

# **Process for Care Orders, Foster Care and Adoption**

## **The Children (Amendment) Act, 2016**

***Based on The Children Act 1997 including the Amendments of 2016***

### **PART I Interpretation**

“approved home” means a Government or nongovernmental home approved by the Minister to provide substitute family care for a child and includes a babies’ home and children’s home which provide care and accommodation for children aged below six years and aged between three to under eighteen years respectively;

“care order” means a care order made under Part V of this Act;

“foster care placement” means the placement of a child with a person who is not his or her parent or relative and who is willing to undertake the care and maintenance of the child;

“foster parent” means a person not being the biological mother, father or relative of the child who assumes parental responsibility of the child by way of a care order;

### **PART II Rights of the Child**

(6) 2. Where the natural parents of a child are deceased, parental responsibility may be passed on to relatives of either parent, or by way of a care order, to the warden of an approved home, or to a foster parent.

### **PART III Support for children by local authorities**

#### **10. Local councils to safeguard children and promote reconciliation between parents and children.**

(1) It is the general duty of every local government council from the village to the district level—

(a) to safeguard and promote the welfare of children within its area;

and

(b) to designate one of its members to be the person responsible for the welfare of children; and this person shall be referred to as the secretary for children’s affairs.

(6) Each local government council shall provide assistance and accommodation for any child in need within its area of jurisdiction who appears to the committee to require assistance and accommodation as a result of his or her having been lost or abandoned or seeking refuge.

(7) Each local government council shall make every effort, including publication through the mass media, to trace the parents or guardians of any lost or abandoned child or to return the child to the place where he or she ordinarily resides; and where the committee does not succeed, it shall refer the matter to a probation and social welfare officer or to the police.

### **PART IV Family and children court**

### **13. Establishment of family and children court.**

- (1) There shall be a court to be known as the family and children court in every district, and any other lower government unit designated by the Chief Justice by notice in the Gazette.
- (2) A magistrate not below the grade of magistrate grade II shall be assigned to preside over the family and children court.

### **14. Jurisdiction of family and children court.**

- (1) A family and children court shall have power to hear and determine—
- (b) applications relating to child care and protection.

## **PART V Care and protection of children**

### **19. Supervision orders and care orders.**

On the application of a probation and social welfare officer or an authorised person, a family and children court may make—

- (b) a care order or interim care order, placing a child in the care of the warden of an approved home or with an approved foster parent in accordance with the Foster Care Placement Rules in the Second Schedule to this Act.

### **20. Welfare reports.**

- (1) The family and children court shall require a written welfare report in respect of a child before making a supervision order or a care order.
- (2) It shall be the duty of the probation and social welfare officer to prepare a welfare report, and he or she shall comply with the request of a family and children court whenever required to produce a welfare report.

### **21. Grounds for making a supervision or care order.**

A family and children court may only make an order under this Part, if it is satisfied that—

- (a) the child concerned is suffering or is likely to suffer significant harm; and
- (b) that the harm, or probability of harm, is attributable to—
  - (i) the care given to the child, or likely to be given to the child if the order were not made, not being what it would be reasonable to expect a parent to give to a child;

### **27. Care order.**

- (1) A family and children court may, on the application of a probation and social welfare officer or an authorised person, make a care order or an interim care order placing a child in the care of the warden of an approved home or with foster parents.
- (2) An application for a care order may only be made —
  - (a) after all possible alternative methods of assisting the child have been tried without success and the significant harm from which the child is suffering or is likely to suffer requires his or her removal from where he or she is living; or

(b) the danger to which the child is exposed is so severe as to require his or her immediate removal from where he or she is living.

### **28. Purpose of a care order.**

The object of a care order is—

(a) to remove a child from a situation where he or she is suffering or likely to suffer significant harm; and

(b) to assist the child and those with whom he or she was living or wishes to live to examine the circumstances that have led to the making of the order and to take steps to resolve or ameliorate the problem so as to ensure the child's return to the community.

### **29. Duration of care order.**

(1) A care order shall be for a maximum period of three years or until the child reaches the age of eighteen years, whichever is the shorter.

(2) A care order shall be reviewed at least once in each year by the probation and social welfare officer who may make recommendations as to steps to be taken having regard to the outcome of the review.

### **30. Duty to enforce a care order.**

The duty to enforce the care order shall be vested in the probation and social welfare officer who applies for the order.

### **31. Parental responsibility of warden or foster parent.**

(1) The warden of the approved home or the foster parent with whom the child is placed has parental responsibility for the child while the child is with him or her.

(2) The child's contact with parents, relatives and friends while he or she is in the approved home or with a foster parent shall be encouraged unless it is not in the best interests of the child.

(3) The warden of the approved home or the foster parent with whom the child is placed shall ensure that the child's development while in the approved home or with a foster family, particularly his or her health and education, is attended to.

(4) It is the responsibility of the warden of the approved home to communicate with the parents or guardians of the child, to inform them of the child's progress and to arrange through the probation and social welfare officer for a trial return home by the child as soon as it is appropriate.

### **32. Special duties of the probation and social welfare officer in relation to care order.**

(1) The probation and social welfare officer shall, before and after the termination of the care order, work with the parents, guardians or relatives, to whom the child is expected to return after the termination of the care order.

(2) The duties of the probation and social welfare officer under this section include child and family counselling, before, during and after the child's return and gaining the assistance of those in the community who can help in the process of resolving the problems which caused the care order to

be made.

(3) In carrying out his or her duties under this section, the probation and social welfare officer shall bear in mind the wishes of the child.

(4) When a child is placed with a foster family, it shall be the responsibility of the probation and social welfare officer to communicate with the guardians or parents of the child, to inform them of the progress of the child and to arrange a trial period for the child to be at home as soon as it is appropriate.

(5) The probation and social welfare officer shall visit the child during the trial period at home and make plans for the future of the child in consultation with the foster parents.

## **PART VI—FOSTER CARE PLACEMENTS.**

### **43. Conditions for foster care placements.**

(1) Where a child has been committed to an approved home under a care order, the district probation and social welfare officer, in conjunction with the warden of the approved home, may place the child with a person who is willing to undertake the care and maintenance of the child, in this Part referred to as a “foster parent”.

(2) An application to foster a child shall be made to the district probation and social welfare officer, except that a relative of a child without a parent or guardian may foster the child without first applying to the district probation and social welfare officer, and this Part shall not apply to him or her.

(3) A foster parent in whose care a child is committed shall, while the child remains in his or her care, have the same responsibilities in respect of the child’s maintenance as if he or she were the parent of the child.

(4) Foster care placements shall be made in accordance with the rules set out in the Second Schedule to this Act.

(5) The Minister may, by statutory instrument, amend the rules in the Second Schedule to this Act.

## **PART VIA Guardianship**

### **43A Legal Guardianship**

2 A person who is not a citizen of Uganda shall not be eligible to apply for legal guardianship.

## **PART VII Adoption**

### **44. Jurisdiction.**

(1) An application for an adoption order may be made—

(a) to a chief magistrate’s court within the jurisdiction of which the applicant or the child resides where both the child and the applicant are citizens of Uganda;

(b) to the High Court where the child or the applicant is not a citizen of Uganda, and the court may, subject to this Act, grant the application.

(2) A child need not be a Ugandan to be adopted.

***Prerequisites for adoption.***

**45. Restrictions and conditions.**

(1) An adoption order may be granted to a sole applicant or jointly to spouses where—

(a) the applicant or at least one of the joint applicants has attained the age of twenty-five years and is at least twenty-one years older than the child;

(b) in the case of an application by one of the spouses, the other has consented to the adoption.

(2) The court may dispense with the consent required under subsection (1)(b) if the spouse whose consent is required cannot be found or is incapable of giving consent, or the spouses are separated and living apart and the separation is likely to be permanent.

(3) An adoption order shall not be made in favour of a sole male applicant in respect of a female child, or in favour of a sole female applicant in respect of a male child, unless the court is satisfied that there are special circumstances that justify, as an exceptional measure, the making of an adoption order.

(4) The application shall not be considered unless the applicant has fostered the child for a period of not less than twelve months under the supervision of a probation and social welfare officer.

(5) The probation and social welfare officer shall be required to submit a report to assist the court in considering the application; and the court may, in addition, require some other person or the local authority to make a report in respect of the adoption application.

(6) Except where the application is by spouses jointly, an adoption order shall not be made authorising more than one person to adopt a child at the same time.

**46. Intercountry adoption.**

(1) A person who is not a citizen of Uganda may in exceptional circumstances adopt a Ugandan child, if he or she—

(a) has stayed in Uganda for at least one year;

(b) has fostered the child for at least one year under the supervision of a probation and social welfare officer;

(c) does not have a criminal record;

(d) has a recommendation concerning his or her suitability to adopt a child from his or her country's probation and welfare office or other competent authority; and

(e) has satisfied the court that his or her country of origin will respect and recognise the adoption order.

(2) For the purposes of an application to which this section applies, the probation and social welfare officer referred to in subsection (1)(b) shall be required to submit a report to assist the court in considering the application; and the court may, in addition, require some other person or authority to make a report in respect of the application.

(3) The restrictions and conditions in section 45, other than subsections (4) and (5), apply to an application to which this section relates.

(4) The court may, in exceptional circumstances, waive any of the requirements specified in subsection (1).

(5) The following persons may facilitate the courts of law with information to protect the best interest of the child –

- (a) Advocates;
- (b) Probation and Social Welfare Officers; or
- (c) A guardian ad litem for children.

(6) Notwithstanding the provisions of this section, inter-country adoption shall be considered as the last option available to orphaned, abandoned or legally relinquished children, along a continuum of comprehensive child welfare services.

(7) For the purpose of this section, continuum of comprehensive child welfare services means a broad range of preventive services and community based family-centred alternative care options which may include –

- (a) Family preservation;
- (b) Kinship care;
- (c) Foster care;
- (d) Institutionalisation.

#### **47. Consent.**

(1) The consent of the parents of the child, if known, is necessary for the adoption order to be made; but the consent may be revoked at any time before the pronouncement of the adoption order.

(2) The court may dispense with the consent if the parents are incapable of giving it.

(3) While an application for an adoption order is pending in the court, a parent who has given his or her consent to the adoption is not entitled, except with the leave of the court, to remove the child from the care and custody of the applicant.

(4) The court may refuse to grant leave to remove the child from the care and custody of the applicant under subsection (3) if it considers it significantly harmful to the welfare of the child.

(5) If in the view of the court a child is able to understand the adoption proceedings, then his or her views shall be taken into consideration.

(6) If the child is at least fourteen years of age, his or her consent to the adoption must be obtained unless it is impossible for him or her to express his or her wishes.

(7) Where it appears to the court that any person who is not the parent of the child has any rights or obligations in respect of the child under any order of the court or agreement or under customary law or otherwise, the court may require the consent of that person before the adoption order is made.

(8) The court may also request a probation and social welfare officer to prepare a report to assist it to determine whether any person who is not a parent of the child has any rights or obligations in

respect of the child and whether that person's consent ought to be obtained before the making of the adoption order.

#### **48. Functions of the court.**

(1) The court shall, before making an adoption order, be satisfied that—

- (a) every person whose consent is required and is not dispensed with has consented and understands the nature and effects of the adoption, namely, that it will permanently deprive that person of parental rights over the adopted child;
- (b) the order if made will be for the welfare of the child, due consideration being given to the wishes of the child having regard to his or her age and understanding;
- (c) the applicant has not received or agreed to receive, and that no person has made or agreed to make to the applicant, any payment or other reward in consideration of the adoption; and
- (d) the applicant or any person on behalf of the applicant has not paid or agreed to pay money or anything in place of money to the parent, guardian or any person in charge of the child in consideration of the adoption of the child.

(2) The court may, in an adoption order, include such terms and conditions as it thinks fit.

#### **49. Rules as to the procedure for adoption.**

(1) The Chief Justice may by statutory instrument make rules regarding all matters under this Part and the procedure to be followed by the court in adoption proceedings.

(2) Without prejudice to the general effect of subsection (1), the rules may provide for—

- (a) the admission of documentary evidence of any consent to adoption;
- (b) the admission of evidence, documentary or otherwise, to determine the age of the child;
- (c) a probation and social welfare officer to prepare a report for the court to help determine whether the adoption order will be for the welfare and best interests of the child;
- (d) the conduct of adoption societies or similar bodies in placing children for adoption.

#### **51. Effect of an adoption order.**

Upon an adoption order being made—

- (a) all rights, duties, obligations and liabilities of the parents and guardians in relation to the future custody, maintenance and education of the child, including all rights to appoint a guardian and to consent or give notice of consent to marriage, are extinguished; and
- (b) there shall vest in, and be exercised by, and enforceable against the adopter all such rights, duties, obligations and liabilities in relation to the future custody, maintenance and education of the child as would vest in him or her if the child were the natural child of the adopter born to him or her in lawful wedlock.

#### **54. Adopted children register.**

The registrar of births and deaths shall maintain an adopted children register in which shall be registered particulars of adoptions under this Act.

#### **56. Approval of homes.**

(1) A government or non-government home set up for the purposes of caring for children shall be approved by the Minister, in consultation with the probation and social welfare officer within six months of receipt of application for approval.

(2) A person who establishes or runs a home without the approval of the Minister under this section commits an offence.

#### **57. Admission of children to home.**

An approved home shall only receive children in the following two ways—

- (a) in an emergency situation from a police officer, a probation and social welfare officer or any other person for a maximum period of forty-eight hours pending production of the child in court; or
- (b) on an interim care order or a care order.

#### **60. Contact with parents and relatives.**

(1) The approved home and the probation and social welfare officer shall maintain contact with the parents or relatives of a child in the home as well as maintain contact between the child and the parents or relatives of the child.

#### **66. Rules for approved homes.**

The Minister may make rules for carrying this Part into effect and in particular for—

- (a) prescribing the form of application for an approved home;
  - (b) prescribing requirements as to the accommodation and equipment to be provided in homes;
  - (c) prescribing the medical arrangements to be made for protecting the health of the children in the approved homes;
  - (d) regulating the management and discipline of an approved home;
- and
- (e) regular inspection of the home.

#### **95A Appointment and supervision of probation and social welfare officers.**

The Ministry responsible for gender, labour and social development in consultation with the district service commission, shall be responsible to the appointment and supervision of probation and social welfare officers.

### ***Second Schedule.***

#### **Foster Care Placement Rules.**

##### **3. Application of rules.**

These Rules apply to the placement of a child with foster parents by a probation and social welfare officer.

##### **4. Application to foster a child.**

Any person interested in fostering a child shall complete the application form specified in Form 1 of the Schedule to these Rules and submit it to the district probation and social welfare officer or to the warden of an approved home.

## **5. Persons qualified to foster children.**

- (1) The following persons may apply to be foster parents—
- (a) a husband and wife, but if a man has more than one wife, the name of the wife who is to be the foster mother shall be clearly stated;
  - (b) a single woman not below the age of twenty-one years; or
  - (c) a single man not below the age of twenty-one years.
- (2) A single man may not foster a female child under this Act.
- (3) A non-Ugandan citizen residing in Uganda is qualified to apply to be a foster parent subject to subrule (1).

## **6. Procedure before placement.**

- (1) A child shall not be placed with a foster parent who is not a relative of the child unless—
- (a) a probation and social welfare officer has interviewed the prospective foster parent and assessed that he or she is a suitable person to foster a child;
  - (b) a probation and social welfare officer has visited the home of the prospective foster parent and has confirmed in writing that it is likely to meet the requirements of the particular child and that the conditions in it are satisfactory;
  - (c) two persons who know the prospective foster parent well have vouched for his or her good character and suitability to care for the child, and one of the two persons shall be the secretary for children's affairs of the village local council or the village chief;
  - (d) it has been established from the secretary for children's affairs of the council or the person in charge of any government medical unit in the area that no person in the household of the prospective foster parent is suffering from any physical or mental illness likely to affect the child adversely;
  - (e) it has been established from the secretary for children's affairs or from the officer in charge of the police station in the area that no person in the home has been convicted of a serious criminal offence rendering it undesirable for the child to associate with that person; and
  - (f) the wishes of the child so far as can be ascertained concerning the proposed fostering have been ascertained and have, so far as practicable, been taken into account.
- (2) For record purposes, the probation and social welfare officer concerned with the fostering shall make a written report which shall contain the following—
- (a) the information required in subrule (1) of this rule;
  - (b) details of the name, approximate age, religion and employment of the prospective foster parents; and
  - (c) the number and approximate ages of other persons living in the household of the prospective foster parent.
- (3) The report shall be in Form 3 as specified in the Schedule and shall be filed in the district probation and social welfare office.

## **7. Religion.**

- (1) Where a child's religion is known, the child shall be placed with a foster parent who is of the same religion as the foster child; but where that is not possible, the foster parent shall undertake to bring up the child in accordance with the religious denomination of the child.

(2) Where a child's religion is not known, the child shall be placed with a foster parent who shall undertake to bring up the child in accordance with the religious denomination of the foster parent.

#### **8. Cultural background.**

Wherever possible, a child shall be placed with a foster parent who has the same cultural background as the child's parents and who originates from the same area in Uganda as the parents of the child.

#### **9. Undertaking by foster parents.**

(1) Each foster parent shall, on the day on which the child is placed with him or her, sign the undertaking specified in Form 2 in the Schedule in the presence of a witness.

(2) Where the prospective foster parent cannot read the English language sufficiently to understand the nature of the undertaking, the supervising officer or the authorised officer concerned shall cause the undertaking to be explained to the prospective foster parent in a language which he or she understands and shall certify to that effect as prescribed in Form 2 of the Schedule.

(3) Each foster parent shall be given a copy of the undertaking signed by him or her.

(4) A copy of the undertaking shall also be sent to the district probation and social welfare office and to the commissioner.

#### **10. Medical arrangements.**

(1) Except in the case of an emergency, a child shall not be placed with a foster parent unless he or she has been examined by a qualified medical practitioner or such other medical personnel not below a rank approved by the director of medical services, and the person examining the child has reported in writing on the child's physical and mental condition.

#### **11. Supervising officer.**

A district probation and social welfare officer shall, subject to these Rules, be responsible for overseeing all aspects of the fostering and for ensuring that the provisions of these Rules are complied with.

#### **12. Visits during placement.**

(1) A probation and social welfare officer shall visit the foster family and see the child—

- (a) within two weeks after the date of placement of the child with the foster family where the child is under two years of age, and thereafter once every three months;
- (b) within one month after the date of placement of the child with the foster family where the child is above two years of age, and thereafter once every three months;
- (c) within one month after receiving notification from a foster parent that he or she has changed his or her residence;
- (d) immediately and in any case not later than one week after receipt of any information from the child, a foster parent or any other person which indicates the need for him or her to visit the child.

(2) The probation and social welfare officer who carries out a visit under subrule (1) of this rule shall make a written report to be placed in the child's case record stating in detail his or her observations as to the child's welfare, progress and conduct and any changes which have occurred in the

circumstances of the foster family.

(3) The report made under subrule (2) shall also include the child's views and feelings concerning placement; and where there are any problems, they shall be discussed and resolved openly within the foster family.

### **13. Termination of placement.**

(1) A child shall not be allowed to remain with a foster parent where it appears that the placement is no longer in the best interests of the child except that—

(a) the foster parent may appeal to the commissioner if the supervising officer seeks to remove a child who has been in the care of the foster parent for more than twelve months; and

(b) the commissioner on any such appeal may prohibit the removal or authorise it subject to such conditions as he or she thinks fit.

(2) A child shall not be required to remain in the care of a foster parent after he or she has attained the age of eighteen years.

### **16. Records.**

(1) Every district probation and social welfare office shall maintain a register of foster parents, in which shall be stated in respect of each foster parent, a record set out in Form 3 specified in the Schedule to these Rules.

(7) Every district probation and social welfare office shall report to the commissioner within one month after each fostering effected by it, the fact of the fostering and stating the information in Form 3 specified in the Schedule to these Rules.