

### **Executive Order on Adoption**

The following provisions are laid down pursuant to sections 25 and subsection (2) of section 29 b of the Danish Adoption (Consolidation) Act, cf. Consolidation Act No. 905 of 28 September 2009:

#### *Chapter 1*

#### *Area of application etc.*

#### *Area of application*

1. The rules in this Executive Order apply to the Regional State Administration's handling of adoption cases, unless other provisions are made below.

#### *Definitions*

2. In this Executive Order the terms indicated below are to be understood as follows:

- 1) *Stepchild adoption*: An adoption where the applicant adopts his or her spouse's or registered partner's child or adoptive child, cf. the Danish Adoption Act's section 5 a and the Registered Partnership Act, second sentence of subsection (1) of section 4.
- 2) *Family adoption*:
  - a) An adoption where an applicant adopts a grandchild, a nephew, niece or sibling,
  - b) An adoption of a child of parents to whom the applicant is particularly closely attached through long and close acquaintance, and the child is below the age of 18, or
  - c) An adoption of a child to whom the applicant is particularly closely attached, cf. subsection (2) of section 4 a of the Danish Adoption Act, (typically a foster-child adoption).
- 3) *Unfamiliar adoption*: An adoption where the applicant is adopting a child below the age of 18, and where it is a condition for the adoption that the applicant obtains approval as an adopter, cf. Danish Adoption Act, subsection (1) of section 4 a.
- 4) *Domestic adoption*: An adoption where the applicant adopts a child which is resident here in this country.
- 5) *Intercountry adoption*: An adoption where the applicant adopts a child which is resident in another country, or a child which has come to Denmark with a view to being adopted.
- 6) *Country of origin*: The country in which the child has residence.
- 7) *Receiving country*: The country in which the applicant has residence.

Chapter 2  
*Application for adoption etc.*  
*The application for adoption*

**3.** Application for adoption is submitted to the Regional State Administration at the place in which the applicant lives, unless provision is made to the contrary below.

(2) If the applicant is staying abroad for a long-term period, in connection with being stationed abroad or something similar, or the applicant is resident in another country, cf. Danish Adoption Act's section 29, the application is dealt with by the State Administration for Greater Copenhagen. However the Department of Family Affairs can authorize another Regional State Administration to deal with the case.

**4.** The application must be submitted on an approved form, unless the application concerns the issue of an administrative decree in a case of adoption of an unknown person.

(2) The application must have the declarations, documents etc., referred to in the application form, enclosed with it.

*Translations*

**5.** Upon request the person applying to adopt must provide a translation into Danish for declarations, certificates, copies of court judgments etc. for documents in a language other than Danish, Norwegian, Swedish, Finnish, Icelandic, English or German. The translation must be certified by a public authority in the relevant other country or by an authorized translator or interpreter, either in the relevant other country or in Denmark.

*Application for release of a child for adoption*

**6.** An enquire for the release of a child for domestic adoption may be made to the Regional State Administration in the place where the child's parents (or one parent) live or are staying.

**7.** If the municipal authority receives an enquire for the voluntary release of a child for domestic adoption, the parents are given guidance regarding the possibilities which they have, according to social legislation, for receiving support if they do not release the child for adoption. If it remains the case that they wish to release the child for adoption, the matter is passed on as soon as possible, if possible no later than at the time of the child's birth, to the Regional State Administration.

(2) The Regional State Administration provides guidance to the parents in the same manner as stated in subsection (1), if the guidance has not already been provided by the municipal authority.

(3) If it remains the case that the parents wish to release the child for adoption, the Regional State Administration ensures that the necessary investigations are made into the relationship between the child and the parents.

**8.** Likewise the application to adopt a child living in Denmark, with respect to an applicant resident in another state one which has acceded to the Hague Convention of 29 May 1993 on Protection of Children and Cooperation in Respect of Intercountry Adoption, can be made to the Regional State Administration where the child's parents (or one parent) live or are staying.

(2) The Regional State Administration forwards the matter to the Department of Family Affairs which is the country's central authority with regard to the Hague Convention.

### *Chapter 3 Handling of the adoption case*

#### *General provisions*

**9.** The Regional State Administration obtains the consent and declarations from the child's parents, the legal guardian and the child, in accordance with the rules in chapter 4, 5 and 6.

(2) The Regional State Administration must ensure that the person seeking to adopt receives or has received advice and information to the necessary extent.

**10.** The Regional State Administration presents an application for adoption to the Department of Family Affairs if:

- 1) consent to the adoption is submitted to a foreign authority or institution and there is no foreign decision on adoption which is recognized here in this country, according to the Danish Adoption Act, subsection (2) of section 28. However if it is a case of an adoption with assistance from one of the adoption agencies or organizations approved pursuant to section 30 of the Danish Adoption Act, the case does not need to be presented,
- 2) the request is for adoption without parental consent, cf. Danish Adoption Act, section 9, or
- 3) the matter gives rise to suspicion of a breach of subsection (1) of section 31 of the Danish Adoption Act, (illegal assistance in pursuing an adoption) or section 33 (illegal procurement of a surrogate-mother arrangement), or
- 4) another reason prompts the Regional State Administration to do so.

**11.** The Regional State Administration passes on the information concerning the case to the National Board of Adoption when a child is released for a domestic unfamiliar adoption, whether with or without parental consent. This does not apply if consent to release the child for adoption is given in respect of adoption with a specific applicant for the adoption in mind, for in such a case the matter is dealt with solely in the Regional State Administration.

#### *Unfamiliar adoption*

**12.** The Regional State Administration obtains a complete document of evidence of previous convictions (if any), concerning applicants who have an abstract approval, cf. the Executive

Order on Approval, subsection (1)(2) of section 2, immediately before the child is placed with the applicants. The Regional State Administration obtains a complete document of evidence of previous convictions (if any) concerning applicants with a specific approval, cf. Executive Order on Approval, subsection(1)(1) of section 2, immediately before the administrative decree is issued.

### *Family adoption*

**13.** In a case of an application for a domestic family adoption, the Regional State Administration obtains a declaration from the municipal authority regarding the extent to which the applicant, according to the rules applicable to permission for foster-care, fulfils the conditions for having a child in his or her care. The municipal authority must provide information on the following: which investigations form the basis for the declaration and whether there have been any special circumstances giving rise to doubt as to whether adoption is to the benefit of the child. If any such circumstances exist, the material which the municipal authority has had at its disposal must be sent with the declaration to the Regional State Administration.

(2) In the cases where the child whom the applicant wish to adopt has reached the age of 18, subsection (1) does not apply.

**14.** If it is a case of application for an international family adoption within the scope of the Hague Convention of 29 May 1993 on Protection of Children and Cooperation in Respect of Intercountry Adoption and if, based on the information available, the Regional State Administration finds that the adoption can be assumed to be to the benefit of the child, the Regional State Administration sends the application to the authority which has been selected as the central authority in the country of origin, or to another relevant authority. The application must be accompanied by a report on the applicant for adoption and a well-founded statement from the Regional State Administration to the effect that, based on the information available, the applicant may be assumed to be suitable to adopt the child.

(2) If, based upon the information from the donor country about the child, the Regional State Administration finds that an adoption may be carried out, the Regional State Administration firstly issues a declaration, in accordance with the Convention's Article 17c and sends it to the central authority of the donor country, or to the authority which the central authority has authorized to receive/issue Article 17c declarations, and secondly ensures that the donor country likewise issues an Article 17c declaration to the Regional State Administration. A declaration in accordance with first sentence is issued on an approved form.

(3) In the case of an application for an international family adoption not within the scope of the Hague Convention, the Regional State Administration must ensure that the authorities in the country of origin are involved in the adoption, if the legislation of the country of origin requires this.

(4) In the situations referred to in subsections (2) and (3) the Regional State Administration can require the applicant to become registered with an adoption agency or organization, approved by the Ministry of Justice pursuant to section 30 of the Danish Adoption Act, if legislation in the country of origin requires that the application is submitted by such an organization, or if this is deemed to be appropriate for another reason.

**15.** The Regional State Administration obtains a complete document of evidence of previous convictions (if any) with regard to the applicant, immediately before the administrative decree is issued.

(2) If the declaration from the municipal authority, or the information which the Regional State Administration obtains in its investigation of the matter, contains information about the applicant's state of physical or mental health which can give rise to doubt as to whether the adoption is to the benefit of the child, the Regional State Administration can obtain a statement from the National Board of Adoption: this statement concerns the extent to which the information means that the adoption applied for is subject to misgivings.

**16.** The Regional State Administration calls the applicant in for a discussion about the adoption and its significance.

(2) This does not apply if the applicant has already obtained sufficient guidance from another authority.

#### *Stepchild adoption*

**17.** The administrative decree for the adoption of a spouse's adoptive child may only be granted if the administrative decree already issued has legal effect, or is due to have legal effect conferred on it, in accordance with the Danish Adoption Act, chapter 2, cf. the Act's subsection (2) of section 39.

(2) The administrative decree can be issued even if the person adopted has reached the age of 18.

#### *Chapter 4*

#### *Consent from parents or the legal guardian*

#### *General provisions*

**18.** Consent from the parents or the legal guardian, cf. section 7 of the Danish Adoption Act, must be obtained in person at the Regional State Administration which has received the application for adoption. If the parents or legal guardian are not resident in the relevant Regional State Administration's area, or are not staying in it, the Regional State Administration may request another Regional State Administration to call the relevant person in for a meeting, with regard to issuing consent.

(2) If the parents or legal guardian are resident abroad or are staying abroad long-term, the Regional State Administration may request a Danish representative organization, in the country where the relevant person is staying, to call the relevant person in for a meeting with regard to issuing consent.

**19.** In accordance with section 7 of the Danish Adoption Act, consent must be issued on an approved form.

(2) Before the parents or the legal guardian issue the consent, the Regional State Administration must advise them and inform them about the legal effects of the adoption and of the consent, including chapters 2 and 3 of the Danish Adoption Act, and also, unless it is an application for stepchild adoption, about the Act's subsection (1) of sections 9 and section 12. If the consent is obtained by another authority, it is incumbent on that authority to provide advice and information, as referred to in the first sentence of this subsection.

**20.** Consent to the adoption must be unconditional.

#### *Family adoption and unfamiliar adoption*

**21.** Consent from the parents or the legal guardian, cf. the Danish Adoption Act, section 7, to the release of a child for adoption, in the case of a domestic unfamiliar adoption, may be granted in the case of a child being adopted by a person selected by the National Board of Adoption.

**22.** In the case of an intercountry unfamiliar adoption, where one of the organizations approved pursuant to section 30 of the Danish Adoption Act is acting as intermediary, where the consent is issued with regard to a foreign authority or institution, and also where no agreement concerning foreign adoption has been made which is acknowledged in this country pursuant to subsection (2) of section 28 of the Danish Adoption Act, it is the Regional State Administration which decides whether the consent issued may have the same legal effect as consent issued with respect to a Danish authority.

**23** During an adoption case the Regional State Administration may appoint a lawyer on behalf of a child which is at least 3 years old, and which is resident here in this country, cf. the Danish Adoption Act's section 15 a. However this does not apply in the case of adoption in accordance with section 5 a of the Danish Adoption Act, or if the adoption is subject to intermediary assistance by an organization which has permission to provide adoption assistance according to section 30 of the Danish Adoption Act.

#### Chapter 5

#### *Submission of a declaration regarding adoption*

**24.** A declaration from parents and the legal guardian, cf. the Danish Adoption Act's sections 13-14 must be submitted on an approved form.

(2) The Regional State Administration ensures that, prior to submitting a declaration; the parents and the legal guardian have received information about the legal effects of the adoption, including chapters 2 and 3 of the Danish Adoption Act. If the circumstances call for it, the Regional State Administration may issue a demand that the declaration is submitted in person at the Regional State Administration. If the parents or the legal guardian are not resident within the relevant Regional State Administration's area, or are not staying in it, the Regional State Administration may request another Regional State Administration to call in the relevant person to a meeting, with regard to issuing a declaration.

(3) If the parents or the legal guardian are resident abroad or are on a longer-term stay abroad, the Regional State Administration may request a Danish representative organization in the country where the person is staying to call the person in for a meeting, with regard to issuing a declaration.

## Chapter 6

### *Consent from the child and information on the child's attitude to the adoption*

**25.** With respect to subsection (1) of section 6 of the Danish Adoption Act, consent must be given in person at the Regional State Administration. If the child is not resident in the relevant Regional State Administration's area, or is not staying in it, the Regional State Administration may request another Regional State Administration to call the child in to a meeting, with regard issuing consent.

(2) The consent is given in writing or verbally, according to the provision of the Regional State Administration in each individual case. If the Regional State Administration determines that a child's consent to the adoption must be given in writing, an approved form is used. If the Regional State Administration determines that a child's consent must be given verbally, the Regional State Administration issues a declaration that the consent has been given.

(3) Before the child gives its consent, the Regional State Administration must hold a discussion with the child during which the child is advised and informed about the legal effects of the adoption and of the child's consent.

(4) Subsection (2) of section 18 and section 22 apply accordingly.

**26.** Consent is not required if the child is below the age of 18, and obtaining consent is considered to be detrimental to the best interests of the child.

**27.** If the child is under the age of 12, the information about the child's attitude to the proposed adoption, cf. subsection (3) of section 6 of the Danish Adoption Act, must be obtained in a way which takes into account the child's age, level of maturity and the circumstances of the case.

(2) The Regional State Administration must ensure that the child has received advice and information, as referred to in subsection (3) of section 25.

## Chapter 7

### *Adoption without consent (forcible adoption)*

**28.** The provisions of the Act on Social Services about housing a person other than in its family home, without consent, must be fulfilled before a case may be initiated, involving the release of a child for adoption without consent, according to the Danish Adoption Act, subsections (3) and (4) of section 9.

**29.** In assessing the parents' capability to discharge their duty of care of the child (parental capability) in a case of adoption without consent, pursuant to the Danish Adoption Act's subsections (3) and (4) of section 9, the municipality must make a predictive assessment: this must include, as its starting point, information about the mental state of the parents, their level of intellectual functional effectiveness, the scope and duration of any abuse (where applicable), any physical illnesses, as well as any treatment conducted previously. Moreover the predictive assessment must include details about the parents' other children (if there are any) and their degree of wellbeing and contact with the parents. For the benefit of the predictive assessment, specialist examinations should be involved, e.g. from a psychiatrist, a psychologist or another relevant specialist, with a view to clarifying the situation of the parents.

(2) Adoption without consent, according to the Danish Adoption Act, subsections (3) and (4) of section 9, can only be permitted if both parents will permanently not be in a position to discharge their duty of care of the child. This also applies to parents who do not hold custody. In the case of adoption without consent according to subsection (3) of section 9 of the Danish Adoption Act, it is furthermore a condition that neither of the parents will be in a position to play a positive role for the child in connection with contact.

**30.** After conclusion of a case conducted pursuant to section 9 of the Danish Adoption Act, the Regional State Administration sends a summary of the case to the Department of Family Affairs.

**31.** After receiving a request from the Children and Adolescents' Committee or the National Social Appeals Board, the Regional State Administration must appoint a lawyer for the child, and offer to appoint a lawyer for the parents and the person who holds custody (if this is a person other than one of the parents), as well as for the child's foster-parents (where applicable), pursuant to subsection (2) of section 15 a of the Danish Adoption Act when a case of adoption without consent is being dealt with by these above-mentioned authorities. Moreover the Regional State Administration must appoint a lawyer for the child, and offer to appoint a lawyer for the parents and the person with custody (if this is a person other than one of the parents), as well as for the child's foster-parents (where applicable), pursuant to

subsection 2 of section 15 a of the Danish Adoption Act, if a case of adoption without consent is being dealt with in the Regional State Administration.

### *Chapter 8*

#### *Residence permit for foreign children with a view to adoption and the right of Danish citizenship*

**32.** A child which is not a national of Denmark, Finland, Iceland, Norway or Sweden must not be brought into this country with regard to the child's adoption before the child has been granted a residence permit or a visa.

(2) If the child is born here in this country, and if the mother was not resident here at the date of the child's birth, the child may not stay here in this country with a view to adoption without a residence permit, unless the child is a national of Denmark, Finland, Iceland, Norway or Sweden.

**33.** A foreign child under the age of 12, adopted as a result of a Danish administrative decree on adoption, becomes a Danish national upon adoption if the child is adopted either by a married couple in which at least one of the spouses is a Danish national or by an unmarried Danish national.

(2) If the child does not become a Danish national according to subsection (1) hereof, but it is the wish that the child obtains the right of Danish nationality, a copy of the Danish administrative decree on adoption, or of the foreign decision on adoption and a confirmation that the latter is acknowledged here in this country, must be sent to the Nationality Division at the Ministry of Refugees, Immigration & Integration Affairs, together with the following documents:

- 1) The adopters' written confirmation of the request for the right of Danish nationality,
- 2) If the child is at least 12 years old, a declaration from the child that it wishes to have the right of Danish nationality,
- 3) If the child is at least 15 years old, a written confirmation that the child and the adopters are aware that information concerning the child will be obtained from Denmark's Criminal Register,
- 4) If the child is under the age of 12 and has a certain degree of maturity, details of the child's attitude to acquiring the right of Danish nationality,
- 5) A copy of the child's passport or travel legitimation,
- 6) Documentation concerning the nationality of the adopters (a copy of the passport),
- 7) A copy of the marriage certificate in cases in which the adopter and the original parent or the adopters have entered into marriage abroad.

*Chapter 9*  
*Issue of the administrative decree*

**34.** The Regional State Administration issues the administrative decree on adoption on an approved form. A copy of the administrative decree is kept by the Regional State Administration in the files relating to the case.

(2) In the administrative decree on adoption a position may be adopted on the child's name. The regulations in the Danish law on names do apply.

(3) When the Regional State Administration issues an administrative decree on adoption, which comes within the scope of the Hague Convention of 29 May 1993 on Protection of Children and Cooperation in Respect of Intercountry Adoption, the Regional State Administration must provide a certificate in connection with the issue of the administrative decree on adoption, that the adoption is in accordance with the Convention, cf. Article 23 of the Convention. The certificate is issued on an approved form and is provided to the adopter.

**35.** If the adoption is carried out within the scope of a foreign decision on adoption which is acknowledged here in this country, cf. subsection (2) of section 28 of the Danish Adoption Act, an administrative decree on adoption is not issued, but the Regional State Administration confirms in writing that the foreign decision on adoption is acknowledged here in this country.

**36.** If the child acquires Danish nationality upon being adopted, cf. subsection (1) of section 33, this must be stated in the administrative decree or in the confirmation according to section 35.

**37.** The Regional State Administration must send the written notification on adoption to:

- 1) The manager of the list of persons registered in the child's parish of residence,
- 2) The manager of the list of persons, if the child has both its birth and the giving of its name registered in the Southern Jutland administrative districts, and
- 3) The branch of the national registration office for the municipality where the child is resident.

(2) In addition, according to circumstances, the notification is sent to:

- 1) The persons from whom consent or a declaration was obtained, pursuant to sections 5-7 and 13-14 of the Danish Adoption Act, unless the person in question is married to the applicant, or it is a case of an international adoption of an unknown person, or consent is granted to the child being adopted by a person selected by the National Board of Adoption.
- 2) The organization which acted as intermediary for the adoption,
- 3) The authority which granted a residence permit to the child,
- 4) The municipality which issued the permit for the fostering of the child.
- 5) The National Board of Adoption, if the approval of the adopter was granted by the Board.

(3) A photocopy of the adopter's birth- and baptism certificate/birth- and name certificate, and marriage certificate where applicable, must be enclosed with the notification to the manager of the list of persons, cf. subsection (1),(1)(2).

**38.** If, prior to the adoption, a sum of money has been fixed for maintenance of the child, the Regional State Administration which issued the administrative decree on adoption must ensure that the resolution regarding maintenance is officially marked with a reference to the adoption and that the obligation to make contributions is annulled.

**39.** The Regional State Administration notifies the Department of Family Affairs concerning the issued administrative decrees on adoption and concerning the foreign decisions on adoption which are acknowledged in accordance with the Danish Adoption Act, subsection (2) of section 28.

## Chapter 10

### *Changing the legal effects of older adoptions*

**40.** An application according to subsection (2) of section 39 of the Danish Adoption Act, must be submitted by an adopter and sent to the Department of Family Affairs via the Regional State Administration for the place where the adopter lives. If the adopter is not resident here in this country, the application is sent to the Department of Family Affairs.

**41.** The application must be personally signed by the applicant and include information about the extent to which the connection between the child and the child's original parents has been maintained after adoption.

(2) The following is submitted together with the application:

- 1) The original administrative decree on adoption or, if this is not available and was not issued by the Ministry of Justice, a certified copy,
- 2) If the connection between the child and its original parents has been maintained after adoption, a declaration from the parents,
- 3) Consent from the child,
- 4) If one of the adopters is dead, the death certificate, probate court certificate or transcript of an official ruling with regard to a death, or judgement on presumption of death, and
- 5) If one of the child's original parents is dead, and the connection between the child and the parents was maintained after the adoption, the death certificate, probate court certificate or transcript of an official ruling with regard to a death, or judgement on presumption of death.

## Chapter 11

### Complaints etc.

**42.** A complaint regarding the Regional State Administration's decisions is dealt with by the Department of Family Affairs, cf. however subsection (2). A complaint is submitted to the Regional State Administration which reached the decision. The Regional State Administration passes on the complaint and the documents of the case to the Department of Family Affairs.

(2) A complaint regarding the Regional State Administration's decisions concerning adoption without consent, pursuant to section 9 of the Danish Adoption Act, is dealt with by the law courts. The complaint is issued to the Regional State Administration which reached the decision. The Regional State Administration presents the matter before the court of law.

**43.** The Regional State Administration may reopen its handling of a decision, with regard to which a complaint has been submitted to the Department of Family Affairs, if:

- 1) the complaint includes a request with regard to which the Regional State Administration Office has not yet adopted a position,
- 2) the complaint contains essential new information,
- 3) there are essential details regarding which the Regional State Administration Office has not yet adopted a position, or
- 4) an error has been committed in the handling of the case, which could have a significance for the decision.

(2) The party lodging the complaint may make a complaint to the Department of Family Affairs against the decision by the Regional State Administration to reopen the case.

## Chapter 12

### Commencement provisions etc.

**44.** The Executive Order takes effect on 1 October 2009.

(2) Executive Order on Adoption No. 1366 of 12 December 2006 shall be repealed.

*Ministry of Justice, 28 September 2009*

Brian Mikkelsen

/Trine Hede