

Malawi

Adoption of Children Act

Chapter 26:01

Legislation as at 31 December 2014

FRBR URI: /akn/mw/act/1949/13/eng@2014-12-31

There may have been updates since this file was created.

PDF created on 21 February 2024 at 15:17.

Collection last checked for updates: 31 December 2014.

Check for updates



About this collection

The legislation in this collection has been reproduced as it was originally printed in the Government Gazette, with improved formatting and with minor typographical errors corrected. All amendments have been applied directly to the text and annotated. A scan of the original gazette of each piece of legislation (including amendments) is available for reference.

This is a free download from the Laws.Africa Legislation Commons, a collection of African legislation that is digitised by Laws.Africa and made available for free.

www.laws.africa
info@laws.africa

There is no copyright on the legislative content of this document.
This PDF copy is licensed under a Creative Commons Attribution 4.0 License (CC BY 4.0). Share widely and freely.

Adoption of Children Act Contents

1. Short title	1
2. Power to make adoption orders	1
3. Restrictions on making adoption orders	1
4. Matters with respect to which court to be satisfied	2
5. Terms and conditions of order	2
6. Effect of adoption order	2
7. Power to make interim orders	3
8. Power to make subsequent order in respect of infant already subject to an order	3
9. Jurisdiction and procedure	3
10. Restriction on payments	4
11. Provisions as to existing de facto adoptions	4
12. Adopted Children register	4
13. Revision of particulars in Adopted Children Register	5
Schedule (Section 12)	5

Malawi

Adoption of Children Act

Chapter 26:01

Commenced on 16 June 1949

[This is the version of this document at 31 December 2014.]

[Note: This version of the Act was revised and consolidated in the Fifth Revised Edition of the Laws of Malawi (L.R.O. 1/2018), by the Solicitor General and Secretary for Justice under the authority of the Revision of the Laws Act.]

An Act to Provide for the Adoption of Children

1. Short title

This Act may be cited as the Adoption of Children Act.

2. Power to make adoption orders

- (1) Upon an application in the prescribed manner by any person desirous of being authorized to adopt an infant who has never been married, the court may, subject to this Act, make an order (in this Act referred to as "an adoption order") authorizing the applicant to adopt that infant.
- (2) A person so authorized to adopt the infant and an infant authorized to be adopted are in this Act referred to as an "adopter" and an "adopted child" respectively, and an "infant" means a person under the age of twenty-one.
- (3) Where an application for an adoption order is made by two spouses jointly, the court may make the order authorizing the two spouses jointly to adopt, but save as aforesaid no adoption order shall be made authorizing more than one person to adopt an infant.

3. Restrictions on making adoption orders

- (1) An adoption order shall not be made in any case where—
 - (a) the applicant is under the age of twenty-five years; or
 - (b) the applicant is less than twenty-one years older than the infant in respect of whom the application is made:

Provided that, where the applicant and the infant are within the prohibited degrees of consanguinity, it shall be lawful for the court, if it thinks fit, to make an order notwithstanding that the applicant is less than twenty-one years older than the infant.

- (2) An adoption order shall not be made in any case where the sole applicant is a male and the infant in respect of whom the application is made is a female unless the court is satisfied that there are special circumstances which justify as an exceptional measure the making of an adoption order.
- (3) An adoption order shall not be made except with the consent of every person or body who is a parent or guardian of the infant in respect of whom the application is made or who has the actual custody of the infant or who is liable to contribute to the support of the infant:

Provided that the court may dispense with any consent required by this subsection 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 such consent or, being a person liable to contribute to the support of the infant, either has persistently neglected or refused to contribute to such support or is a person whose consent ought, in the opinion of the court and in all the circumstances of the case, to be dispensed with.

- (4) An adoption order shall not be made upon the application of one of two spouses without the consent of the other of them:

Provided that the court may dispense with any consent required by this subsection if satisfied that the person whose consent is to be dispensed with cannot be found or is incapable of giving such consent or that the spouses have separated and are living apart and that the separation is likely to be permanent.

- (5) An adoption order shall not be made in favour of any applicant who is not resident in Malawi or in respect of any infant who is not so resident.

4. Matters with respect to which court to be satisfied

The court before making an adoption order shall be satisfied—

- (a) that every 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 any parent understands that the effect of the adoption order will be permanently to deprive him or her of his or her parental rights; and
- (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 no person has made or given, or agreed to make or give to the applicant, any payment or other reward in consideration of the adoption except such as the court may sanction.

5. Terms and conditions of order

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 adopted child such provision (if any) as in the opinion of the court is just and expedient.

6. Effect of adoption order

- (1) Upon an adoption order being made, all rights, duties, obligations and liabilities of the parent or parents, guardian or guardians of the adopted child, in relation to the future custody, maintenance and education of the adopted child, including all rights to appoint a guardian or to consent or give notice of dissent to marriage shall be extinguished, and all such rights, duties, obligations and liabilities shall vest in and be exercisable by and enforceable against the adopter as though the adopted child was a child born to the adopter in lawful wedlock, and in respect of the same matters and in respect of the liability of a child to maintain its parents the adopted child shall stand to the adopter exclusively in the position of a child born to the adopter in lawful wedlock:

Provided that, in any case where two spouses are the adopters, such spouses shall in respect of the matters aforesaid and for the purpose of the jurisdiction of any court to make orders as to the custody and maintenance of and right of access to children stand to each other and to the adopted child in the same relation as they would have stood if they had been the lawful father and mother of the adopted child, and the adopted child shall stand to them respectively in the same relation as a child would have stood to a lawful father and mother respectively.

- (2) An adoption order shall not deprive the adopted child of any right to or interest in property to which, but for the order, the child would have been entitled under any intestacy or disposition, whether occurring or made before or after the making of the adoption order, or confer on the adopted child any right to or interest in property as a child of the adopter and the expressions "child", "children" and "issue", where used in any disposition whether made before or after the making of an adoption order, shall not, unless the contrary intention appears, include an adopted child or children or the issue of an adopted child.

- (3) Where an adopted child or the spouse or issue of an adopted child takes any interest in real or personal property under a disposition by the adopter, or where an adopter takes any interest in real or personal property under a disposition by an adopted child or the spouse or issue of an adopted child, any succession, legacy or other duty which becomes leviable in respect thereof shall be payable at the same rate as if the adopted child had been a child born to the adopter in lawful wedlock.
- (4) For the purposes of this section "disposition" means an assurance of any interest in property by any instrument whether *inter vivos* or by will including codicil.
- (5) For the purposes of any enactments relating to friendly societies, collecting societies and industrial assurance companies, which enable such societies and companies to insure money to be paid for funeral expenses, and which restrict the persons to whom money may be paid on the death of a child under the age of ten, the adopter shall be deemed to be the parent of the child; and where before the adoption order was made any such insurance had been effected by the natural parent of the child, the rights and liabilities under the policy shall by virtue of the adoption order be transferred to the adopter, and the adopter shall, for the purposes of the said enactments be treated as the person who took out the policy.

7. Power to make interim orders

- (1) Upon any application for an adoption order, the court may postpone the determination of the application and may make an interim order (which shall not be an adoption order for the purposes of this Act) giving the custody of the infant to the applicant for a period not exceeding two years by way of a probationary period upon such terms as regards provision for the maintenance and education and supervision of the welfare of the infant and otherwise as the court may think fit.
- (2) All such consents as are required to an adoption order shall be necessary to an interim order but subject to a like power on the part of the court to dispense with any such consent.

8. Power to make subsequent order in respect of infant already subject to an order

An adoption order or an interim order may be made in respect of an infant who has already been the subject of an adoption order, and, upon any application for such further adoption order, the adopter or adopters under the adoption order last previously made shall, if living, be deemed to be the parent or parents of the infant for all the purposes of this Act.

9. Jurisdiction and procedure

- (1) The court having jurisdiction to make adoption orders under this Act shall be the High Court, or, at the option of the applicant, but subject to any Rules under this section, a court of a Resident Magistrate or of a magistrate of the first grade.
- (2) Rules in regard to any matter to be prescribed under this Act and directing the manner in which applications to the court are to be made and dealing generally with all matters of procedure and incidental matters arising out of this Act and for carrying this Act into effect shall be made by the High Court.

Such Rules may provide for applications for adoption orders being heard and determined otherwise than in open court, and where the application is made to a subordinate court of the first grade, for the hearing and determination thereof in a juvenile court as defined by the Children and Young Persons Act.

[Cap. 26:03]

- (3) For the purpose of any application under this Act and subject to any Rules under this section the court shall appoint some person or body to act as guardian *ad litem* of the infant upon the hearing of the application with the duty of safeguarding the interests of the infant before the court.

10. Restriction on payments

It shall not be lawful for any adopter or for any parent or guardian except with the sanction of the court to receive any payment or other reward in consideration of the adoption of any infant under this Act or for any person to make or give or agree to make or give to any adopter or to any parent or guardian any such payment or reward.

11. Provisions as to existing *de facto* adoptions

Where at the date of the commencement of this Act any infant is in the custody of, and being brought up, maintained and educated by any person or two spouses jointly as his, her or their own child under any *de facto* adoption, and has for a period of not less than two years before such commencement been in such custody, and been so brought up, maintained and educated, the court may, upon the application of such person or spouses, and notwithstanding that 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 any parent or guardian of the infant to be obtained, upon being satisfied that in all the circumstances of the case it is just and equitable and for the welfare of the infant that no such consent should be required and that an adoption order should be made.

12. Adopted Children register

- (1) The Registrar General of Births and Deaths shall establish and maintain at his office a register to be called the Adopted Children Register, in which shall be made such entries as may be directed to be made therein by adoption orders, but no other entries.
- (2) Every adoption order shall contain a direction to the Registrar General of Births and Deaths to make in the Adopted Children Register an entry recording the adoption in the form set out in the Schedule and (subject to the next following subsection) shall specify the particulars to be entered under the headings of that Schedule.
- (3) For the purpose of complying with the requirements of the last preceding subsection—
 - (a) where the precise date of the infant's birth is not proved to the satisfaction of the court, the court shall determine the probable date of his birth and the date so determined shall be specified in the order as the date of his birth; and
 - (b) where the name or surname which the infant is to bear after the adoption differs from his original name or surname, the new name or surname shall be specified in the order instead of the original.
- (4) If upon any application for an adoption order there is proved to the satisfaction of the court—
 - (a) the date of the birth of the infant; and
 - (b) the identity of the infant with a child to which any entry or entries in the Register of Births relates,

the adoption order shall contain a further direction to the Registrar General of Births and Deaths to cause such birth, entry or entries in the Register of Births, to be marked with the word "Adopted", and to include in the entry in the adoption register recording the adoption the date stated in the order of the adopted child's birth in the manner indicated in the Schedule.

- (5) The prescribed officer of the court shall cause every adoption order to be communicated in the prescribed manner to the Registrar General of Births and Deaths, and upon receipt of such communication the Registrar General of Births and Deaths shall cause compliance to be made with the direction contained in such order in regard both to marking any entry in the Register of Births and Deaths with the word "Adopted", and in regard to making the appropriate entry in the Adopted Children Register.

- (6) A certified copy of any entry in the Adopted Children Register if purporting to be sealed or stamped with the seal of the Registrar General of Births and Deaths' Office shall, without any further or other proof of such entry—
- (a) where the entry does not contain any record of the date of the birth of the adopted child be received as evidence of the adoption to which the same relates; and
 - (b) where the entry contains a record of the date of the birth of the adopted child shall be received not only as evidence of the adoption to which the same relates but also as evidence of the date of the birth of the adopted child to which the same relates in all respects as though the same were a certified copy of an entry in the Register of Births and Deaths.
- (7) The Registrar General of Births and Deaths shall cause an index of the Adopted Children Register to be made and kept in his Office and every person shall be entitled to search such index and to have a certified copy of any entry in the Adopted Children Register in all respects upon, and subject to the same terms, conditions and regulations as to payment of fees and otherwise as are applicable under the Births and Deaths Registration Act in respect of searches in registers kept in the Registrar General of Births and Deaths' Office, and in respect of the supply from such office of certified copies of entries in the Register of Births and Deaths.

[Cap. 24:01]

13. Revision of particulars in Adopted Children Register

The court may, on application being made to it by, or on behalf of, a person in respect of whom an adoption order has been made prior to the coming into operation of the Adoption of Children (Amendment) Ordinance, 1958*, make an order directing that the particulars entered in the Adopted Children Register, and in the index thereto referred to in [section 12](#) (7) relating to that person shall be amended to conform with the particulars which would have been entered therein if the adoption order had been made after the coming into operation of the said Ordinance, and the Registrar General of Births and Deaths shall comply with any such order.

Schedule (Section 12)

No. of Entry _____

Date of Entry _____

Name of Adopted Child. (Enter name as stated in Adoption Order.)

Sex of Adopted Child. (Enter sex as stated in Adoption Order.)

Name and Surname, Address and Occupation of Adopter or Adopters

(Enter name, address and occupation as stated in Adoption Order.)

Date of Birth of Child _____

(Enter date of birth (if any) directed by the Adoption Order to be entered, but otherwise no entry.)

Date of Adoption Order and description of Court by which made

(Entry to be made as appearing in the Adoption Order.)

Signature of Officer deputed by Registrar General to attest the Entry
