respect of
adoption.
1908, No. 86,
s. 18 (1) (c)
Adoption Act
1950 (U.K.),
s. 5

11. Before making any interim order or adoption order in respect of any child, the Court shall be satisfied—

- (a) That every person who is applying for the order is a fit and proper person to have the custody of the child and of sufficient ability to bring up, maintain, and educate the child; and 20
- (b) That the welfare and interests of the child will be promoted by the adoption, due consideration being for this purpose given to the wishes of the child, having regard to the age and understanding of the child. 25

Revocation of
interim order.

12. (1) On the application of any person, the Court may in its discretion, if it deems it to be in the interests of the child to do so, revoke an interim order in respect of any child on such terms as the Court thinks fit, including an order for the refund by some person specified in the order of money spent by any proposed adopter for the child's benefit. 30 35

(2) Any such order for the refund of money shall be enforceable as a judgment of the Court in favour of the person to whom the money has to be repaid.

Issue of
adoption order
where an
interim order
has been made.

13. (1) The person or persons in whose favour an interim order has been made in respect of any child may apply to the Court for the issue of an adoption order in respect of the child, if,— 40

- (a) The interim order is in force at the date of the application and has continued in force for not less than the prescribed period specified in subsection *two* of this section; and 45

(b) In any case where the child is under the age of fifteen years, the child has been continuously in the care of the applicant or applicants for not less than the said prescribed period since the adoption was first approved by a Child Welfare Officer or the interim order was made, whichever first occurred.

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10 (2) The prescribed period mentioned in subsection *one* of this section shall be six months, or such shorter period as may in special circumstances be specified in the interim order in any case.

15 (3) Where an application is duly made to a Magistrate's Court under subsection *one* of this section the Registrar shall issue the adoption order without any further hearing, or where an application is duly made to the Maori Land Court under subsection *one* of this section that Court shall issue the adoption order without any further hearing, if in either case—

20 (a) A Child Welfare Officer has filed a report recommending that an adoption order be issued;

(b) The interim order did not require the application to be dealt with by the Court; and

25 (c) No proceedings for the revocation of the interim order have been commenced;

but the adoption order shall not be issued without a further hearing in any other case.

(4) In any case where a hearing by the Court of an application under this section is required as aforesaid—

30 (a) The Maori Land Court or the Registrar of the Magistrate's Court, as the case may be, shall require a Child Welfare Officer to furnish a report on the application:

35 (b) The Maori Land Court or the Registrar of the Magistrate's Court, as the case may be, shall appoint a time and place for the hearing of the application, and in so doing shall allow reasonable time to enable the Child Welfare Officer to furnish his report as aforesaid:

40 (c) The Court shall consider any report which the Child Welfare Officer may furnish:

(d) The Maori Land Court or the Registrar of the Magistrate's Court, as the case may be, shall give the Child Welfare Officer reasonable notice of the hearing of the application, and the Child Welfare Officer shall be entitled to appear, cross-examine, call evidence, and address the Court. 5

(5) In any case where an adoption order could issue under this section in favour of one person only, the Court may, upon application by that person and his or her spouse and after further hearing, issue the adoption order in favour of that person and his or her spouse jointly without requiring any further consents to the adoption. 10

Date on which adoption order becomes effective.

14. (1) An adoption order made after the commencement of this Act shall be deemed to be made,— 15

(a) In any case where it is issued after an interim order has been made and without further hearing, on the date on which it is so issued:

(b) In any other case, on the date of the actual granting of the order by the Court, whether or not a formal order is ever signed. 20

(2) Where before the commencement of this Act an adoption order has been granted in New Zealand by any Court but no adoption order in the prescribed form has ever been signed, the order shall be deemed to have been signed and to have become effective on the date of the actual granting of the order by the Court: 25

Provided that, for the purposes of any deed or instrument (except a will) made before the commencement of this Act, or of the will or intestacy of any testator or intestate who died before the commencement of this Act, or of any vested or contingent right of the adopted child or any other person under any such deed, instrument, will, or intestacy, this subsection shall not apply to any adoption order which has been granted before the commencement of this Act. 30 35

Effect of Interim Orders and Adoption Orders

Effect of interim order. Adoption Act 1950 (U.K.), s. 6 (4)

15. (1) An interim order in respect of any child—
 (a) May require that the adoption order shall not be issued without a further hearing: 40
 (b) Shall not effect any change in the child's names, but may specify how they are to be changed by the adoption order:

- (c) Shall remain in force for one year or until it is sooner revoked or an adoption order is sooner made in respect of the child:

Provided that a further interim order may be made by the Court upon application duly made to it in that behalf:

- (d) Shall not be deemed to be an adoption order for any purpose.

(2) So long as an interim order remains in force in respect of any child—

- (a) The person or persons in whose favour the order is made shall be entitled to the custody of the child; and shall comply with such terms, if any, as may be specified in the order in respect of the custody of the child:

- (b) Any Child Welfare Officer may, at all reasonable times, visit and enter the residence in which the child lives:

- (c) The child shall not be taken out of New Zealand without leave of the Court:

- (d) The person or persons in whose favour the order is made shall give to a Child Welfare Officer at least seven days' notice before changing his, her, or their residence:

Provided that where an immediate change of residence is necessitated by an emergency it shall be sufficient if notice is given within forty-eight hours after leaving the residence occupied prior to the change.

16. (1) Every adoption order shall confer the surname of the adoptive parent on the adopted child, with such first or Christian name as the Court, on the application of the person who is applying for the adoption order, may fix.

Effect of
adoption order.
1950, No. 18,
s. 2

(2) Upon an adoption order being made, the following paragraphs of this subsection shall have effect for all purposes, whether civil, criminal, or otherwise, but subject to the provisions of any enactment which distinguishes in any way between adopted children and children other than adopted children, namely:

- (a) The adopted child shall be deemed to become the child of the adoptive parent, and the adoptive parent shall be deemed to become the parent of the child, as if the child had been born to that parent in lawful wedlock:

Provided that, where the adopted child is adopted by his mother either alone or jointly with her husband, the making of the adoption order shall not prevent the making of an affiliation order or maintenance order, or of an application for an affiliation order or maintenance order, in respect of the child: 5

- (b) The adopted child shall be deemed to cease to be the child of his existing parents (whether his natural parents or his adoptive parents under any previous adoption), and the existing parents of the adopted child shall be deemed to cease to be his parents, and any existing adoption order in respect of the child shall be deemed to be discharged under section *twenty* of this Act: 10 15

Provided that, where the existing parents are the natural parents, the provisions of this paragraph shall not apply for the purposes of any enactment relating to forbidden marriages or to the crime of incest: 20

- (c) The relationship to one another of all persons (whether the adopted child, the adoptive parent, the existing parents, or any other persons) shall be determined in accordance with the foregoing provisions of this subsection so far as they are applicable: 25
- (d) The foregoing provisions of this subsection shall not apply for the purposes of any deed, instrument, will, or intestacy, or affect any vested or contingent right of the adopted child or any other person under any deed, instrument, will, or intestacy, where the adoption order is made after the date of the deed or instrument or after the date of the death of the testator or intestate, as the case may be, unless in the case of a deed, instrument, or will, express provision is made to that effect: 30 35
- (e) The adoption order shall not affect the race, nationality, or citizenship of the adopted child: 40
- (f) The adopted child shall acquire the domicile of his adoptive parent or adoptive parents, and the child's domicile shall thereafter be determined as if the child had been born in lawful wedlock to the said parent or parents: 45

Provided that nothing in this paragraph shall affect the domicile of origin of the child:

5 (g) In any case where the adoption order was made before the adopted child attained the age of three years, the child's domicile of origin shall be deemed to be the domicile which he first acquired under paragraph (f) of this subsection upon the making of the adoption order, but nothing in this Act shall affect the domicile of origin of an adopted child in any other case:

(h) Any existing appointment as guardian of the adopted child shall cease to have effect:

15 (i) Any affiliation order or maintenance order in respect of the adopted child and any agreement (not being in the nature of a trust) which provides for payments for the maintenance of the adopted child shall cease to have effect:

20 Provided that, where the adopted child is adopted by his mother either alone or jointly with her husband, the order or agreement shall not cease to have effect by reason of the making of the adoption order:

25 Provided also that nothing in this paragraph shall prevent the recovery of any arrears which are due under any order or agreement at the date on which it ceases to have effect as aforesaid.

30 (3) This section shall apply with respect to all adoption orders, whether made before or after the commencement of this Act:

Provided that,—

35 (a) For the purposes of any appointment, affiliation order, maintenance order, or agreement to which paragraph (h) or paragraph (i) of subsection *two* of this section applies, the adoption order, if made before the commencement of this Act, shall be deemed to have been made on the date of the commencement of this Act:

40 (b) For the purposes of any other deed or instrument (except a will) made before the commencement of this Act, or of the will or intestacy of any testator or intestate who died before the commencement of this Act, or of any vested or

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contingent right of the adopted child or any other person under any such deed, instrument, will, or intestacy, this section shall not apply, and the adoption order shall have effect for the purposes of the deed, instrument, will, or intestacy according to the law existing at the date on which the deed, instrument, will, or intestacy took effect: 5

- (c) An adoption order made before the first day of April, nineteen hundred and fifty-four, shall not affect the operation of any rule of Maori custom as to intestate succession to Maori land. 10

Effect of
overseas
adoption.

17. (1) Where a person has been adopted (whether before or after the commencement of this section) in any place outside New Zealand according to the law of that place, and the adoption is one to which this section applies, then, for the purposes of this Act and all other New Zealand enactments and laws, the adoption shall have the same effect as an adoption order validly made under this Act, and shall have no other effect. 15 20

(2) Subsection *one* of this section shall apply to an adoption in any place outside New Zealand, if,—

- (a) The adoption is legally valid according to the law of that place; and
- (b) In consequence of the adoption, the adoptive parents or any adoptive parent had, or would (if the adopted person had been a young child) have had, immediately following the adoption, according to the law of that place, a right superior to that of any natural parent of the adopted person in respect of the custody of the person; and 25 30
- (c) Either—
- (i) The adoption was made by an order of a Court of a Commonwealth country or of the United States of America; or 35
- (ii) In consequence of the adoption, the adoptive parents or any adoptive parent had, immediately following the adoption, according to the law of that place, a right superior to or equal with that of any natural parent in respect of any property of the adopted person which was capable of passing to the parents or any 40

parent of the person in the event of the person dying intestate without other next of kin and domiciled in the place where the adoption was made and a national of the State which had jurisdiction in respect of that place—

5 but not otherwise.

(3) Nothing in this section shall restrict or alter the effect of any other adoption made in any place outside New Zealand.

10 *Maori Adoptions*

18. An adoption order may be made under this Act on the application of any person, whether a Maori or not, in respect of any child, whether a Maori or not. Application of Act to Maoris.

15 19. (1) No person shall hereafter be capable or be deemed at any time since the commencement of the Native Land Act 1909 to have been capable of adopting any child in accordance with Maori custom, and, except as provided in subsection *two* of this section, no adoption in accordance with Maori custom shall be of any force or effect, whether in respect of intestate succession to Maori land or otherwise. Adoptions according to Maori custom not operative. 1953, No. 94, s. 80 1909, No. 15

20 (2) Any adoption in accordance with Maori custom that was made and registered in the Maori Land Court before the thirty-first day of March, nineteen hundred and ten (being the date of the commencement of the Native Land Act 1909), shall during its subsistence be deemed to have and to have had the same force and effect as if it had been lawfully made by an adoption order under Part IX of the Native Land Act 1909.

30 *Miscellaneous*

20. (1) The Court may in its discretion vary or discharge any adoption order (whether the order was made before or after the commencement of this Act), or any adoption to which subsection *two* of section *nineteen* of this Act applies, subject to such terms and conditions as it thinks fit. Adoption order may be varied or discharged. 1908, No. 86, s. 22 1950, No. 18, s. 4

35 (2) The Court may, in its discretion and subject to such terms and conditions as it thinks fit, discharge any adoption made in any place outside New Zealand either before or after the commencement of this Act, if—

(a) The person adopted is living and is domiciled in New Zealand; and

(b) Every living adoptive parent is domiciled in New Zealand.

(3) Where the Court discharges any adoption order or adoption as aforesaid, it may confer on the person to whom the order or adoption related such surname with such first or Christian name as the Court thinks fit; but, if it does not do so, the names of the person shall not be affected by the discharge of the order. 5

(4) Any person may, at any time within one month after the date of the decision of the Court under this section,— 10

(a) Appeal to the Supreme Court against any decision of a Magistrate's Court under this section:

(b) Appeal to the Maori Appellate Court against any decision of the Maori Land Court under this section. 15

(5) Upon an adoption order, or an adoption to which subsection *one* of section *seventeen* of this Act applies, or an adoption to which subsection *two* of section *nineteen* of this Act applies, being discharged under this section after the commencement of this Act— 20

(a) The relationship to one another of all persons (whether the adopted child, the adoptive parents, the natural parents, the guardians of the child at the date of the adoption order or adoption, or any other persons) shall be determined as if the adoption order or adoption had not been made; and any appointment as guardian of the adopted child which was made while the adoption order or adoption was in force shall cease to have effect. 25 30

Provided that the discharge of the order or adoption shall not affect anything lawfully done or the consequences of anything unlawfully done while the order or adoption was in force. 35

(b) No change in the child's domicile shall occur by reason only of the discharge; but, where during the infancy of the child any natural parent resumes custody of the child to whom the discharged order or adoption related, the domicile of the child shall thereafter be determined 40

as if neither the discharged order or adoption nor any prior adoption order or adoption in respect of the child had been made:

5 (c) Any affiliation order, maintenance order, or agreement for payment of maintenance which ceased to have effect under paragraph (i) of subsection *two* of section *sixteen* of this Act shall thereafter have effect according to the terms thereof:

10 Provided that nothing in this paragraph shall cause the order or agreement to have any effect in respect of the period while the adoption order or adoption remained in force:

15 (d) For the purposes of any other deed or instrument (except a will) made while the order or adoption was in force, or of the will or intestacy of any testator or intestate who died while the order or adoption was in force, or of any vested or contingent right of the adopted child or any other person under any such deed, instrument, will, or intestacy, the order or adoption shall be deemed to continue in force.

25 (6) Upon the discharge of any adoption made in any place outside New Zealand, not being an adoption to which subsection *one* of section *seventeen* of this Act applies,—

30 (a) If at the date of the discharge adoptions could be discharged in the place where the adoption in question was made, the discharge shall have the same effects as if it was made in that place:

35 (b) If at the date of the discharge adoptions could not be discharged in the place where the adoption in question was made, the discharge shall have the same effects, so far as they are applicable, as the discharge of an adoption order made under this Act.

40 (7) Where an adoption order has been discharged before the commencement of this Act, the effect of the discharge shall be determined by reference to the law existing at the date of the discharge.

21. Where the applicant, or (in the case of a joint application) one of the applicants, is a Maori and the child is a Maori, the application for an adoption order

Court to which application for adoption order shall be made.

shall be made to and considered by the Maori Land Court; but every other application for an adoption order shall be made to and considered by a Magistrate's Court of civil jurisdiction:

Provided that no adoption order shall be invalid by reason of the fact that it was made in the wrong Court. 5

Appointment
of associate
members of
Magistrate's
Court.

22. (1) The Governor-General may from time to time appoint one or more persons of either sex to be associated with a Magistrate's Court or with Magistrates' Courts in any specified area for the purposes of any particular application for or in relation to an interim order or adoption order or any particular class of applications for or in relation to such orders or generally in relation to all applications for or in respect of such orders to be dealt with in the said Court or Courts. Such persons shall be appointed on the ground of special knowledge or experience deemed to be of advantage to the Court in the exercise of its discretionary powers under this Act. 10 15

(2) The decision of the Court shall not in any case be dependent on any person being so appointed, or on the concurrence of any person so appointed, but in all other respects all persons so associated with any Magistrate's Court shall be deemed to be members of that Court. 20

Applications
not to be heard
in open Court.

23. No application under this Act shall be heard or determined in open Court, and no report of proceedings under this Act shall be published except by leave of the Court which heard the proceedings. 25

Adoption
records not
open for
inspection.

24. (1) Adoption records shall not be available for production or open to inspection except on the order of the Court or of the Supreme Court: 30

Provided that the adoption order itself shall be open to inspection by an executor or administrator or trustee who requires to inspect it for some purpose in connection with the administration of an estate or trust. 35

(2) Any such order may be made—

(a) For the purposes of a prosecution for making a false statement; or

(b) In the event of any question as to the validity or effect of an interim order or an adoption order; or 40

(c) On any other special ground.

Evidence in
adoption cases.

25. The Court to which any application is made under this Act may receive as evidence any statement, document, information, or matter that may in its opinion 45

assist it to deal effectually with the application, whether or not the same would be otherwise admissible in a Court of law.

5 **26.** Except with the consent of the Court, it shall not be lawful for any person to give or receive or agree to give or receive any payment or reward in consideration of the adoption or proposed adoption of a child or in consideration of the making of arrangements for an adoption or proposed adoption.

Prohibition of payments in consideration of adoption. 1908, No. 86, s. 20

10 **27.** It shall not be lawful for any person, other than the Superintendent of Child Welfare or a Child Welfare Officer, to publish any advertisement indicating—

Restriction upon advertisements. Adoption Act 1950 (U.K.), s. 38

- (a) That the parent or guardian of a child desires to cause the child to be adopted; or
- 15 (b) That any person desires to adopt a child; or
- (c) That any person or body of persons is willing to make arrangements for the adoption of a child.

20 **28.** (1) Every person commits an offence against this section who,—

Offences.

- (a) Places or receives or keeps any child in the home of any person for the purpose of adoption in contravention of section *six* of this Act:
- 25 (b) Takes out of New Zealand without leave of the Court any child in respect of whom an interim order is in force:
- (c) Being a person in whose favour an interim order has been made, fails to give any notice of change of residence required by paragraph
- 30 (d) of subsection *two* of section *fifteen* of this Act:
- (d) Gives or receives or agrees to give or receive any payment in contravention of section
- 35 *twenty-six* of this Act:
- (e) Publishes any advertisement in contravention of section *twenty-seven* of this Act:
- (f) Makes any false statement for the purpose of obtaining or opposing an interim order or adoption order or any variation or discharge
- 40 of any such order.

(2) Every person who commits an offence against this section shall be liable on summary conviction before a Magistrate to imprisonment for a term not exceeding three months or to a fine not exceeding fifty pounds or

45 to both.

(3) Where the Court is satisfied that an offence against this section has been committed in respect of any child, whether or not any person has been convicted of the offence, the Court may order the child to be removed to a place of safety until he can be restored to his parents or guardian or until other arrangements can be made for him. 5

Regulations.

29. (1) The Governor-General may from time to time, by Order in Council, make all such regulations as may in his opinion be necessary or expedient for giving effect to the provisions of this Act and for the due administration thereof. 10

(2) All regulations made under this section shall be laid before Parliament within twenty-eight days after the date of the making thereof if Parliament is then in session and, if not, shall be laid before Parliament within twenty-eight days after the date of the commencement of the next ensuing session. 15

Consequential amendments.

30. The enactments specified in the *First* Schedule to this Act are hereby amended in the manner indicated in that Schedule. 20

Repeals and savings.

31. (1) The enactments specified in the *Second* Schedule to this Act are hereby repealed.

See Reprint of Statutes, Vol. VIII, p. 568

(2) Without limiting the provisions of the Acts Interpretation Act 1924, it is hereby declared that the repeal of any provision by this Act shall not affect any document made or any thing whatsoever done under the provision so repealed or under any corresponding former provision, and every such document or thing, so far as it is subsisting or in force at the time of the repeal and could have been made or done under this Act, shall continue and have effect as if it had been made or done under the corresponding provision of this Act and as if that provision had been in force when the document was made or the thing was done. 25 30 35

(3) All applications, matters, and proceedings commenced under any such enactment and pending or in progress at the commencement of this Act may, at the discretion of the Court, be continued and completed,—

- (a) Under this Act; or 40
- (b) Under the said enactments in all respects as if the said enactments continued in force and as if this Act had not been passed.

SCHEDULES

Schedules.

FIRST SCHEDULE

CONSEQUENTIAL AMENDMENTS

Section 30

Enactment Amended	Nature of Amendment
1910, No. 38— The Destitute Persons Act 1910 (Reprint of Statutes, Vol. II, p. 896)	By repealing section 4 (4). By omitting from section 16 (1) the words “whether the child has been adopted by any other person or not”.
1914, No. 56— The Education Act 1914 (Reprint of Statutes, Vol. II, p. 1064)	By omitting, from the definition of the term “parent” in section 127 (1), the words “and includes an adopting parent within the meaning of Part III of the Infants Act 1908, and the wife or husband, as the case may be, of an adopting parent”.
1951, No. 22— The Births and Deaths Registration Act 1951	By omitting from section 21 (1) the words “an order of adoption is made under Part III of the Infants Act 1908”, and substituting the words “an adoption order is made by a Magistrate’s Court under the Adoption Act 1954”. By omitting from section 22 (1) the words “under Part III of the Infants Act 1908”, and substituting the words “by a Magistrate’s Court under the Adoption Act 1954”; also by omitting from section 22 (2) the words “pur- suant to Part IX of the Maori Land Act 1931”, and substituting the words “by the Maori Land Court under the Adoption Act 1954”.
1952, No. 35— The Deaths by Accidents Compensation Act 1952	By omitting, from the definition of the term “child” in section 2 (1), the words “section twenty-one of the Infants Act 1908”, and sub- stituting the words “the Adoption Act 1954”.

SECOND SCHEDULE

ENACTMENTS REPEALED

Section 31 (1)

1908, No. 86—

The Infants Act 1908: Part III, and section 56. (Reprint of Statutes, Vol. III, p. 1069.)

1925, No. 22—

The Child Welfare Act 1925: So much of the Third Schedule as relates to section 24 of the Infants Act 1908. (Reprint of Statutes, Vol. III, p. 1113.)

1939, No. 39—

The Statutes Amendment Act 1939: Section 34.

1941, No. 26—

The Statutes Amendment Act 1941: Section 36.

1942, No. 18—

The Statutes Amendment Act 1942: Sections 14 to 17.

1947, No. 60—

The Statutes Amendment Act 1947: Section 26.

1948, No. 48—

The Child Welfare Amendment Act 1948: Section 10.

1950, No. 18—

The Infants Amendment Act 1950.

1951, No. 81—

The Statutes Amendment Act 1951: Section 15.

1953, No. 94—

The Maori Affairs Act 1953: Part IX.