

STATES OF JERSEY



DRAFT ADOPTION (AMENDMENT No. 7) (JERSEY) LAW 201-

Lodged au Greffe on 12th May 2015
by the Minister for Health and Social Services

STATES GREFFE



Jersey

DRAFT ADOPTION (AMENDMENT No. 7) (JERSEY) LAW 201-

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Minister for Health and Social Services has made the following statement –

In the view of the Minister for Health and Social Services, the provisions of the Draft Adoption (Amendment No. 7) (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Senator A.K.F. Green, M.B.E.**

Minister for Health and Social Services

Dated: 11th May 2015

REPORT

Introduction

The purpose of the Draft Adoption (Amendment No. 7) (Jersey) Law 201- (the “**Amendment Law**”) is to amend the Adoption (Jersey) Law 1961 (the “**1961 Law**”) in order to –

1. Enhance Jersey’s regulation of domestic adoption arrangements so as to enable the extension to Jersey of the 2008 European Convention on the Adoption of Children (the “**2008 Convention**”),
2. To ensure continuing compliance with the European Convention on Human Rights (“**ECHR**”) in certain adoption aspects, and
3. Generally, to modernise certain language contained in the 1961 Law.

Background

A key feature of the Amendment Law are provisions which will introduce changes to the 1961 Law required so that the 2008 Convention may be extended to Jersey. The 2008 Convention was prepared by the Council of Europe to replace the 1967 European Convention on the Adoption of Children (the “**1967 Convention**”). Both the 1967 Convention and the 2008 Convention are primarily concerned with setting standards with regard to domestic arrangements for adoption in member States of the Council of Europe, and the 2008 Convention reflects certain changes that have occurred in adoption practice in the intervening period.

The United Kingdom was an original signatory to the 1967 Convention, which was extended to Jersey in 1977. That Convention does not permit joint adoption by same-sex couples and, owing to the coming into force of the Civil Partnerships (Jersey) Law 2012 together with changing attitudes towards same-sex adoption, it is now appropriate for Jersey to follow the United Kingdom and the Isle of Man in renouncing the 1967 Convention. That renunciation will make Jersey’s compliance with the 2008 Convention all the more important.

The United Kingdom was an original signatory to the 2008 Convention, however it is yet to ratify that Convention. In anticipation of that eventuality and the subsequent extension of the Convention to Jersey, a review of the 1961 Law concluded that Jersey’s domestic adoption arrangements would, for the most part, be compatible with the 2008 Convention. However, to enable Jersey to fully comply with the 2008 Convention and to have the United Kingdom’s eventual ratification extended to it, some amendments to the 1961 Law would be required. These amendments would modernise adoption practice in Jersey and, in any event, are desirable from a policy perspective regardless of whether the 2008 Convention is ratified and extended to Jersey in due course.

What does the draft Law do?

The Amendment Law is primary legislation which sets out amendments to the 1961 Law. Those amendments, together with their rationale and practical effect, are detailed below.

Child’s welfare to be the paramount consideration

The 1961 Law will be amended so as to ensure that in reaching decisions concerning adoption matters, the welfare of the child must be the paramount consideration of the Court, the Minister and the Adoption Service.

The rationale for making this amendment is not in itself aimed at ensuring compatibility with the 2008 Convention. Presently, the 1961 Law provides that promoting the welfare of the child must be the ‘*first consideration*’, and that requirement is thought to be compatible with the best interest assessment principles contained in the 2008 Convention.

Rather, the rationale for making this amendment is to ensure that the 1961 Law is made consistent with the Children (Jersey) Law 2002 (the “**Children Law**”), and overarching principles in the UN Convention on the Rights of the Child, which specifically require the welfare of the child to be the ‘*paramount consideration*’ in, respectively, decisions about a child’s upbringing and adoption. The distinction between the ‘*first consideration*’ and ‘*paramount consideration*’ standards which currently exist in the Jersey legislation has the potential to cause confusion in the application of the 1961 Law, and may be problematic in adoption proceedings. The problems inherent in applying these different standards have also been reflected in case law in the English Courts¹. The present amendment will address that difficulty by ensuring legislative consistency here.

Requirement for the child’s agreement to an adoption order

The 1961 Law will be amended so that a child aged 14 or over must give his or her agreement to the granting of an adoption order.

The need for the express and freely given consent of the child to their adoption is a specific requirement under the 2008 Convention. Presently, the 1961 Law does make provision for giving a degree of consideration to the wishes of a child, for example requiring the Court to have regard to the interests of the infant, and requiring that the wishes of the infant be ascertained and given due consideration having regard to their age and understanding.

There is no provision in the 1961 Law which requires that formal consent be given by a child but, in practice, it is difficult to conceive of any circumstances in which the Adoption Service or Court would support or approve an application for adoption contrary to a child’s objections. While that may be the case, the 2008 Convention is explicit in requiring express consent from a child, and the Amendment Law will address that requirement. The Amendment Law will also provide that a child is considered to have sufficient understanding to give his or her agreement to an adoption if that child is aged 14 or over. That age is specified in the 2008 Convention and is considered by the Adoption Service to be appropriate to introduce into the 1961 Law, but that age may be amended by Order.

Joint adoption by unmarried couples

The 1961 Law will be amended so as to permit joint adoption by unmarried couples, whether those couples are heterosexual or same-sex.

Currently, the 1961 Law provides for adoption by one person, jointly by 2 spouses, or by both partners of a civil partnership domiciled in the British Islands. The 1961 Law does not enable *unmarried* heterosexual or same-sex couples to adopt a child together. Those who wish to do so would be required to have one partner adopt a child, and his or her partner would be required to seek a residence order under the Children Law with respect to the adopted child.

The rationale for the amendment to the 1961 Law here is not based on a need to comply with the 2008 Convention. The position under the 2008 Convention, and

¹ See judgment of Lord Simon in *Re D (a minor) (adoption: injunction)* [1991] Fam 137 and judgment of Lord MacDermott in *J v C* [1970] AC 668 (at 710).

supporting ECHR case law², is that States should be permitted to decide whether to afford the right to joint or second parent adoption to unmarried couples. The only proviso would appear to be that if the right *is* given to unmarried couples, it must be given to *both* heterosexual and same sex couples.

The amendment to the 1961 Law to permit joint adoption by unmarried couples is required in order to address a potential conflict with non-discrimination principles in the ECHR. An absolute bar on joint adoptions by unmarried couples has been found by the House of Lords³ to infringe Article 14 of the ECHR, the anti-discrimination provision of the ECHR. Such a bar prevents joint adoptions from occurring even when that arrangement is in the best interests of the child, and arguably that position cannot be justified as a rational or proportionate interference with rights afforded by the ECHR.

That is not to say that as a matter of practice married couples and civil partners might not be preferred as joint adopters over unmarried couples. However, if in all the circumstances of a particular case, it is in the best interests of a child that they should be adopted jointly by an unmarried couple, then as the child's interests should be the paramount consideration, it should be possible for the courts to grant a joint adoption in favour of an unmarried couple.

Therefore, the existence of a bar to unmarried couples adopting jointly potentially leaves the 1961 Law open to challenge on human rights grounds. Amending the 1961 Law to permit joint adoptions by unmarried couples would bring Jersey into line with the current position in England and Wales and, generally, addresses a restriction in the 1961 Law which the Children's Service considers to be outdated and inappropriate.

Requirement for the agreement of a spouse or civil partner to an adoption order

The 1961 Law will be amended so that, where an individual makes an application to the Court for an order authorising the adoption of a child, the Court must be satisfied that the agreement of that applicant's spouse or civil partner to the adoption order has been given freely and in writing.

The need for such express agreement is a requirement of the 2008 Convention. While current Adoption Service practice would seek to capture the interests of the applicant's spouse or civil partner (e.g. through inclusion in assessments and the requirement of consent in adoption forms), compliance with the 2008 Convention necessitates codification in the 1961 Law of a formal requirement for that agreement. The requirement to obtain agreement here can be dispensed with on the satisfaction of specified grounds (for example, if the welfare of the child, as the paramount consideration, justifies the making of the order without agreement).

Removal of mandatory requirement for interview with a counsellor

The 1961 Law will be amended so as to remove a mandatory requirement for an interview with a counsellor before an adopted person can receive information from the Superintendent Registrar necessary in order to obtain a certified copy of the record of his or her birth. Such information might include the date and place of the adoption order, name at birth and the name of birth mother, for example.

Presently, the 1961 Law permits the Superintendent Registrar to disclose this information to a person aged 18 or older but only where that person has attended an interview with a counsellor. The rationale behind the existing requirement in the

² See, for example, *X and others v Austria* (Application No. 19010/07); *Gas and Dubois v France* (Application No. 25951/07 – judgment of 15th March 2012).

³ *P v Others* 2008 UKHL 38.

1961 Law for a mandatory interview is that the disclosure of sensitive adoption related information has the potential to be distressing. In many older adoption cases, information about the adopted person's family of origin will have been withheld from the family into which the person is adopted meaning that the adopted person might be less well informed as to what they might discover about their origins. Therefore, it was considered necessary in all cases for counselling services to be involved. In practice the counselling services will often be provided by social workers who specialise in adoption, and the Superintendent Registrar could not be expected to provide these services themselves.

In recent times, the practice followed by the Adoption Service in Jersey concerning adoption arrangements and the handling of related information has developed considerably. From January 2007 onwards, the Adoption Service has incorporated use of the British Adoption and Fostering Association's 'Child Permanence Report' ('CPR') into its adoption planning processes. A CPR (which is prepared by a social worker) is a comprehensive report about a child for whom adoption is considered and is essential to planning adoption placements. Amongst other things, that report will contain information on proposed or suggested arrangements for contact with the birth family or other significant persons. Use of the CPR signified a major change in adoption practice, enhancing both the best interest assessment before the adoption and permanence panel and the child/parent matching process. One practical result of this process is that adopted persons are likely to be much better informed as to the circumstances of their family of origin and those that led to their adoption.

As a result of this development in adoption practice in Jersey and, specifically, the introduction of the CPR, it was no longer felt necessary to continue to require a mandatory interview with a counsellor before adoption-related information could be received. Accordingly, the draft Law removes the mandatory requirement in relation to those persons adopted after 1st January 2007 (the date from which the Adoption Service began using CPR procedures), although counselling services must still be provided if requested by the applicant. The relaxation of the mandatory requirement for counselling reflects a similar approach taken in England and Wales.

Introduction of framework for the disclosure of restricted information

The Amendment Law will introduce into the 1961 Law a framework for the disclosure of information held on the Adoption Service's files that may, among other things, enable an adopted person to find out information about their origins.

The 1961 Law contains provisions which enable a person to access their birth records. The 1961 Law also makes provision for an adoption contact register which facilitates contact between an adopted person and their family of origin where both parties agree to be contacted. However, the need for a specific framework for the disclosure of information concerning adoption is a requirement under the 2008 Convention. Moreover, the 1961 Law is not considered sufficient to comply with Jersey's obligations under Article 8 of the ECHR. There is currently no provision in the 1961 Law to permit an adopted person to access information held by the Adoption Service concerning his or her origins, or to enable the potentially competing interests of an adopted person and their family origin in that information to be balanced.

The Amendment Law will address these issues by introducing to the 1961 Law a number of provisions aimed at structuring the access to information concerning adoption and how its disclosure by the Adoption Service is to be managed. The disclosure of restricted information by the Adoption Service will be prohibited unless that disclosure is handled in accordance with specific disclosure provisions and contravention of that prohibition will be a criminal offence.

These provisions of the draft Law will apply to restricted information kept by the Adoption Service. 'Restricted information' will include information relating to an adopted person or any other person which is, or includes, identifying information, and also information in relation to an entry in the Adoption Children Register or information that would enable an adopted person to obtain a certified copy of the record of his or her birth. This information might include, for example, the applicant's birth place or the family name of his or her birth parents.

The Amendment Law will set out the procedure to be followed where a person makes a request to the Adoption Service for disclosure to him or her of restricted information concerning an adult, whether that information concerns the applicant or another person. An application for information can be made by any person and might include, for example, an adopted person wishing to find out information about his or her siblings, or someone seeking information because they believe they are related to an adopted person.

The Amendment Law will also detail the procedure to be followed where the information in question concerns a person who is a child at the date on which the application is made. Again, for example, this might concern an older sibling seeking information about an adopted child. Currently, the Adoption Service receives on average 30 requests for such information per year and the introduction of these provisions will bring clarity and structure to this aspect of their work. The disclosure provisions will set out the factors which the Adoption Service must consider in determining whether to make a disclosure in each case. That determination will include a need to have regard to the welfare of the adopted person and seeking the subject's views as to the proposed disclosure. Where the disclosure concerns a child, the welfare of any child concerned must be the paramount consideration of the Adoption Service.

The 1961 Law will also be amended to include a provision enabling an adopted person to make an application to the Court for copies of any documents relating to his or her adoption. It is envisaged that this provision will be utilised by adopted people when limited information is held by the adoption agency and are therefore likely to be seeking all the information held in official records.

Financial and manpower implications

There are no financial or manpower implications for the States arising from the adoption of the Amendment Law.

The introduction by the Amendment Law of a framework for the disclosure of restricted information concerning an adopted person may lead to an increased interest in obtaining such information, with a resulting increased demand on the Adoption Service to deal with information requests. Current resources within the Adoption Service are sufficient to handle any such increased demand.

Human Rights

The notes on the human rights aspects of the draft Law in the Appendix have been prepared by the Law Officers' Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

APPENDIX TO REPORT

Human Rights Note on the Draft Adoption (Amendment No. 7) (Jersey) Law 201-

These Notes have been prepared in respect of the Draft Adoption (Amendment No. 7) (Jersey) Law 201- (the “**draft Law**”) by the Law Officers’ Department. They summarise the principal human rights issues arising from the contents of the draft Law and explain why, in the Law Officers’ opinion, the draft Law is compatible with the European Convention on Human Rights (“**ECHR**”).

These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.

The draft Law will amend the Adoption (Jersey) Law 1961 (the “**1961 Law**”) in order to ensure continuing compliance in Jersey with the ECHR and to enhance Jersey’s domestic adoption arrangements in line with the 2008 European Convention on the Adoption of Children (the “**2008 Convention**”). Amongst other things, the draft Law will amend provisions in, or insert provisions to, the 1961 Law: (i) to confer joint adoption rights on unmarried same sex and heterosexual couples; and (ii) to permit the disclosure of restricted information concerning an adoption.

Article 8 ECHR is engaged by the draft Law in respect of the provisions contained in new Part 4A to be inserted into the 1961 Law (contained in Article 7 of the draft Law), dealing with the restricted disclosure of information relating to adoption. Amongst other things, Article 8 ECHR protects family relationships and matters essential to those relationships. The right to respect for family life extends to adoption matters and, specifically, to accessing information regarding parentage.

Currently, there is no provision in the 1961 Law that would permit an adopted person to access information held by the Adoption Service concerning his or her origins, or to enable the potentially competing interests of an adopted person and their family of origin in that information to be balanced. The European Court of Human Rights (“**ECtHR**”) has held that a child has, in accordance with Article 8 ECHR, the right to know their identity. In particular, in *Gaskin v UK*⁴, the ECtHR stated that the guiding principle governing access to information about one’s origin is that everyone should be able to “establish details of their identity as individual human beings” and that where a person was in the care of the State that may include the need to disclose information about a child’s origins that others who supplied that information may not wish to see disclosed. However, the ECtHR has also recognised that the birth parents of an adopted child have Article 8 ECHR rights to the protection of information about them, especially where they have decided to remain anonymous and that there should be a legal process for balancing these competing interests.

New Part 4A (Article 7 of the draft Law) addresses these issues by providing a framework for the Adoption Service’s assessment and balancing of the competing disclosure rights of adopted persons, the family of origin and other interested parties. The provisions in new Part 4A set out a legal process for that balancing exercise which consists of, amongst other things, identifying what constitutes restricted information (Article 32A) and procedural provisions for the disclosure of restricted information concerning adopted adults and children (Articles 32C and 32D).

⁴ (1989) 12 EHRR 36.

It is these latter provisions which enable the balancing exercise required pursuant to Article 8 ECHR to be achieved. Firstly, the Adoption Service is required, in determining whether it is appropriate to proceed with the request for disclosure, to have regard to the welfare of the adopted person concerned. Thereafter, if the Adoption Service does proceed with the application, it must take steps to obtain the subject's views as to the proposed disclosure. In the case of a disclosure concerning a child, the views of the child's parent or guardian and, where appropriate, the child, must also be taken into consideration. These various matters are then to be balanced by the Adoption Service in determining whether it is appropriate to make the requested disclosure.

The accommodation in the disclosure provisions mentioned above of the interests of both the adopted person and those who might wish to remain anonymous sets the basis for the balancing exercise required under Article 8 ECHR. In practice, any interference with the Article 8 ECHR right of birth parents should be justifiable on the basis that the Adoption Service will have performed a measured assessment, pursuant to a legislative process, of the competing Article 8 ECHR interests in determining whether to disclose information. Moreover, the Adoption Service will, as a public authority, be bound to act in a manner that is compatible with the ECHR under Article 7 of the 2000 Law, so it must exercise its obligations under the disclosure provisions in new Part 4A in a compatible manner.

Article 14 ECHR – Prohibition of discrimination

Currently, Article 10 of the 1961 Law provides for adoption by one person, jointly by 2 spouses, or by both partners of a civil partnership, domiciled in the British Islands. The 1961 Law does not, however, permit joint adoption by unmarried couples, whether heterosexual or same-sex.

Article 14 ECHR provides for a right not to be discriminated against, but only in respect of the other rights laid down in the ECHR and its Protocols. In the present context, the restriction on joint adoption by unmarried couples engages Article 8 ECHR as it impacts on the right to family life, and it is that Article of the ECHR that is to be read in conjunction with the anti-discrimination principles enshrined in Article 14 ECHR.

The ECtHR has delivered a number of key judgments on this subject. In *X and others v Austria*⁵ the ECtHR made it clear that, where a State affords the right to second parent adoption or to joint adoption to unmarried heterosexual couples, but not to same-sex heterosexual couples, then that will be a breach of Article 14 of the ECHR. However, where a State decides to afford that right only to married couples, then unmarried couples (same-sex or heterosexual) cannot claim a breach of Article 14 ECHR. This is on the basis that States are entitled, within their margin of appreciation, to decide which special rights are afforded to married couples and, moreover, that the situations of unmarried couples and married couples are not comparable.

In *Gas and Dubois v France*⁶ a woman's application to adopt the daughter of her female partner was rejected, essentially, because the lesbian couple did not qualify as 'spouses' on the basis that homosexual couples could not marry under French law. The ECtHR held, firstly, that the ECHR did not impose an obligation to allow homosexual couples to marry and, secondly, that there was no discrimination. This was on the basis that marriage was regarded as conferring a special status on a couple and the ECtHR did not view the applicant's situation as legally analogous to that of a married couple who wished to adopt. This judgment confirmed that in situations

⁵ Application No. 19010/07

⁶ Application No. 25951/07 – judgement 15th March 2012

where the State does not afford same-sex couples the right to marry, there may be no breach of Article 14 ECHR where those couples are refused the right to adopt.

These cases reinforce the position, also reflected in the 2008 Convention, that States should be permitted to decide whether to afford the right to joint or second parent adoption to registered partners and unmarried couples. The only proviso would appear to be that, if the right to adopt is given to unmarried couples, it must be given to both heterosexual and same-sex couples.

The principal authority in the United Kingdom is *P & Others*⁷ in which the House of Lords held that the absolute bar under the Adoption (Northern Ireland) Order 1987 to joint adoption of a mother's natural child by the mother and her unmarried opposite sex partner infringed Article 14 ECHR. Essentially, the House of Lords concluded that an outright ban on joint adoption by unmarried couples prevented such adoptions from occurring even when they were in the best interests of the child, and that couldn't be justified as a rational or proportionate interference with rights afforded by the ECHR.

In view of the authorities mentioned here, the amendment to Article 10 of the 1961 Law, contained at Article 4 of the draft Law, will allow unmarried couples (whether same-sex or heterosexual) to adopt jointly. That amendment will promote in the 1961 Law the principle from the 2008 Convention that the welfare of the child is to be the paramount concern in adoption matters. Moreover, the removal of the bar to joint adoptions by unmarried couples will align the adoption rights of unmarried couples with other 'family units', thereby addressing non-discrimination principles provided under the ECHR.

⁷ 2008 UKHL 38

Explanatory Note

This draft Law would amend the Adoption (Jersey) Law 1961 (the “Law”) in order to ensure continuing compliance in Jersey with the European Convention on Human Rights (“ECHR”) and to enhance Jersey’s domestic adoption arrangements in line with the 2008 European Convention on the Adoption of Children.

The opportunity has been taken generally to modernise the Law; hence *Article 2*, which firstly updates the interpretation provisions in Article 1 of the Law, and secondly replaces the references throughout the Law to an “infant” (which is an inappropriate term in the modern social and legislative context, particularly when referring to a young person of little less than the age of majority) by references to a “child” (in keeping with the use of that term elsewhere in Jersey legislation).

Article 3 substitutes new Articles 3 and 3A for Article 3 of the Law. New Article 3 provides that the paramount consideration for the Court, the Minister or the Adoption Service in reaching any decision relating to the adoption of a child must be the child’s welfare. New Article 3A provides that where the child is aged 14 or over, he or she is deemed to have sufficient understanding to be able to give agreement, in accordance with that Article, to any adoption, and that an order for adoption shall not be made unless the child who is the subject of the order has freely given written consent to it.

Article 4 amends Article 10 of the Law to permit joint adoption by unmarried couples (whether heterosexual or same-sex).

Article 5 inserts a new Article 10A into the Law, which requires the Court to be satisfied that in the case of a person applying as an individual for an order authorizing the adoption of a child, the agreement of the applicant’s spouse or civil partner has been given freely (and in writing) or may be dispensed with on one of the grounds stated in that Article.

Article 30 of the Law is amended by *Article 6*, to remove a mandatory requirement for an interview with a counsellor before an adopted person can receive any information necessary to obtain a certified copy of the record of his or her birth (but the Superintendent Registrar must still inform a person seeking such information that counselling is available, and the mandatory requirement would still apply in the case of persons adopted before 1st January 2007).

Article 7 inserts a new Part 4A into the Law, dealing with restricted disclosure of information relating to adoption. New Article 32A of the Law would restrict disclosure of certain information kept by the Adoption Service and which might permit identification of the person or is information kept in or in relation to the Adopted Children Register. Article 32A would also permit the Minister to give directions as to arrangements for disclosure by the Adoption Service of information which is not restricted within the meaning of that Article, and to authorize or require the Adoption Service to disclose restricted information to a person who is not an adopted person. Contravention of the restriction on disclosure would be an offence punishable by a fine of up to level 4 on the standard scale.

New Article 32B would confer on adopted persons the right to make an application to court in a form to be prescribed, for the purpose of obtaining copies of documents relating to their adoption. Documents to which this right would apply may be specified by Order and the Order-making power would include power to specify restricted information which should be redacted from any documents disclosed.

New Articles 32C and 32D would confer rights to disclosure by the Adoption Service, in certain circumstances specified in those Articles, of restricted information about

(respectively) adults and children. New Article 32E would provide that before any information is supplied to an applicant under Part 4A, the Adoption Service must inform the applicant of the availability of counselling services provided by the Minister.

Article 8 would amend Article 42 of the Law to extend the Order-making powers to encompass the new Orders proposed for the purposes of Part 4A.

Article 9 would provide for the citation of this Law, which would come into force (by virtue of Article 1(6) of the Interpretation (Jersey) Law 1954) on the day of its registration.

Under the Criminal Justice (Standard Scale of Fines) (Jersey) Law 1993, level 1 is £50, level 2 is £500, level 3 is £2,000 and level 4 is £5,000.



Jersey

DRAFT ADOPTION (AMENDMENT No. 7) (JERSEY) LAW 201-

Arrangement

Article

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Jersey

DRAFT ADOPTION (AMENDMENT No. 7) (JERSEY) LAW 201-

A **LAW** to amend further the Adoption (Jersey) Law 1961

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 Interpretation

In this Law a reference to an Article by number only is to the Article of that number in the Adoption (Jersey) Law 1961¹ (“the Law”).

2 Article 1 amended, and references to “infant” etc. substituted

(1) In Article 1(1) –

(a) in the definition “approved adoption society” –

(i) for sub-paragraph (b) there shall be substituted –

“(b) an adoption agency within the meaning given to that expression by section 2 of the Adoption and Children Act 2002 (c. 38) of the United Kingdom; and”,

(ii) in sub-paragraph (c) for the word “Committee” there shall be substituted the word “Department”;

(b) before the definition “civil partnership couple” there shall be inserted the following definition –

“ ‘child’ means a person under the age of majority, but does not include a person who has been married, or who is or has been a civil partner;”;

(c) the definition “infant” shall be deleted.

(2) Throughout the Law (including the headings to Articles of the Law) –

- (a) for the words “an infant” or “an infant’s” in each place in which they occur there shall be substituted respectively the words “a child” or “a child’s”;
- (b) for the word “infant” in each place in which it occurs without an indefinite article there shall be substituted the word “child”;
- (c) for the word “infants” in each place in which it occurs there shall be substituted the word “children”; and
- (d) for the words “the infant’s” in each place in which they occur there shall be substituted the words “the child’s”.

3 Article 3 substituted

For Article 3 there shall be substituted the following Articles –

“3 Welfare of child to be paramount

- (1) In reaching any decision relating to the adoption of a child, the paramount consideration of the Court, the Minister and the Adoption Service must be the welfare of the child throughout his or her life.
- (2) Without derogation from paragraph (1) or from the specific provisions as to agreement by a child in Article 3A, the Court, the Minister and the Adoption Service shall, in reaching any decision relating to the adoption of a child, have regard to all the circumstances of the case and shall in particular –
 - (a) so far as practicable, ascertain the wishes and feelings of the child regarding a decision or proposed decision relating to his or her adoption; and
 - (b) give due consideration to the child’s wishes and feelings, having regard to his or her age and understanding.
- (3) The Minister may by Order prescribe other matters, in addition to those mentioned in paragraph (2) and in all cases without derogation from paragraph (1), to which the Court, the Minister and the Adoption Service must have regard in reaching any decision relating to the adoption of a child.

3A Agreement of child having sufficient understanding

- (1) This Article applies in relation to children aged 14 or over.
- (2) A child in relation to whom this Article applies shall, subject to paragraph (5), be deemed to have sufficient understanding to give his or her agreement in accordance with paragraphs (3) and (4).
- (3) Where the Court proposes to make an order authorizing the adoption of such a child, the order shall not be made unless the Court is satisfied that the child freely, and with full understanding of what is involved, agrees to the adoption.

- (4) For the purposes of paragraph (3), the child's agreement must be given in writing or be evidenced by writing.
- (5) If in all the circumstances the Court considers that a child in relation to whom this Article would otherwise apply is incapable of giving agreement, the Court may proceed to make the proposed order without seeking to obtain such agreement.
- (6) If the Court proceeds to make an order without agreement in pursuance of paragraph (5), the Court shall record that it has done so and its reasons for so doing.
- (7) The Minister may by Order amend paragraph (1) for the purpose of specifying a different age.”.

4 Article 10 amended

In Article 10 –

- (a) for paragraph (1)(b) there shall be substituted the following paragraph –
 - “(b) subject to paragraph (1A), by 2 persons jointly, at least one of whom is domiciled in the British Islands,”;
- (b) for the words “2 spouses, or both partners of a civil partnership,” there shall be substituted the words “2 persons jointly,”;
- (c) after paragraph (1) there shall be inserted the following paragraphs –
 - “(1A) A joint application may be made only where the 2 persons in question are –
 - (a) married to each other;
 - (b) in a civil partnership with each other; or
 - (c) otherwise living as partners in an enduring family relationship (and for this purpose it is irrelevant whether the 2 persons are of different genders or the same gender).
 - (1B) Sub-paragraph (1A)(c) does not include 2 persons one of whom is related to the other as a parent, grandparent, sister, brother, aunt or uncle, and relationship for this purpose –
 - (a) means relationship of full or half blood or, in the case of an adopted person, such a relationship as would exist except for the adoption; and
 - (b) includes the relationship of a child with his or her adoptive or former adoptive parents, but does not include any other adoptive relationship.”.

5 Article 10A inserted

After Article 10 there shall be inserted the following –

“10A Consent of spouse or civil partner of adoptive parent

- (1) Where, on the application of a person made in accordance with Article 10(1)(a), the Court proposes to make an order authorizing the adoption of a child, the order shall not be made unless the Court is satisfied that –
 - (a) the spouse or civil partner of the person making the application freely, and with full understanding of what is involved, agrees to the making of the order;
 - (b) the spouse’s or civil partner’s agreement to the making of the order should be dispensed with on a ground specified in paragraph (2).
- (2) The grounds mentioned in paragraph (1)(b) are that –
 - (a) the spouse or civil partner cannot be found;
 - (b) the spouse or civil partner is incapable of giving agreement;
 - (c) the spouse or civil partner is unreasonably withholding agreement; or
 - (d) the welfare of the child, as the paramount consideration, justifies the making of the order without the agreement of the spouse or civil partner.
- (3) For the purposes of paragraph (1)(a), the spouse’s or civil partner’s agreement must be given in writing or be evidenced by writing.”.

6 Article 30 amended

In Article 30 –

- (a) in paragraph (1) for the words “Subject to this Article,” there shall be substituted the words “Subject to paragraph (3),”;
- (b) for paragraphs (3) and (4) there shall be substituted the following paragraphs –
 - “(3) Where an application for information is made under paragraph (1) –
 - (a) where the applicant was adopted prior to 1st January 2007, paragraph (4) shall apply;
 - (b) in any other case, paragraph (5) shall apply.
 - (4) Where this paragraph applies –
 - (a) it shall be the duty of the Minister to provide counselling services to the applicant, if requested by the applicant to do so; and
 - (b) the Superintendent Registrar shall not supply the information unless the applicant has attended a counselling interview so provided.
 - (5) Where this paragraph applies –
 - (a) before supplying any information to the applicant, the Superintendent Registrar shall inform the applicant that

- counselling services provided by the Minister are available to the applicant; and
- (b) it shall be the duty of the Minister to provide such services to the applicant if requested by the applicant to do so.”.

7 Part 4A inserted

After Part 4 there shall be inserted the following –

“PART 4A
RESTRICTIONS ON DISCLOSURE OF INFORMATION RELATING
TO ADOPTION

32A Restriction on disclosure of certain information

- (1) In this Part, ‘restricted information’ means information about a person (the ‘subject’) of a description to which either paragraph (4) or paragraph (5) applies.
- (2) Restricted information of a description to which paragraph (4) applies shall not be disclosed to any person other than the subject, except as expressly permitted by this Part.
- (3) Subject to paragraph (9), restricted information of a description to which paragraph (5) applies shall not be disclosed to any person except as expressly permitted by this Part.
- (4) This paragraph applies to information kept by the Adoption Service –
 - (a) which relates to an adopted person or any other person; and
 - (b) which is, or includes, identifying information.
- (5) This paragraph applies to information kept by the Adoption Service –
 - (a) in or in relation to an entry in respect of an adopted person in the Adopted Children Register; or
 - (b) which would enable an adopted person to obtain a certified copy of the record of his or her birth (whether the Adoption Agency obtained the information from the Superintendent Registrar, or otherwise).
- (6) For the purposes of paragraph (4), ‘identifying information’ in relation to any person means information by which, whether taken on its own or together with any other information, identifies that person or enables that person to be identified.
- (7) The Adoption Service may, for the proper exercise of any of its functions, disclose information which is not restricted information to any person, in accordance with such arrangements as the Minister may direct.

- (8) The Minister may by Order authorize or require the Adoption Service to disclose restricted information to a person who is not the subject.
- (9) The prohibitions in paragraphs (2) and (3) shall not prejudice any right to disclosure of information conferred on a person by Article 30 or by any other enactment.
- (10) Where a person discloses restricted information in contravention of the prohibition in paragraph (2) or (3), the person is guilty of an offence and liable on conviction to a fine not exceeding level 4 on the standard scale.

32B Right of adopted person to obtain documents from Court

- (1) An adopted person may, by an application made for the purpose in the prescribed form, apply to the Court for copies of any documents relating to his or her adoption, including Orders of the Court, such as may be prescribed.
- (2) On an application duly made under paragraph (1) the Court shall, as soon as reasonably practicable, supply to the adopted person (subject to paragraph (3)) copies of the documents requested.
- (3) A document shall not be supplied under paragraph (2) if or to the extent that it contains restricted information about any person other than the applicant, unless restricted information of a prescribed description is redacted from the document so that it cannot be read or otherwise retrieved.

32C Disclosure in certain circumstances of restricted information about adults

- (1) This Article applies where a person makes a request to the Adoption Service, by an application in such form as the Adoption Service may publish for the purpose, for disclosure to him or her of restricted information about –
 - (a) himself or herself; or
 - (b) another person, who is not a child at the date on which the application is made.
- (2) The Adoption Service is not required to proceed with an application under paragraph (1) unless, having regard to all the circumstances and in particular to –
 - (a) the welfare of the adopted person concerned; and
 - (b) any further matters such as may be prescribed by the Minister by Order,it is considered appropriate to do so.
- (3) If the Adoption Service does proceed with the application it must take such steps as are reasonable to obtain the subject's views as to the proposed disclosure.

- (4) If, having regard to all the circumstances and in particular –
 - (a) the welfare of the adopted person concerned;
 - (b) any views obtained under paragraph (3); and
 - (c) any further matters such as may be prescribed by the Minister by Order,it is considered appropriate to do so, and subject to Article 32E, the Adoption Service may disclose the information requested.
- (5) For the avoidance of doubt this Article does not apply –
 - (a) to a request for information under any other provisions as to disclosure in or under this Law; nor
 - (b) to a request for information which the Adoption Service may be authorized or required to provide by any Order made under Article 42(2)(f).

32D Disclosure in certain circumstances of restricted information about children

- (1) This Article applies where a person makes a request to the Adoption Service, by an application in such form as the Adoption Service may publish for the purpose, for disclosure to him or her of restricted information about another person (the ‘subject’) who is a child at the date on which the application is made.
- (2) The Adoption Service is not required to proceed with an application under paragraph (1) unless it is considered appropriate to do so, having regard to all the circumstances and in particular to –
 - (a) the welfare of any adopted person concerned; and
 - (b) any further matters such as may be prescribed by the Minister by Order.
- (3) If the Adoption Service does proceed with the application it must take such steps as are reasonable to obtain the views of the following persons as to the proposed disclosure, namely –
 - (a) in a case where the subject is still a child –
 - (i) any parent or guardian of the subject, and
 - (ii) the subject, if the Adoption Service considers it appropriate to do so having regard to the subject’s age, understanding and all other circumstances;
 - (b) in a case where the subject has attained the age of 18 years, the subject.
- (4) Subject to Article 32E, the Adoption Service may disclose the information requested if it is considered appropriate to do so, having regard to all the circumstances and in particular to –
 - (a) the welfare of any child (which shall be the paramount consideration);
 - (b) any views obtained under paragraph (3); and

(c) any further matters such as may be prescribed by the Minister by Order.

(5) For the avoidance of doubt this Article does not apply –

(a) to a request for information under any other provisions as to disclosure in or under this Law; nor

(b) to a request for information which the Adoption Service may be authorized or required to provide by any Order made under Article 42(2)(f).

32E Counselling services to be provided

(1) Before supplying any information to an applicant under this Part, the Adoption Service shall inform the applicant that counselling services provided by the Minister are available to the applicant.

(2) Where an adopted person applies for information under this Part it shall be the duty of the Minister to provide counselling services for that person if requested by him or her to do so.”.

8 Article 42 amended

In paragraph (2) of Article 42 –

(a) at the end of sub-paragraph (b) the word “and” shall be deleted; and

(b) at the end of sub-paragraph (c) there shall be added –

“(d) the information which the Adoption Service must keep in relation to an adoption and the form and manner in which it must be kept;

(e) the transfer of information held by the Adoption Service to any other approved adoption society;

(f) the circumstances in which the Adoption Service may be authorized or required to disclose restricted information to a person who is not an adopted person; and

(g) the amounts of any fees, and the circumstances in which any fees are payable, in relation to requests for disclosure of information under Part 4A.”.

9 Citation

This Law may be cited as the Adoption (Amendment No. 7) (Jersey) Law 201-.

¹ *chapter 12.050*