

Executive Order on the Danish Adoption (Consolidation) Act

The Danish Adoption (Consolidation) Act is hereby announced; cf. Consolidation Act No. 928, of 14 September 2004, with the changes which follow from section 22 in Act No. 542 of 24 June 2005 and section 1 in Act No. 494 of 12 June 2009.

Chapter I

Conditions

1. Adoption is granted by an administrative decree issued by The Regional State Administration.

(2) Where a child from a foreign country is being adopted, the administrative decree takes effect from the date when the child arrives in Denmark. If the adoption is linked to a probationary period, the administrative decree does not take effect before the expiry of the probationary period. The Regional State Administration can depart from the provision in the second sentence if special circumstances apply.

(3) In the case of adoption of a registered partner's child, where consent to the adoption is obtained according to section 8 a, the administrative decree takes effect from the child's birth.

2. Adoption may only be granted if, after an investigation into the matter, it can be assumed to be to the benefit of the person whose adoption is sought, and that person either wishes to be fostered by the adopter or has been fostered by that person, or there is another special reason for the adoption.

3. An adoption decree may not be granted for adoption of one's own child.

4. An adoption decree may only be granted to persons who have reached the age of 25. However, where warranted by special reasons a decree may be granted to a person who has reached the age of 18. In the case of adoption according to section 8 a an adoption decree may be granted to a person who has reached the age of 18.

4 a. If the person whose adoption is sought is under the age of 18, the adoption can only be granted when the applicant is approved as an adopter, cf. section 25 a and 25 b.

(2) Approval is not required, however, in the case of adoption of a spouse's child or adoptive child, or according to rules set out by the Ministry of Justice, in cases in which the adopter is closely related to, or has other special ties to, the adoptive child or its parents.

5. Persons who are married can only adopt together with their spouse, apart from the cases stated in subsection (2) of section 5 a, unless that person's spouse cannot be found or is, by reason of insanity, mental deficiency or any similar condition, incapable of managing his or her own affairs.

(2) Only married couples may adopt together.

5 a. A spouse may adopt the child or adoptive child of the other spouse (stepchild adoption).

(2) Furthermore, stepchild adoption of the child or adopted child of a former spouse may be effected. If the marriage has been dissolved by divorce or annulled, stepchild adoption shall only be allowed if the person to be adopted is of full age.

6. Where the person to be adopted has reached the age of 12, the decree shall be granted only after obtaining the consent of the person to be adopted, except where obtaining consent is considered to be detrimental to the best interests of the child.

(2) The consent of the child should be given in person before a representative of the Regional State Administration or before another authority or institution approved pursuant to subsection (1) of section 8. Before the child gives his or her consent, the child has to attend an interview about the adoption, and the child shall be informed about the legal and other effects of the adoption.

(3) Where the child is under 12, information shall be obtained about the attitude of the child to the adoption, to the extent relevant with regard to the age and maturity of the child and the circumstances of the case. In making the decision the attitude of the child in this respect should be considered to the greatest possible extent.

7. The consent of the parents is to be obtained where the person to be adopted is under the age of 18 years and is a minor.

(2) Where one of the parents does not hold the custody, cannot be found or is, by reason of insanity, mental deficiency or any similar condition, incapable of managing his or her own affairs, only the consent of the other parent is required.

(3) Where the restrictions set out in subsection (2) above apply to both parents, consent is to be obtained from the legal guardian of the child.

8. The consent to be obtained pursuant to section 7, must be given in writing during the personal attendance of the parents (legal guardian) before a representative of the Regional State Administration or another authority or institution approved for this purpose by the Minister of Justice.

(2) Consent for adoption may not be accepted until 3 months after the birth of the child except in exceptional circumstances.

(3) Prior to acceptance of consent, the parents (legal guardian) shall be instructed about the legal effects of adoption and consent.

(4) Consent may be granted to the child being adopted by the person designated by an authority or institution as authorised to act as intermediary in the adoption of children.

(5) The Minister of Justice, or the person authorised by the Minister of Justice for the purpose, may decide that consent given before an authority or institution abroad shall have the same legal effect as consent given before a Danish authority or institution, and may in that case permit departure from the provisions in subsections (1) to (3) above.

8 a. Consent according to section 7 may be granted earlier than 3 months after the birth of the child, irrespective of subsection (2) of section 8, if the adopter wishes to adopt his or her registered partner's child, which is presumed to have been born as a result of artificial insemination with anonymous donor semen, and if the partners lived together at the point in time of the artificial insemination.

(2). Subsections (1), (3) and (5) of section 8 apply correspondingly to consent granted according to subsection (1) of this section.

9. If consent granted in accordance with section 8 is revoked, the adoption decree may however be granted in so far as, with special regard to the welfare of the child, the consent is revoked unreasonably.

(2) Where the consent required by virtue of subsection (1) of section 7 cannot be obtained, an adoption decree can be granted in special circumstances, if it is of decisive importance to the welfare of the child. Where the child is being housed in a place other than its family home, the consent of the National Social Appeals Board must be obtained for an adoption decree to be granted.

(3) An adoption decree can be granted according to subsection (2), for adoption of a child under the age of 1 year, if it is established that the parents will permanently not be in a position to take care of the child and will also not be able to play a positive role for the child in connection with contact.

(4) Adoption of a child which has been housed in a place other than its family home for at least 3 years, can be granted in accordance with subsection (2), if it is established that the parents will permanently not be in a position to take care of the child.

10. (Annulled)

11. If the Regional State Administration decides to grant a decree according to section 9, even if consent to the adoption has not been obtained from the parents pursuant to subsection (1) of section 7, notification of this is given to the child, the parents, the person who holds the custody if this person is not one of the parents, the legal guardian and the prospective adoptive parent.

(2) A decision as stated in subsection (1) must be in written form and delivered in person by the Regional State Administration to the respective person/s, or served upon them. The decision shall contain information about provisions for having the decision reviewed at the court, as well as the time limits applied, cf. subsection (3).

(3) Within 14 days after a decision as stated in subsection (1) is delivered or formally announced, a demand can be made that the case is brought before the courts. Where special reasons warrant this course of action, the Regional State Administration may determine a longer time period, or extend the time period before its expiry.

(4) Where the Regional State Administration receives an application for a review of the decision by the courts, the Regional State Administration shall bring the matter before the courts, pursuant to the provisions in the (Danish) Administration of Justice Act, chapter XLIIIb, unless the adoption decree has been issued after the expiry of the time limit in subsection (3).

(5) Where the court upholds a decision by the Regional State Administration that a decree is to be granted, pursuant to section 9, or where the court decides that a decree may be granted, the Regional State Administration may not issue the adoption decree before the period allowed for appeal has expired without appeal proceedings having been instituted. The same applies in respect to appeals in interlocutory proceedings if the court dismisses a motion for a review of the decision, cf. the (Danish) Administration of Justice Act, subsection (4) of section 475 b.

12. Where the Regional State Administration has decided that it ought not be taken into account that consent to the adoption has not been obtained, the child, if in the care of the prospective adoptive parent, may not be removed from the home of the applicant by the person who holds the custody over the child while an application for adoption is pending. This shall also apply where the National Social Appeals Board has consented to adoption, according to the second sentence of subsection (2) of section 9.

13. Where the consent of a parent is not required by virtue of subsections (1) and (2) of section 7, a declaration from the parent shall be obtained before a decision is made, unless this is considered to be fundamentally detrimental to the best interests of the child or would cause undue delay in the proceedings.

14. A person who has been placed under guardianship pursuant to section 5 of the (Danish) Guardianship Act, or has been declared legally incompetent cf. section 6 of that Act may not be adopted unless a declaration has been obtained from his or her legal guardian.

15. An adoption decree shall not be issued if any of the parties required to consent to the adoption are to give or receive any kind whatsoever of payments or consideration, including compensation for loss of earnings. Any person who is familiar with the matter may be required by the Regional State Administration to supply all information known to them in order to ascertain whether any payment or consideration etc. has been received by any of the parties, as specified in the first sentence of this section.

Assistance of a Lawyer

15 a. During adoption proceedings the Regional State Administration may appoint a lawyer for a child which is at least 3 years old and which is resident in this country. This does not however apply with respect to adoptions pursuant to section 5 a, or if the adoption is taking place with an intermediary role being played by an organisation which has permission to provide adoption assistance according to section 30.

(2) The Regional State Administration must appoint a lawyer for the child during an adoption case where section 9 is applicable. At the same time the Regional State Administration must offer to the parents, and the person who holds the custody if this person is not one of the parents, as well as to the child's foster-parents (where applicable), to appoint a lawyer.

(3) With respect to legal fees and compensation for payments to lawyers the same provisions apply as in cases in which free legal aid is granted, cf. the (Danish) Administration of Justice Act, chapter XXXI.

Chapter II

Legal effects

16. The effects of adoption are to create between the adopter and the adopted child the same legal relationship as that between parents and their child, and the adopted child and its issue shall succeed to the property of the adopter and his or her family, and vice versa, as if the adopted child were the adopter's own child. At the same time, the legal relationship between the adopted child and its original family will be extinguished.

(2) In the case of stepchild adoption under section 5 a, the legal relationship between the adopted child and the spouses or former spouses shall be the same as if the child had been born to the couple or former couple.

(3) In respect of the name of the adopted child, the provisions contained in the (Danish) legislation on personal names shall apply.

17. Adoption does not confer upon the adopted child a right of succession to entailed estates of whatsoever nature, except where this is specifically provided by legislation.

Chapter III

Revocation

18. An adoption decree may be revoked by the Minister of Justice when the adopter and the adopted child so agree. Where one of the parties have been placed under guardianship pursuant to section 5 of the (Danish) Guardianship Act, or has been declared legally incompetent cf. section 6 of that Act, a declaration from his or her legal guardian must be obtained.

(2) Where the child is a minor under 18 years of age, the adoption decree may be revoked by virtue of subsection (1) above, if the adopter and the original parents of the adopted child so agree, and revocation is in the best interests of the child.

(3) If the adopted child has reached the age of 12, the consent of the child must also be obtained. The consent of the child should be given in person before a representative of the Regional State Administration, or before another authority or institution approved pursuant to subsection (1) of section 8. Before the child gives his or her consent, the child has to attend an interview about the revocation, and the child shall be informed about the legal and other effects of the revocation.

(4) Where the child is under the age of 12, information shall be obtained about the attitude of the child to the proposed revocation, to the extent relevant with regard to the age and maturity of the child and the circumstances of the case. In making the decision the attitude of the child in this respect should be considered to the greatest possible extent.

(5) When the adopters have died, the Minister of Justice may, at the request of the original parents, revoke the adoption decree if this is in the best interests of the child. Subsections (3) and (4) apply correspondingly.

19. The adoption decree may, upon a statement of claim being filed, be revoked by a court order if the adopter is guilty of serious misconduct towards the child or of persistently failing to discharge his or her parental duties in respect of the child, or if, for any other reason, a revocation of the adoption decree is found to be of fundamental importance to the welfare of the child.

(2) Action for the revocation of an adoption decree is to be brought by the adopted child. If the child is a minor or is, by reason of insanity, mental deficiency or any similar condition, incapable of managing his or her own affairs, action shall be brought by the legal guardian of the child, its original father or mother, or by the Minister of Justice or any person authorised by him.

20. Where a married couple has jointly adopted a child, the adoption decree can be revoked only in respect of both spouses.

(2) In the cases referred to in section 19, revocation may be effected although the grounds for revocation are attributable to only one of the adopters.

21. Where, under the general provisions of the (Danish) Administration of Justice Act, it is not possible to designate an agreed venue before which action for the revocation of an adoption decree may be brought, action shall be brought before a court to be determined by the Minister of Justice.

22. In the case of a new adoption, any previous adoptive relationship will be considered to have been extinguished, cf., however, subsection (2) of section 16.

23. In the event of the revocation of an adoption decree, the legal relationship between the adoptive child and the adopter and his or her relatives shall be extinguished. Under special circumstances the court may decide, upon revoking the adoption decree pursuant to section 19, that the adopter shall pay maintenance to the child.

(2) Where an adoption decree is revoked by virtue of subsections (2) and (5) of section 18, the child shall be reinstated in the legal relationship with its original family.

(3) In the circumstances set out in section 19, and having regard to the grounds for the revocation, the age of the child, and other circumstances, the court may decide that the child shall be reinstated in the legal relationship with its original family.

(4) Where the adoption decree has been revoked for a person who has reached the age of 18 years, the Minister of Justice or the court may, at the request of the adopted person, decide that the person concerned shall be reinstated in the legal relationship with its original family if the original parents consent thereto. If only one of the adopted person's original parents grants its consent under the first sentence of this subsection, it may be decided that the adopted person shall be reinstated in the legal relationship with that family.

(5) In no other respects will the child be reinstated in the legal relationship with its original family.

24. Prior to the revocation of an adoption decree under section 19, the court shall, to the extent possible, obtain declarations from the persons who are to give consent or make a declaration in respect of the issue of an adoption decree. Nevertheless, under special circumstances, where there is no question of reinstating the child in the legal relationship with its original family, the court may dispense with obtaining such declarations.

Chapter IV

Miscellaneous

25. The Minister of Justice may set out the rules for the handling of cases initiated in accordance with this Law, including

- 1) approval as a prospective adoptive parent,
- 2) handling of adoption proceedings, including the contents of applications for adoption etc.,
- 3) the consent to be obtained in respect of adoption, cf. sections 6, 8 and 8 a,
- 4) treatment of adoption cases where no consent has been obtained, cf. section 9.

25 a. For each region, the Minister of Justice sets up one or more Joint Councils which decide, following an inquiry, carried out by the Regional State Administration, whether an applicant may be approved as a prospective adoptive parent, cf. section 4 a.

(2) The Joint Council may decide to withdraw an approval of a prospective adoptive parent, where the applicant no longer fulfils the requirements for being approved, or where the applicant is otherwise considered unfit to adopt.

(3) The Joint Council consists of a member who is trained in social work, a member of the legal profession and a physician. One member must be employed by the Regional State Administration.

(4) The members of the Joint Councils and their substitutes are appointed by the Minister of Justice for periods of up to four years at a time.

(5) Joint Council decisions are made by majority vote. The Minister of Justice sets out the rules of procedure for the Joint Councils.

25 b. The National Board of Adoption consists of a chairman and a number of other members. The chairman shall be a High Court judge or Supreme Court judge. At least five members, including the chairman or a member who holds a Master's Degree in Law, shall participate in the hearing of each complaint. Decisions of the board are made by majority vote. The Minister of Justice sets out the rules of procedure for the board.

(2) The members of the board and their substitutes are appointed by the Minister of Justice for periods of up to four years at a time. A member can be appointed for up to 8 years in total. The same applies to a substitute.

(3) The decisions of a Joint Council in pursuance of this Act may be brought before the National Board of Adoption within 6 months after the decision of the Joint Council.

(4) The Joint Councils are supervised by the National Board of Adoption. The Minister of Justice sets out detailed rules for supervision.

(5) The Minister of Justice may assign other tasks to the Adoption Board, in addition to those mentioned in subsections (3) and (4).

(6) In connection with the processing of cases other than complaints, the National Board of Adoption may seek the advice and assistance of other persons considered to have expert knowledge of or a special interest in the cases processed by the board.

25 c. Where an applicant has not previously adopted a child, an approval as prospective adoptive parent of such a child shall be subject to the applicant having attended a preparatory course for prospective adoptive parents.

(2) By virtue of rules laid down by the Minister of Justice the Joint Councils may decide that applicants who have previously adopted a child shall attend a preparatory course for prospective adoptive parents before being approved again, if this is considered necessary.

(3) The Minister of Justice may determine detailed rules for the contents and planning of the courses mentioned in subsections (1) and (2), including rules for payment for the courses.

26. Upon agreement with a foreign country, it may be determined that the nationals of that country shall only be eligible to adopt or be adopted in Denmark subject to specific conditions set out in a treaty.

(2) Similar agreements may be decided in respect of the revocation of an adoption decree, when the adopter is not Danish national.

27. In respect of specified foreign countries, it may be determined by virtue of an Order in Council that Danish nationals shall only be eligible to adopt or be adopted in that country subject to specific conditions.

(2) Similarly, it may be determined that an adoption decree cannot be revoked in a foreign country with effect in Denmark, when the adopter is a Danish national.

28. Residents here in this country may adopt only under the provisions of this Act.

(2) Notwithstanding subsection (1) above, foreign adoption decisions are recognised in this country when the adoption is effected with a view to the child coming to Denmark for adoption, in accordance with the provisions of the Hague Convention of 1993 on Protection of Children and Cooperation in Respect of Intercountry Adoption. The Minister of Justice may lay down detailed rules on this matter. Furthermore, the Minister of Justice may lay down rules to the effect that other foreign adoption decisions shall be recognised in this country.

29. A resident in a foreign country may only adopt under the provisions of this Act provided that the applicant or his or her spouse is a Danish national and consequently would be unable to adopt in the applicant's country of residence, and provided that a Danish adoption decree shall be valid in the country of residence.

(2) The Minister of Justice may permit adoption, moreover, if the case involves special relations with Denmark.

(3) However, subsections (1) and (2) do not apply in the case of adoption decrees issued pursuant to the provisions of the Hague Convention of 29 May 1993 on Protection of Children and Cooperation in Respect of Intercountry Adoption.

29 a. The Ministry of Justice designates a central authority which shall undertake the assignments and obligations which it is imposed on the central authority to undertake, pursuant to the Hague Convention of 29 May 1993 on Protection of Children and Cooperation in Respect of Intercountry Adoption.

(2) The Minister of Justice can lay down detailed provisions on the activities of the central authority.

29 b. Decisions made by the Regional State Administration under this Act may be appealed to the Minister of Justice. However this does not apply to decisions under section 9, which have been brought before the court, cf. section 11.

(2) The Minister of Justice may lay down detailed rules on the processing of complaints.

Chapter V

Adoption services

Adoption

30. The Minister of Justice may accredit one or more private organisations to act as adoption placement agencies for children who are not Danish nationals.

(2) The Minister of Justice sets out the specific rules and conditions to be followed by adoption placement agencies pursuant to subsection (1) above, and acts as supervisory authority over such agencies.

(3) The Minister of Justice may authorise the National Board of Adoption to supervise the organisations that have been authorised pursuant to subsection (1).

(4) The Minister of Justice may direct that prospective adoptive parent shall be under an obligation to seek assistance from adoption placement agencies that have been accredited by virtue of subsection (1).

31. Only the authorities and organisations mentioned in sections 25, 25 a, 25 b and 30 may provide assistance in establishing contact between prospective adoptive parent and a child with a view to adopting, and implementing the adoption (adoption assistance).

(2) The provision of subsection (1) above does not, however, include legal advice etc. in connection with contact to the above mentioned authorities, or in relation to procuring the information required by the said authorities.

Foster care

32. Assistance in arranging the placement of a child under the age of 14 with foster parents for an extended or indefinite period may only be granted by and received from a public authority, or with the prior consent of a public authority.

(2) Advertising for foster parents pursuant to subsection (1) above may only be carried out by or with the consent of a public authority.

Mediation in connection with surrogate mothers

33. No assistance may be granted or received for the purpose of establishing contact between a woman and a person or persons wishing that woman to bear a child for them.

(2) No advertising is to be undertaken for the purpose of establishing contact of the nature described in subsection (1).

Penalties

34. Any person shall be liable to a fine or imprisonment for a term of up to four months, if the person

- 1) disregards the provisions set out by virtue of subsection (2) of section 30, or
- 2) contravenes sections 31 to 33.

(2) Any person who, as an intermediary, pays a consideration to obtain consent to adoption shall be subject to the same punishment.

(3) Any regulations issued pursuant to subsection (2) of section 30 may provide that any contravention of the regulations shall be punishable with a fine or imprisonment for a term of up to four months.

(4) Companies etc. (i.e. juristic persons) may be held criminally liable by virtue of the provisions in chapter V of the (Danish) Penal Code.

Chapter VI

Commencement provisions etc

35. This Act shall take effect on 1 October 1972.

36. The provisions of subsection (2) of section 6 and section 8 shall not apply to consent granted prior to the commencement of this Act.

37. Chapter II shall apply to:

- 1) adoption decrees taking effect from 1 January 1957, or later
- 2) adoption decrees taking effect prior to 1 January 1957, where by virtue of subsection (2) of section 39, the decree has been issued with the legal effects following from chapter II, and
- 3) adoption decrees taking effect prior to 1 January 1957, where by virtue of subsection (2) of section 27 of the Act on Adoption No. 140 of 25 May 1956, the decree has been issued with the legal effects following from section 13, cf. section 12 of that Act.

(2) Notwithstanding the provisions of subsection (1)(1) above, the provisions of the second sentence of subsection (2) of section 13 of the Act on Adoption no. 140 of 25 May 1956 shall apply to adoption decrees granted prior to the commencement of the Act, to the effect that the child shall maintain the right to succeed to the property of its original family.

38. Chapter III shall also apply to adoption decrees granted prior to the commencement of the Act.

39. For adoption decrees taking effect prior to 1 January 1957 and which are not encompassed by subsection (1), (2) or (3) of section 37, of this present Act, the Act on Adoption No. 87 of 26 March 1923 applies, with the exception of subsection (2) of section 13, and sections 18 to 24.

(2) Where specific reasons so warrant, the Minister of Justice may decide that the legal effects following from Chapter II of this Act shall extend to adoption decrees taking effect prior to 1 January 1957.

40. As from the commencement of this Act, the Act on Adoption No. 140 of 25 May 1956 shall be repealed.

40 a. The Danish government may make agreements with the governments of foreign countries with respect to the legal framework pertaining to adoption, between Denmark and the country in question. Upon being published in the (Danish) Law Gazette the agreement shall subsequently be applied in Denmark.

(2) The Minister of Justice may, moreover, set out rules with respect to the legal framework pertaining to adoption, between Denmark and other Scandinavian countries.

41. This Act does not extend to the Faroe Islands or Greenland except that the provisions hereof may be brought into force by an Order in Council for the said parts of the realm, subject to any variations in their operation necessitated by the specific conditions prevailing in The Faroe Islands and Greenland respectively.

Act No. 446 of 9 June 2004 (Simplification of Rules in the Family Law Area etc) contains the following commencement provision:

9.

(1) This Act shall come into force on 1 October 2004, cf., however, sections 10 and 11.

(2)-(5). (Omitted)

(6) sections 5 and 5 a, subsection 2 of section 16 and sections 23 and 28 of the Danish Adoption Act, as amended by section 5 (1), (2), (4), (5) and (8) of this Act, shall also apply to applications for adoption filed before 1 October 2004, provided that no decision has been made in the case. Section 28 of the Danish Adoption Act, as amended by section 5(8) of this Act, shall also apply to foreign decisions on adoption made before 1 October 2004 provided that no Danish adoption decree has been issued in the adoption case.

(7) (Omitted)

Act No. 542 of 24 June 2005 (Regional State Administration Act) contains the following commencement provision:

6.

(1) The Act takes effect on 1 January 2007, however cf. subsection (2).

(2) Section 5 comes into force on 1 July 2005.

Act No. 494 of 12 June 2009 (adoption without consent, stepchild adoption of the registered partner's child from birth etc.) contains the following commencement provisions:

6.

(1) The Act takes effect on 1 October 2009, however cf. (2).

(2) The Act's section 1(1), subsections 2 and 3 of section 1 in the Danish Adoption Act, as formulated in this Act's section 1(2), Section 4, third sentence, in the Danish Adoption Act, as formulated in this Act's section 1(3), subsection 5 of section 8, in the Danish Adoption Act, as formulated in this Act's section 1(4), section 8 a in the Danish Adoption Act, as formulated in this law's section 1(5), and subsection (8) of section 8, subsection (2) of section 12, subsection (1) of section 13, third sentence of subsection (2) of section 14, subsection (7) of section 15, subsection (1) of section 23, and subsection (1) of section 25 in the Act concerning the right to leave of absence and state benefits in the event of childbirth (the (Danish) Law on Childbirth), as formulated or changed respectively in this Act's section 4, come into effect on 1 July 2009.

7.

(1) Applications submitted before 1 October 2009, for approval as an adopter of a Danish child, are dealt with to completion in accordance with the provisions hitherto in force, unless the applicants are applying to participate in a preparatory course for adoption.

(2) Section 8 a in the Danish Adoption Act, as formulated in this Act's section 1(5), applies to the adoption of children born after the Act took effect. For adoption of children born before the Act took effect the provisions hitherto in force apply.

(3) Section 20 a in the Danish Act on Parental Responsibility, as formulated in this Act's section 3, only applies to adoption completed after the Act took effect.

(4) Subsection (2) of section 25 b in the Danish Adoption Act, as changed in this Act's section 1(13), applies to appointments issued after the Act came into force.

Ministry of Justice, 28 September 2009

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