

No. 20] *Child (Care, Protection and Adoption)* [2019

(Amendment) Act

SAINT LUCIA

No. 20 of 2019

ARRANGEMENT OF SECTIONS

Section

1. Short title
2. Interpretation
3. Amendment of Part VI
4. Repeal of section 126

I Assent

[L.S.]

NEVILLE CENAC,
Governor-General.

July 2, 2019.

SAINT LUCIA

No. 20 of 2019

AN ACT to amend the Child (Care, Protection and Adoption) Act, No. 8 of 2018.

[3rd July, 2019]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the House of Assembly and the Senate of Saint Lucia, and by the authority of the same as follows:

Short title

1. This Act may be cited as the Child (Care, Protection and Adoption) (Amendment) Act, 2019.

Interpretation

2. In this Act, “principal Act” means the Child (Care, Protection and Adoption) Act, No. 8 of 2018.

Amendment of Part VI

3. Part VI of the principal Act is amended by inserting immediately after section 118 the following new Division 7 —

*“Division 7
Adoption by the High Court*

Interpretation: Division 7

118A. In this Division —

“abroad” means outside Saint Lucia;

“adoption order” means an adoption order made under section 118C;

“Court” means the High Court;

“father”, in relation to an illegitimate infant, means the natural father;

“infant” means a person under eighteen years of age, but does not include a person who is or has been married;

“interim order” means an order under section 118H;

“prescribed” means prescribed by rules made under this Division;

“relative”, in relation to an infant, means a grandparent, brother, sister, uncle or aunt, whether of the full blood, of the half-blood or by affinity, and includes

—

(a) if an adoption order has been made in respect of the infant or any other person, any person who would

No. 20] *Child (Care, Protection and Adoption) Act* [2019
(Amendment) Act

be a relative of the infant within the meaning of this definition if the adopted person were the child of the adopter born in lawful wedlock;

- (b) where the infant is illegitimate, the father of the infant and any person who would be a relative of the infant within the meaning of this definition if the infant were the legitimate child of its mother and father;

“tutor” means a tutor appointed under the Civil Code, Cap. 4.01.

Application

118B. Notwithstanding Divisions 1, 2, 3, 5 and 6, this Division applies to —

- (a) an application for an adoption order made under the repealed Act; or
- (b) an adoption order made under this Division until the Adoption Committee is established under section 73.

Power to make adoption order

118C.—(1) Subject to this Act, the Court may, on an application made in the prescribed manner by a person who is a citizen of Saint Lucia or who is domiciled or has resided in Saint Lucia for at least six consecutive months prior to the date of the application, make an order authorizing the applicant to adopt an infant.

(2) An adoption order may be made on the application of two spouses authorizing them jointly to adopt an infant.

(3) An adoption order may be made authorizing the adoption of an infant by the mother or father of the infant, either alone or jointly with her or his spouse.

Restriction on making adoption order

118D.—(1) An adoption order shall not be made in respect of an infant unless the applicant or, in the case of a joint application, one of the applicants —

No. 20] *Child (Care, Protection and Adoption) Act* [2019
(Amendment) Act

- (a) has attained the age of twenty-five years and is at least twenty-one years older than the infant;
- (b) has attained the age of twenty-one years and is a relative of the infant; or
- (c) is the mother or father of the infant.

(2) An adoption order shall not be made in respect of an infant who is a female in favour of a sole applicant who is a male, unless the Court is satisfied that there are special circumstances which justify as an exceptional measure the making of an adoption order.

(3) Subject to section 118C(2), an adoption order shall not be made authorizing more than one person to adopt an infant.

(4) Subject to section 118C, an adoption order shall not be made —

- (a) in any case, except with the consent of every person who is a parent or tutor of the infant or who is liable by virtue of an order or agreement to contribute to the maintenance of the infant; and
- (b) on the application of one of two spouses, except with the consent of the other spouse.

(5) An adoption order shall not be made in Saint Lucia unless the applicant and the infant reside in Saint Lucia, except where the applicant is the father, mother, or relative of the infant or is a citizen of Saint Lucia.

(6) An adoption order shall not be made in respect of an infant unless the infant has been continuously in the care and possession of the applicant for at least three consecutive months immediately preceding the date of the order, except where the applicant is the father, mother or relative of the infant.

Consent to adoption

118E.—(1) The Court may dispense with consent under section 118D(4)(a) if it is satisfied —

- (a) in the case of a parent or tutor of the infant, that he or she has abandoned, neglected or persistently ill-treated the infant;
- (b) in the case of a person liable by virtue of an order or agreement to contribute to the maintenance of the infant, that he or she has persistently neglected or refused so to contribute; or
- (c) in any case, that the person whose consent is required cannot be found or is incapable of giving his or her consent or that his or her consent is unreasonably withheld.

(2) The Court may dispense with the consent of the spouse of an applicant for an adoption order if satisfied that the person whose consent is to be dispensed with cannot be found or is incapable of giving the consent or that the spouses have separated and are living apart and that the separation is likely to be permanent.

(3) The consent of a person to the making of an adoption order in pursuance of an application may be given either unconditionally or subject to conditions with respect to the religious persuasion in which the infant is to be brought up without knowing the identity of the applicant for the order; and where consent given by a person is subsequently withdrawn on the ground only that he or she does not know the identity of the applicant, his or her consent is deemed for the purposes of this section to be unreasonably withheld.

(4) While an application for an adoption order in respect of an infant is pending in any court, a parent or tutor of the infant who has signified his or her consent to the making of an adoption order in pursuance of the application shall not be entitled, except with the leave of the Court, to remove the infant from the care and possession of the applicant; and in considering whether to grant or refuse such leave the Court shall have regard to the welfare of the infant.

Evidence of consent of parent or guardian

118F.—(1) If a person whose consent to the making of an adoption order under section 118D(4)(a) does not attend the proceedings for the purpose of giving it, subject to subsection (3) a document signifying his or her consent to the making of the order shall, if the person in whose favour the order is to be made is named in the document or where the identity of that person is not known to the consenting party is distinguished therein in a manner satisfactory to the Court, be admissible as evidence of that consent, whether the document is executed before or after the commencement of the proceedings.

(2) If a document under subsection (1) is attested by a magistrate, notary royal or a justice of the peace or, if executed outside Saint Lucia, by a judge or registrar of a court of record, a magistrate, a commissioner for oaths, a notary public or a British diplomatic or consular official, the document is admissible without further proof of the signature of the person by whom it is executed; and for the purposes of this subsection, a document purporting to be attested is deemed to be so attested, and to be executed and attested on the date and at the place specified in the document, unless the contrary is proved.

(3) A document signifying the consent of the mother of an infant is not admissible under this section unless —

- (a) the infant is at least six weeks old on the date of the execution of the document; and
- (b) the document is attested on that date by a magistrate, notary royal or a justice of the peace, or if executed outside Saint Lucia, by a judge or registrar of a court of record, a magistrate, a commissioner for oaths, a notary public, or a British diplomatic or consular official.

(4) For the purposes of this section, a document signifying a person's consent to the making of an adoption order must include a licence issued abroad by

virtue of which an infant is brought into Saint Lucia for adoption.

Functions of Court as to adoption orders

118G.—(1) The Court before making an adoption order shall be satisfied —

- (a) that a person whose consent is necessary under this Act, and whose consent is not dispensed with, has consented to and understands the nature and effect of the adoption order for which application is made, and in particular in the case of a parent understands that the effect of the adoption order will be permanently to deprive him or her of his or her parental rights;
- (b) that the order if made will be for the welfare of the infant, due consideration being for this purpose given to the wishes of the infant, having regard to the age and understanding of the infant; and
- (c) that the applicant has not received or agreed to receive, and that a person has not made, given or agreed to make or give to the applicant a payment or other reward in consideration of the adoption except as the Court sanctions.

(2) The Court in an adoption order may impose such terms and conditions as the Court may think fit, and in particular may require the adopter by bond or otherwise to make for the infant such provision, if any, as in the opinion of the Court is just and expedient.

Interim order

118H.—(1) Subject to this section, the Court may, on an application for an adoption order, postpone the determination of the application and make an interim order giving the custody of the infant to the applicant for a period not exceeding two years by way of a probationary period on terms as

regards provisions for the maintenance, education and supervision of the welfare of the infant and otherwise as the Court thinks fit.

(2) Consent required for an adoption order is necessary to an interim order but subject to a like power on the part of the Court to dispense with the consent.

(3) An interim order shall not be made in any case where the making of an adoption order would be unlawful under section 118D(6).

(4) An interim order is not deemed to be an adoption order.

Provisions as to existing *de facto* adoptions

118I.—(1) This section applies to an infant who is in the custody of, and being brought up, maintained and educated by a person or two spouses jointly as his, her or their own child under a *de facto* adoption, and has for a period of not less than two years before been in the custody, and been brought up, maintained and educated.

(2) The Court may, on the application of the person or spouses referred to under subsection (1), and although the applicant is a male and the infant a female, make an adoption order authorizing him, her or them to adopt the infant without requiring the consent of a parent or guardian of the infant to be obtained, on being satisfied that in all the circumstances of the case it is just and equitable and for the welfare of the infant that consent is not required and that an adoption order may be made.

Jurisdiction, procedure and rules

118J.—(1) An application for an adoption order shall be made to the Court.

(2) The Chief Justice shall make Rules dealing generally with matters of procedure and incidental matters arising out of this Division and for carrying the same into effect.

(3) Rules under subsection (2) may provide for application for adoption orders being heard and determined otherwise than in open Court.

(4) For the purpose of an application for an adoption order, the Court shall, subject to the Rules under this section appoint a person to act as tutor of the infant on the hearing of the application with the duty of safeguarding the interests of the infant before the Court.

Rights and duties of parents and capacity to marry

118K.—(1) On an adoption order being made —

- (a) the rights, duties, obligations and liabilities of the parents or tutors of the infant in relation to the future custody, maintenance and education of the infant, including the rights to appoint a tutor and to consent or give notice of dissent to marriage, are extinguished;
- (b) the rights, duties, obligations and liabilities vests in and are exercisable by and enforceable against the adopter as if the infant were a child born to the adopter in marriage; and
- (c) in respect of the rights, duties, obligation and liabilities vested under paragraph (b) and, in respect of the liability of a child to maintain his or her parents under the Civil Code, Cap. 4.01 the infant stands to the adopter exclusively in the position of a child born to the adopter in marriage.

(2) In a case where two spouses are the adopters, the spouses shall in respect of the matters aforesaid, and for the purpose of the jurisdiction of a Court to make orders as to the custody and maintenance of and right of access to children, and in any other matter under the laws of Saint Lucia, stand to each other and to the infant in the same relation as they would have stood if they had been the lawful father and mother of the infant and the infant shall stand to them, respectively in the same relation as to a lawful father and mother, respectively.

(3) For the purpose of the law relating to the marriage, an adopter and the person whom he or she has been authorised

to adopt under an adoption order shall be deemed to be within the prohibited degrees of consanguinity; and this subsection continues to have effect although some person other than the adopter is authorised by a subsequent order to adopt the same infant.

Affiliation orders

118L.—(1) If an adoption order is made in respect of an infant who is illegitimate, subject to this section, an affiliation order or decree of affiliation and aliment in force with respect to the infant and an agreement by which the father of the infant has undertaken to make payments specifically for the benefit of the infant, shall cease to have effect, but without prejudice to the recovery of any arrears which are due under the order, decree or agreement at the date of the adoption order.

(2) If an infant to whom an order, a decree or an agreement under subsection (1) relates is adopted by his or her mother, and the mother is a single woman, the order, decree or agreement does not cease to have effect under subsection (1) on the making of the adoption order, but ceases to have effect if she subsequently marries.

Intestacy, will, and settlement

118M.—(1) If, after the making of an adoption order, the adopter or the adopted person or another person dies intestate in respect of real or personal property, that property devolves in all respects as if the adopted person were the child of the adopter born in lawful wedlock and were not the child of another person.

(2) In a disposition of real or personal property made, by instrument *inter vivos* or by will, including codicil, after the date of an adoption order —

- (a) a reference, expressed or implied, to the child or children of the adopter is, unless the contrary intention appears, construed as, or as including, a reference to the adopted person;

No. 20] *Child (Care, Protection and Adoption) [2019*
(Amendment) Act

- (b) a reference, whether expressed or implied, to the child or children of the adopted person's natural parents or either of them is, unless the contrary intention appears, construed as not being or as not including, a reference to the adopted person; and
- (c) a reference, whether expressed or implied, to a person related to the adopted person in any degree is, unless the contrary intention appears, construed as a reference to the person who would be related to him or her in that degree if he or she were the child of the adopter born in lawful wedlock and were not the child of another person.

(3) If an adopted child or the spouse or child of an adopted child takes an interest in real or personal property under a disposition by the adopter, or if an adopter takes an interest in real or personal property under a disposition by an adopted child or the spouse or issue of an adopted child, a succession, legacy or other duty which becomes leviable is payable at the same rate as if the adopted child had been a child born to the adopter in lawful wedlock.

Provisions supplementary to section 118M

118N.—(1) For the purposes of the application of the articles in the Civil Code, Cap. 4.01 relating to successions, to the devolution of property under section 118M, and for the purposes of the construction of a disposition under that section, an adopted person is deemed to be related to another person being the child or adopted child of the adopter or, in the case of a joint adoption, of either of the adopters —

- (a) if he or she was adopted by two spouses jointly, and that other person is the child or adopted child of both of them, as brother or sister of the whole blood; and
- (b) in any other case, as brother or sister of the half-blood.

(2) Notwithstanding any rule of law, a disposition made by will or codicil executed before the date of an adoption order is not treated for the purposes of section 118M as made after that date by reason only that the will or codicil is confirmed by a codicil executed after that date.

(3) Notwithstanding section 118M, trustees or personal representatives may convey or distribute real or personal property to or among the persons entitled without having ascertained that no adoption order has been made by virtue of which a person is or may be entitled to an interest and are not liable to a person of whose claim they have not had notice at the time of the conveyance or distribution; but nothing in this subsection prejudices the right of the person to follow the property, or property representing it, into the hands of a person, other than a purchaser, who may have received it.

(4) If an adoption order is made in respect of a person who has been previously adopted, the previous adoption is disregarded for the purposes of section 118M in relation to the devolution of property on the death of a person dying intestate after the date of the subsequent adoption order and in relation to a disposition of property made after that date.

Registration of adoptions under this Division

118O. Section 111 applies to the registration of an adoption under this section.

Restriction on advertisements

118P.—(1) A person shall not cause an advertisement to be published indicating —

- (a) that the parent or tutor of an infant desires to cause the infant to be adopted;
- (b) that a person desires to adopt an infant; or
- (c) that a person is willing to make arrangements for the adoption of an infant.

(2) A person who causes to be published or knowingly publishes an advertisement in contravention of the provisions

of this section is liable on summary conviction to a fine not exceeding two thousand dollars.

Restriction on sending infants abroad for adoption

118Q.—(1) A person shall not, in connection with an arrangement made for the adoption of an infant who is a citizen of Saint Lucia, permit, cause or procure, the care and possession of the infant to be transferred to a person who is not a citizen of Saint Lucia or the tutor or a relative of the infant and who is resident abroad.

(2) A person shall not, in connection with an arrangement made for the adoption of an infant who is a citizen of Saint Lucia, permit, cause or procure, the care and possession of that infant, to be transferred to a person who is a citizen of Saint Lucia resident abroad and who is not the tutor or a relative of the infant, unless a licence has been granted in respect of the infant under section 118R.

(3) A person who contravenes this section is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding five thousand dollars or to both.

(4) In proceedings under this section, a report by a public officer or a deposition made before a public officer and authenticated under the signature of that officer is, on proof that the officer or deponent cannot be found in Saint Lucia, admissible in evidence, and it is not necessary to prove the signature or official character of the person who appears to have signed the report or deposition.

(5) In this section, “public officer” means a judge, master or registrar of a court of record, a magistrate, a commissioner for oaths, a notary public or a British diplomatic or consular official.

Licence to send infant abroad for adoption

118R.—(1) Subject to subsection (2), the Court may grant a licence in the prescribed form, and subject to conditions and restrictions as the Court thinks fit, authorizing the care

and possession of an infant for whose adoption arrangements have been made to be transferred to a British subject resident abroad.

(2) The Court shall not grant a licence under subsection (1) unless the Court —

(a) is satisfied that an application is made by or with the consent of a person who is a parent or tutor of the infant in question, or who has the actual custody of the infant, or who is liable to contribute to the support of the infant; and

(b) is satisfied by a report of a public officer that the person to whom the care and possession of the infant is proposed to be transferred is a suitable person to be entrusted with custody, and that the transfer is likely to be for the welfare of the infant, due consideration being for this purpose given to the wishes of the infant, having regard to the age and understanding of the infant.

(3) The Court may dispense with consent under subsection (2)(a) if satisfied that the person whose consent is to be dispensed with has abandoned or deserted the infant or cannot be found or is incapable of giving consent or, being a person liable to contribute to the support of the infant, has persistently neglected or refused to contribute to support or is a person whose consent, in the opinion of the Court and in all the circumstances of the case, may be dispensed with.

(4) If the Court grants a licence under this section, the Court may authorize the making or receipt by a person of a payment in consideration of the transfer of the care and possession of the infant in respect of whom the licence is granted.

(5) The Chief Justice may make Rules with respect to the application for and grant of licences under this section.

(6) In proceedings under this section, a report by a public officer or a deposition made before a public officer and authenticated under the signature of that officer, on

No. 20] *Child (Care, Protection and Adoption)* [2019
(Amendment) Act

proof that the officer or deponent cannot be found in Saint Lucia, is admissible in evidence, and it is not necessary to prove the signature or official character of the person who appears to have signed the report or deposition.

Continuation of adoption under this Division

118S. Notwithstanding the establishment of the Adoption Committee under section 37, an adoption commenced under this Division continues until the adoption order is granted.”.

Repeal of section 126

4. Section 126 of the principal Act is repealed.

Passed in the House of Assembly this 11th day of June, 2019.

ANDY G. DANIEL,
Speaker of the House of Assembly.

Passed in the Senate this 13th day of June, 2019.

JEANNINE GIRAUDY-MCINTYRE,
President of the Senate.