

# The Danish Adoption (Consolidation) Act

## PART I Conditions

**1.** Adoption is granted by an administrative decree issued by the Regional Government Department ("Statsamtet").

(2) Where a child from a foreign country is being adopted, the adoption decree becomes effective from the date when the child arrives in Denmark.

**2.** An adoption decree may be granted only where, following an investigation into the matter, it is assumed to safeguard and promote the welfare of the child to be adopted, and where the prospective adopter wishes to raise or has raised the child, or where other special reasons justify adoption.

**3.** A decree for adoption by the child's original parents may not be granted.

**4.** An adoption decree may be granted only to persons who have attained the age of 25. However, where warranted by special reasons a decree may be granted to a person having attained the age of 18.

**4 a.-(1)** Where the child to be adopted is under the age of 18, adoption is subject to the applicant having been approved as adopter, cf. sections 25(a) and 25(b) of this Act.

(2) Approval is not required, however, in the case where a prospective adopter wishes to adopt the child or adoptive child of the spouse of the adopter, nor in cases, as set out by the Minister of Justice, where the adopter is closely related to or has other special ties to the child or its parents.

**5.-(1)** Except in the cases mentioned in section 5 a(2) of this Act, a married person may only adopt together with his or her spouse unless the 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. -(1)** A married person may adopt the child or adopted 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.-(1)** Where the child to be adopted has attained the age of 12, the decree shall be granted only after obtaining the consent of the child 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 Government Department or before another authority or institution approved pursuant to section 8(1) of this Act. 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 the age of 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.**-(1) The consent of the parents is to be obtained where the person to be adopted is under the age of 18 years and a minor.

(2) Where one of the parents does not have parental responsibility, 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.**-(1) The consent to be obtained pursuant to section 7 of this Act, must be given in writing during the personal attendance of the parents (legal guardian) before a representative of the Regional Government Department or another authority or institution approved for this purpose by the Minister of Justice.

(2) Consent for adoption may not be accepted until three 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) The parents (legal guardian) may consent to the child being adopted by a person selected by an authority or institution authorised to act as intermediary in the adoption of children.

(5) The Minister of Justice 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 extended in subsections (1) to (3) above.

**9.**-(1) If the consent of the parents (legal guardian) given by virtue of section 8 of this Act is revoked, an adoption decree may, nevertheless, be granted where, with special regard to the welfare of the child, the consent is revoked unreasonably.

(2) Where the consent required by virtue of section 7 of this Act cannot be obtained, the Regional Government Department may, nevertheless, grant an adoption decree in special circumstances where it is of decisive importance to the welfare of the child. Where the child is in the care of a child or youth welfare authority, the consent of the Social Appeals Board must be obtained.

**10.** At the request of the Social Appeals Board, the Regional Government Department may give permission that a child placed in the care of a children or youth welfare authority may later be freed for adoption, even though the consent required by virtue of section 7 of this Act cannot be obtained. Permission may only be granted subject to the provisions extended in section 9(2) of this Act.

**11.**-(1) Where the Regional Government Department decides to grant a decree or permission by virtue of sections 9 or 10 of this Act, even though the permission required pursuant to section 7 of this Act has not been obtained, the parents or legal guardian is to be notified hereof. Where the Regional Government Department decides that a decree of adoption shall not be granted under section 9(1), the applicant or the person with whom the child has been placed with a view to

adopting the child shall be notified hereof. The decision shall be given in writing and be delivered by the Regional Government Department to the appropriate individuals in person or served upon them. Within 14 days of receiving the decision or the service thereof, they may demand that the matter be brought before the Minister of Justice or the courts. Where special reasons so warrant, the Regional Government Department may determine a longer time limit, or extend it before its expiry. The decision shall contain information about provisions for having the decision reviewed by the Minister of Justice and the courts as well as the time limits applied.

(2) The provisions of subsection (1) above shall apply correspondingly where a decision by virtue of sections 9 or 10 is made or upheld by the Minister of Justice.

(3) The Minister of Justice cannot review the decision where an application for submission to the Minister is received after the expiry of the time limit as set out in subsection (1) above.

(4) Where the Regional Government Department receives an application for a review of the decision by the courts, the Regional Government Department shall bring the matter before the courts pursuant to the provisions of Part XLIII b of the (Danish) Administration of Justice Act, unless an adoption decree has been granted after the expiry of the time limit set out in subsection (1) above.

(5) Where the court upholds a decision made by the Regional Government Department or by the Minister of Justice to the effect that a decree or permit is to be issued by virtue of sections 9 or 10 of this Act, or where the court decides that a decree may be granted even though the consent of the parents (guardian) has been revoked, the decree cannot be issued until the period allowed for lodging an appeal or interlocutory appeal has expired, without appeal proceedings having been instituted. This shall also apply where the court dismisses a motion for a review of the decision, cf. subsection (4) of section 475 b of the (Danish) Administration of Justice Act.

**12.** Where the Regional Government Department decides to dispense with obtaining consent, the child, if in the care of the prospective adopter, cannot be removed from the home of the applicant by the person holding parental responsibility over the child while an application for adoption is pending. This shall also apply where the Social Appeals Board has consented to adoption by virtue of the second sentence of section 9(2) of this Act, or has made an application under section 10 of this Act.

**13.** Where the consent of a parent is not required by virtue of subsections (1) and (2) of section 7 of this Act, a declaration from the parent shall be obtained before a decision is made, unless where 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 Government Department to supply all information known to them in order for the Regional Government Department 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.

## PART II

### Legal effects

**16.**-(1) 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 of this Act, 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.

## PART III

### Revocation

**18.**-(1) 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 is to 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, when the adopter and the original parents of the adopted child so agree, and when revocation is in the best interests of the child.

(3) If the adopted child has attained the age of 12, the consent of the child is also to be obtained. The consent of the child should be given in person before a representative of the Regional Government Department or before another authority or institution approved pursuant to section 8(1) of this Act. 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 where this is in the best interests of the child. Subsections (3) and (4) above shall apply correspondingly.

**19.**-(1) 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.**-(1) 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 of this Act, revocation may be effected although the grounds for revocation are attributable to one of the adopters only.

**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, section 16(2).

**23.**-(1) 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 of this Act, that the adopter shall pay maintenance to the child.

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

(3) In the circumstances set out in section 19 of this Act, 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 attained the age of 18 years, the Minister of Family and Consumer Affairs 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 hereof, 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 of this Act, 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.

## Miscellaneous

**25.** The Minister of Justice sets out the rules for approval of prospective adopters and for adoption proceedings, including the contents of applications for adoption etc., and the consents to be obtained in respect of adoption, cf. sections 6 and 8 of this Act.

**25 a.**-(1) At each county and at the municipal councils of Copenhagen, Frederiksberg and Bornholm respectively, the Minister of Justice sets up one or more joint councils, that, following an inquiry made by the county (municipal council), decides whether an applicant may be approved as a prospective adopter, cf. section 4 a of this Act.

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

(3) The above mentioned joint council shall consist 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 social service centre (municipal authority or social service committee).

(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.**-(1) The board consists of a chairman and a number of other members. The chairman shall be a judge. At least five members, including the chairman or a member who fulfils the requirements for chairmanship, shall participate in the hearing of complaints. 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

(3) The decision of a joint council in pursuance of this Act may be brought before the Adoption Board.

(4) The joint councils are supervised by the Adoption Board. The Minister of Justice sets out the rules for supervision.

(5) The Minister of Justice may assign additional matters to those mentioned in subsections (3) and (4) above to the Adoption Board.

(6) In connection with the processing of cases other than complaints, the Adoption Board 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.**-(1) Where an applicant has not previously adopted a child from a foreign country, an approval as prospective adopter of such a child shall be subject to the applicant having attended a preparatory course for prospective adopters.

(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 from a foreign country shall attend a preparatory course for prospective adopters before being approved again, if the joint council considers it necessary.

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

**26.-**(1) Upon agreement with a foreign country, it may be determined that the nationals of that country shall be eligible to adopt or be adopted in Denmark only 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 a Danish national.

**27.-**(1) In respect of specified foreign countries, it may be determined by virtue of an Order in Council that Danish nationals shall be eligible to adopt or be adopted in that country only 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 Danish national.

**28.-**(1) Danish residents may adopt only under the provisions of this Act.

(2) Notwithstanding subsection (1) above, foreign adoption decisions are recognised in this country if the adoption is effected with a view to adoption of the child by an adoptive parent or parents in Denmark in accordance with the provisions of the Hague Convention of 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption. The Minister of Family and Consumer Affairs may lay down rules thereon. Furthermore, the Minister of Family and Consumer Affairs may lay down rules to the effect that other foreign adoption decisions shall be recognised in this country.

**29 a.-**(1) 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 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) above 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 Co-operation in Respect of Intercountry Adoption.

**29 b.-**(1) Decisions made by the Regional Government Department under this Act may be appealed to the Minister of Family and Consumer Affairs. However, this does not apply to decisions under sections 9-10 of this Act which have been brought before the court, cf. section 11 of this Act.

(2) The Minister of Family and Consumer Affairs may lay down rules on the processing of complaints.

## PART V

### Adoption services

**30.**-(1) The Minister of Justice may authorise 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 Adoption Board to supervise the organisations that have been authorised pursuant to subsection (1) above.

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

**31.**-(1) Only the authorities and organisations mentioned in sections 25, 25 a, 25 b and 30 of this Act may provide assistance in establishing contact between prospective adopters 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 children

**32.**-(1) 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.**-(1) No assistance may be granted or received for the purpose of establishing contact between a woman and a person 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) above.

### Penalties

**34.**-(1) Any person who disregards the provisions set out by virtue of section 30(2) of this Act, or contravenes sections 31 to 33 of this Act shall be liable to a fine or imprisonment for a term of up to four months.

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

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

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

## PART VI

### Commencement provisions etc

**35.** This Act shall come into force on 1 October 1972.

**36.** The provisions of sections 6(2) and 8 of this Act shall not apply to consents given prior to the commencement of this Act.

**37.**-(1) Part II shall apply to: adoption decrees taking effect from 1 January 1957, or later adoption decrees taking effect prior to 1 January 1975, where by virtue of section 39(2), the decree has been issued with the legal effects following from Part II, and adoption decrees taking effect prior to 1 January 1957, where by virtue of section 27(2) of 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 paragraph (i) of subsection (1) above, the provisions of the second sentence of section 13(2) of Act on Adoption no. 140 of 25 May 1956 shall apply to adoption decrees granted prior to the commencement of this Act, to the effect that the child shall maintain the right to succeed to the property of its original family.

**38.** Part III shall also apply to adoption decrees granted prior to the commencement of this Act.

**39.**-(1) The Act on Adoption no. 87 of 26 March 1923, except section 13(2) and sections 18 to 24 of that Act, shall extend to adoption decrees taking effect prior to 1 January 1957 where paragraphs (ii) and (iii) of section 37(1) of this Act do not apply.

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

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

**40 a.**-(1) 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 Faeroe 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 Faeroe Islands and Greenland respectively.

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

**9.** -(1) This Act shall come into force on 1 October 2003, cf., however, sections 10 and 11, of this Act.

(2)-(5). (Omitted)

(6) Sections 5 and 5 a, section 16(2) and sections 23 and 28 of the Danish Adoption (Consolidation) Act as amended by paragraphs (1), (2), (4), (5) and (8) of section 5 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 (Consolidation) Act as amended by paragraph (8) of section 5 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)

**10.** (Omitted)

**11.** (Omitted)

Ministry of Family and Consumer Affairs, 14 September 2004

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