



LAWS OF SARAWAK

ONLINE VERSION

Chapter 91
(1958 Edition)

ADOPTION ORDINANCE

Incorporating all amendments up to 31st December, 2008

Prepared and Compiled by

STATE ATTORNEY-GENERAL'S CHAMBERS
SARAWAK

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CHAPTER 91 (1958 Edition)

ADOPTION ORDINANCE

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LIST OF AMENDMENTS

<i>Amending law</i>	<i>Short Title</i>	<i>In force from</i>
Ord. No. 9/76	The Sarawak Constitution (Amendment) (No. 2)	18th December, 1976
Cap. A28	Interpretation (Amendment) Ordinance, 1995	29th May, 1995
Cap. A100	Adoption (Amendment) Ordinance, 2002	1st December, 2002

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ARRANGEMENT OF SECTIONS

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LAWS OF SARAWAK**Chapter 91
(1958 Edition)****ADOPTION ORDINANCE**

An Ordinance to make better provision in the law relating to the adoption of children.

[1st January, 1942]

Short title

1. This Ordinance may be cited as the Adoption Ordinance [*Cap. 91 (1958 Ed.)*].

Interpretation

1A. In this Ordinance—

“adopting parent” means a person who adopts or intends to adopt a child in accordance with this Ordinance;

“certificate” means a certificate of adoption issued under section 4(3) or a duplicate thereof issued under section 4(5);

“child” means an unmarried person under the age of eighteen years;

“guardian” means a guardian appointed by a court of competent jurisdiction or in accordance with section 4 or 5 of the Guardianship of Infants Ordinance [*Cap. 93 (1958 Ed.)*];

“natural parent” means the biological father or mother of a child, irrespective of whether or not the father and mother are cohabiting as husband and wife, or are legally married;

“Sarawak connection” means, in relation to any person, a person who—

- (a) is born in Sarawak and one of his parents also has Sarawak connection; or
- (b) is permanently residing in Sarawak; or
- (c) is domiciled in Sarawak.

[Ins. Cap. A100.]

Adoption of children

2.—(1) Subject to this Ordinance any person may adopt a child.

(2) Such adopted child shall stand in the same relation to the adopting parent or parents as would a child born in wedlock and shall have all the rights and privileges of a legitimate child in respect of the obligations and estate of the adopting parents.

(3) The natural parents of such adopted child shall have no control or right over such adopted child and such adopted child shall have no claim by inheritance to the property of his natural parents.

(4) Subsections (2) and (3) shall cease to have effect if the adoption is annulled under section 7.

Procedure on adoption

3.—(1)(a) An application for registration of an adoption of a child shall be made in such form as may be prescribed by the State Secretary and submitted to the District Officer for the District where any of the natural parents or adopting parents or guardian resides, together with all documentary and other evidence necessary to satisfy the District Officer of the conditions set out in section 5(1).

(b) The District Officer may—

- (i) require the natural parents or adopting parents or guardian to produce a medical report from a registered medical practitioner or a doctor in a Government hospital, on the health of the child; or

(ii) request the Director of the State Welfare Department to examine the child or interview the natural parent or adopting parent or guardian, and submit to him a report on the welfare of the child or the social, financial and personal background of the natural parents or adopting parents or guardian based upon such examination or interview,

to enable him to determine whether the adoption would be in the paramount interest of the child.

(c) Where the District Officer is satisfied from the information disclosed in the application form and the documentary and other evidence submitted by the natural parents and adopting parents or guardian, and the report, if any, produced or made available under paragraph (b), that the conditions for a valid adoption have been fulfilled, the District Officer shall notify the parties, their witnesses, and if necessary, the child, to appear before him for the purpose of registration of the adoption.

(2) Where the natural parents and the adopting parents or guardian and their witnesses appear before the District Officer, he shall record their presence and their unequivocal consent in writing to the adoption.

(3) The District Officer, if fully satisfied by documentary evidence that the adoption is *bona fide* and the child is born in Sarawak and has Sarawak connection, may dispense with the personal attendance of the natural parents or parent or guardian of the child, provided that the adopting parents shall furnish to the District Officer a statutory declaration voluntarily made by the natural parents or parent or guardian, that their consent has been freely given for the adoption of the child.

(4) (a) Where a married person adopts a child, the consent of both the adopting father and mother must be obtained.

(b) If the parent or parents of a child are not fit and proper persons to have the care and custody of such child, the District Officer may dispense with the consent of such parent or parents.

[Am. Cap. A100.]

(5) It shall be the duty of the District Officer before registering an adoption by a person who professes the Islamic faith to draw the specific attention of such person to section 2(2), and to inform him in clear and unmistakable terms that the adoption of children on such a basis is contrary to the Islamic Law:

Provided that no adoption shall be invalid by reason only of the District Officer failing to comply with the provisions of this subsection.

Registration

4.—(1) The District Officer, if satisfied that the provisions of sections 3 and 5 have been complied with and on payment of the prescribed fee, shall register such adoption in a special register to be kept for that purpose.

(2) Such registration shall be effected in the presence of the adopting parents or parent and, unless their presence or consent has been dispensed with under section 3(3) or (4), of the natural parents or parent or guardian. The persons present shall affix their signatures or marks to the entry.

(3) The District Officer shall issue a certificate of adoption under his hand and seal to the adopting parents or parent and to the natural parents or parent or guardian.

(4) (a) No variation, amendment or alteration shall be made to the special register or to a certificate of adoption in respect of the registration of any adoption except in accordance with an Order made by a Judge of the High Court to rectify or correct any mistake or error found in the special register or in the certificate of adoption.

(b) An application for an Order under paragraph (a)—

(i) may be made by the District Officer who registers the adoption or issues the certificate or by any person named in the certificate as the natural parents or adopting parents or guardian of the child; and

(ii) shall be by way of originating summons to a Judge in Chambers and the Rules of the High Court relating to application by originating summons shall apply thereto.

(5) The District Officer may, upon being satisfied by evidence given by way of any statutory declaration by an applicant, that a certificate of adoption issued by him under subsection (3) has been lost, defaced or damaged, issue a duplicate thereof to the applicant upon payment of the prescribed fees.

[Am. Cap. A100.]

Conditions of valid adoption

5.—(1) No adoption in Sarawak shall be registered unless an application is made for such registration in accordance with the procedure set out in section 3, and the District Officer is satisfied by evidence upon oath or otherwise—

(a) that the child is born in Sarawak and has Sarawak connection;

(b) subject to subsection (2), that at least one of the adopting parents has Sarawak connection;

(c) that the adopting parent or, if there be two, each of the adopting parents is a fit and proper person to have the care and custody of the child;

(d) that the adopting parent or parents has or have adequate means and abilities to maintain the adopted child according to the social status of the adopting parent or parents until the child reaches the age of eighteen years or is able to support himself, whichever is the later;

(e) if there be two adopting parents, that they are legally married to one another by custom or otherwise;

(f) that where a female child is to be adopted, there shall be two adopting parents who are legally married to each other and that female child shall not be adopted by a male adopting parent unless there are exceptional or special circumstances;

(g) that the adopting parent, or, if the adoption is joint, each of the adopting parents, is over the age of twenty-one years, and is at least twenty-one years older than the child to be adopted;

(h) that if the adoption is made in accordance with the custom or customary law of either the natural parents or adopting parents or guardian, such custom or customary law permits the adoption of the child and that all procedures and requirements thereof have been duly followed and complied with; and

(i) that the adoption would not contravene the provisions of the Islamic Family Law Ordinance, 2001 [*Cap. 43*].

(2) Where both the adopting parents have no Sarawak connection, the adoption of the child shall not be effected and registered unless—

(a) if both or any one of the adopting parents are citizens or is a citizen of another country, a certificate is obtained from a competent authority in the High Commission or Embassy of that country in Malaysia, stating that the High Commission or Embassy is aware that the adopting parent or parents intends or intend to adopt the child and the adopting parents are able to furnish evidence that the child would, upon being adopted, be permitted entry into that country; or

(b) if both or any one of the adopting parents are or is residing in any other part of Malaysia, evidence is furnished to the District Officer of their or his residential address outside Sarawak.

[Sub. Cap. A100.]

Further adoption of an adopted child

6.—(1) Where a child who had been adopted in accordance with this Ordinance, is to be adopted again, sections 3, 4 and 5 shall apply, and that for the purposes of the further adoption, the adopting parents at the time of such adoption shall be in the same position or role as that of the natural parents and those whose consent must be obtained in the manner set out in section 3(2), (3) or (4).

(2) Upon the adoption of an adopted child under subsection (1)—

(a) the child shall cease to be the adopted child of the previous adopting parents and shall have no claim to inheritance of the property of the previous adopting parents; and

(b) the certificate of adoption previously issued for that child shall be cancelled before a new certificate of adoption is issued for him.

(3) Nothing herein shall authorize the re-adoption of a child by his natural parent or parents.

[Sub. Cap. A100.]

Offences and penalties

6A. Any person who—

(a) makes any statement or particular which is false or is calculated to deceive in an application or other document submitted to the District Officer with intent to procure the registration of an adoption under this Ordinance; or

(b) without lawful authority alters or changes or removes any entry or particular or matter in the special register kept under section 4(1) or pursuant to regulations made under section 12; or

(c) alters, changes or removes any particular in a certificate of adoption or destroys or defaces such particular; or

(d) without reasonable cause, retains or has in his possession, a certificate which is not issued to him by the District Officer under section 4(3) or (5),

shall be guilty of an offence: Penalty, a fine not exceeding five thousand ringgit or imprisonment for a term not exceeding eighteen months or both.

[Ins. Cap. A100.]

Information on adoption

6B.—(1) The District Officer may by notice in writing request any person to furnish him within such period as may be stipulated in the notice, with information concerning the family background, nationality, occupation, health, accommodation and other relevant particulars concerning the natural parent or adopting parent or guardian, or the place of birth, nationality, health, age, welfare and other particulars concerning a child to be adopted.

(2) Any person who without reasonable cause fails to comply with a notice issued by the District Officer under subsection (1), or who wilfully prevents, obstructs or delays any person who receives such notice from compliance therewith shall be guilty of an offence: Penalty, a fine not exceeding two thousand ringgit or imprisonment for a term not exceeding one year or both.

[Ins. Cap. A100.]

When adoption may be annulled

7.—(1) No adoption shall be annulled except by order of the High Court.

(2) The High Court may on application made, by way of originating motion, by the State Attorney General or any person named in a certificate issued under section 4 as the natural parent or adopting parent or guardian or child annul an adoption if after hearing such evidence as it considers necessary it is of the opinion—

(a) that the adopted child is being treated in such a way by the adopting parents that the health of such child is being injured;

(b) that the adopting parents are unfit to have the care and custody of the child;

(c) that in all the circumstances of the case it is in the interests of the child that the adoption should be annulled;

(d) that the registration of the adoption was procured by fraud or misrepresentation on the part of any of the persons named in the certificate as the natural parent or adopting parent or guardian of the child; or

(e) that the adopted child, who is still a minor, has been abandoned by his adopting parents or parent or the whereabouts of such a child are unknown.

[Am. Cap. A100.]

(3) If an adoption is annulled by the Court the rights of the adopted child and the adopting parents under section 2 are extinguished and the child resumes his original legal status as the child of his natural parents.

Interest of child paramount

8. Where there is any question whether the adoption of any child should be effected or annulled the interests of such child shall be the paramount consideration.

Adoption effected outside Sarawak

9.—(1) Nothing in this Ordinance shall compel the registration of an adoption effected outside Sarawak by persons with Sarawak connection:

Provided that a High Court may, on the application by way of originating summons, by an interested parent, direct the registration of such adoption.

[Am. Cap. A100.]

(2) The District Officer shall register any adoption effected outside Sarawak according to the law of the country in which it was effected on the application of either of the adopting parents:

Provided that he may refuse to register such adoption if the conditions required by section 5 are not satisfied.

Power to provide for certain extraordinary forms of adoption

10.—(1) The Majlis Mesyuarat Kerajaan Negeri may make rules—

(a) to regulate the adoption of children according to Chinese custom by heads of Chinese families for the purpose of providing heirs or successors for the deceased members of such families; and

(b) to regulate the adoption of adults among races in which such adoptions are recognized by custom.

[Am. Ord. 9/76; Am. Cap. A28.]

(2) Unless otherwise stated in rules made under this section, the provisions of this Ordinance shall not apply in respect of adoptions effected in accordance with such rules:

Provided that any such rules may apply the whole or any part of this Ordinance to such adoptions.

Saving

11. Nothing in this Ordinance shall affect the validity or legal effect of an adoption registered prior to the coming into operation of this Ordinance.

Regulations

12. The Majlis Mesyuarat Kerajaan Negeri may make regulations generally for the purpose of carrying out the provisions of this Ordinance and, in particular, such regulations may provide for—

- *(a) the establishment of a Central Registry;
- (b) the form of registers to be kept;
- (c) the issue of certified extracts of entries in registers and the evidential value thereof; and
- (d) the fees to be charged under this Ordinance including the alteration of any fees specified in this Ordinance.

[Am. Ord. No. 9/76; Am. Cap. A28.]

* See Adoption (Central Registry) Regulations, 1960 [G.N.S. 76/60 and G.N.S. 134/60].

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