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GAZETTE

EXTRAORDINARY.

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PART II.—LEGAL.

DRAFT ORDINANCES.

MINUTE.

The following Draft of a proposed Ordinance is published for general information:—

L. D.—O 8/41

An Ordinance to enable companies formed and registered in Ceylon to lend money without interest to the Government of Ceylon under the Free Loans (War Purposes) Ordinance, No. of 1941.

BE it enacted by the Governor of Ceylon, with the advice and consent of the State Council thereof, as follows:—

1. This Ordinance may be cited as the Companies (Free Loans) Ordinance, No. of 1941. Short title.

2. (1) Notwithstanding anything in any written law or instrument, the memorandum of every company shall be deemed to include among the objects of the company the lending of money without interest to the Government of Ceylon in accordance with the provisions of the Free Loans (War Purposes) Ordinance, No. of 1941; and the moneys of any company may, subject as hereinafter provided, be lent to the Government of Ceylon accordingly: Power for companies to lend moneys without interest to the Government of Ceylon.

Provided that no moneys shall be so lent except in pursuance of an ordinary resolution in that behalf passed at a general meeting of the company of which not less than seven days' prior notice shall have been given.

(2) In this section, "company" and "memorandum" have, respectively, the same meaning as in the Companies Ordinance, No. 51 of 1938.

Objects and Reasons.

The object of this Bill is to enable companies formed and registered in Ceylon to lend money without interest to the Government of Ceylon, in accordance with the provisions of the Free Loans (War Purposes) Ordinance, No. of 1941, for Imperial War Expenditure.

G. C. S. COREA,
Minister for Labour, Industry and Commerce,
Colombo, February 1, 1941.

MINUTE.

The following Draft of a proposed Ordinance is published for general information :—

L. D.—O 29/40

An Ordinance to make provision for the compulsory purchase by the Crown of certain lands sold in execution of mortgage decrees, for the alienation of such lands by the Crown and for matters connected with or incidental to the matters aforesaid.

BE it enacted by the Governor of Ceylon, with the advice and consent of the State Council thereof, as follows :—

Short title and date of operation.

1. This Ordinance may be cited as the Land Redemption Ordinance, No. of 1941, and shall come into operation on such date as the Governor may appoint by Proclamation published in the *Gazette*.

Appointment of Commissioner, Assistant Commissioners, &c.

2. (1) The Governor may appoint—

- (a) any person by name or by office to be or to act as a Commissioner for the Redemption and Alienation of Lands ;
- (b) any person by name or by office to be or to act as an Assistant Commissioner for the Redemption and Alienation of Lands ; and
- (c) such other officers and servants as may from time to time be required for the purposes of this Ordinance.

(2) The Commissioner shall, in the exercise, performance or discharge of any power, duty or function conferred or imposed upon or assigned to him by or under this Ordinance, be subject to the general direction and control of the Executive Committee of Labour, Industry and Commerce.

Acquisition of lands by Commissioner.

3. (1) The Commissioner is hereby authorised to acquire on behalf of Government the whole or any part of any agricultural land which was sold in execution of a mortgage decree at any time within the period which commenced on the thirty-first day of December, 1928, and ended on the thirty-first day of December, 1939, both days inclusive.

(2) Every acquisition of land under sub-section (1) shall be effected in the manner hereinafter provided and shall be paid for out of funds voted by the State Council for the purposes of this Ordinance.

(3) The question whether any land which the Commissioner is authorised to acquire under sub-section (1) should or should not be acquired shall, subject to any regulations made in that behalf, be determined by the Commissioner in the exercise of his individual judgment ; and every such determination of the Commissioner shall be final.

Cap. 203.

(4) Where the Commissioner has determined that any land shall be acquired for the purposes of this Ordinance, the provisions of the Land Acquisition Ordinance shall, subject to the exceptions and modifications set out in the schedule, apply for the purposes of the acquisition of that land ; and any sum of money which may, under such provisions, be required to be paid or deposited by the Commissioner or by Government by way of compensation, costs or otherwise, shall be paid out of funds voted by the State Council for the purposes of this Ordinance.

(5) The Schedule may be amended or modified by regulation.

Disposal of lands acquired under the Ordinance.

4. (1) Every land acquired under the provisions of this Ordinance shall, as soon after such acquisition as may be convenient, be sold or leased in accordance with the provisions of sub-section (3) and subject—

- (a) in the case of a sale, to the general terms and conditions prescribed in sub-section (4) ; and
- (b) in the case of a sale or lease, to such other terms and conditions and to such covenants and restrictions as may be prescribed by regulation.

(2) In the interval between the date on which the Commissioner enters into possession of any land for the purpose of acquiring that land and the date on which that land is sold or leased under the provisions of this Ordinance, the Commissioner shall be responsible for the custody, management and protection of the land and for the disposal of the produce thereof ; and, for the purposes of the preceding provisions of this sub-section, the Commissioner is hereby authorised to expend such moneys and to take all such measures as he may deem necessary, subject to such conditions and restrictions as may be prescribed.

(3) No land acquired under the provisions of this Ordinance shall be sold or leased to any person other than—

- (a) any person against whom that land was sold in execution of a mortgage decree entered by any court, or
- (b) any person domiciled in Ceylon who is not the owner of other agricultural land, or
- (c) any person domiciled in Ceylon who is the owner of other agricultural land of an extent not exceeding such extent as may be prescribed.

(4) Where any land acquired under the provisions of this Ordinance is sold, the sale shall be subject to the following general terms and conditions :—

- (a) that the purchase price shall be paid in such instalments on such dates, and within such period, as may be specified in the instrument of sale ;
- (b) that the purchaser shall not sell, lease or mortgage the land until the entire purchase price and all other moneys due under the instrument of sale have been duly paid.

5. Where the Commissioner considers it necessary that an inspection, examination or survey should be made of any agricultural land which he is authorised by this Ordinance to acquire, it shall be lawful for the Commissioner, or any person acting under the written authority of the Commissioner, together with such servants and workmen as may be necessary, to enter upon and to survey and take levels of that land or of any land in the same locality, to mark the levels and boundaries of that land, and to do all such other acts as may be necessary for the purposes of such inspection, examination or survey :

Powers of entry, survey, &c.

Provided, however, that no person shall enter or do any act upon any land in pursuance of the powers conferred by the preceding provisions of this section except with the consent of the owner or occupier of that land, or after giving to such owner or occupier, in the prescribed manner, not less than seven days' notice of his intention to enter that land or to do such act thereon.

6. (1) The Commissioner may at any time direct any person to furnish to him before a specified date—

Power of Commissioner to call for returns.

- (a) a return in the prescribed form containing the prescribed particulars relating to any such land as is referred to in section 3 of which that person is, or was at any time, the owner ;
- (b) such information or explanation as the Commissioner may require in respect of any particulars stated in any return furnished by that person ;
- (c) such documentary or other evidence as the Commissioner may require for the purpose of verifying any particulars stated in any return or any information furnished by that person.

(2) Any person who, when required to furnish a return, or any information or explanation, or any evidence under sub-section (1), fails or refuses to furnish such return, information, explanation or evidence, or knowingly furnishes a return containing any particulars which are false or any information or explanation which is false, shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one hundred rupees.

7. (1) The Executive Committee of Labour, Industry and Commerce may make regulations for the purpose of carrying out or giving effect to the principles and provisions of this Ordinance.

Regulations.

(2) In particular and without prejudice to the generality of the powers conferred by sub-section (1), the Executive Committee may make regulations for or in respect of any or all of the following matters :—

- (a) all matters stated or required by this Ordinance to be prescribed ;
- (b) the classes and qualifications of persons to whom any land acquired under this Ordinance may be sold or leased.

(3) Every regulation made by the Executive Committee shall be brought before the State Council by a motion that such regulation shall be approved and, if so approved, shall be submitted to the Governor for ratification. No regulation made by the Executive Committee shall have effect until it has been approved by the State Council and ratified by the Governor. Notification of such approval and ratification shall be published in the *Gazette*.

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(4) A regulation made by the Executive Committee when approved by the State Council and ratified by the Governor shall, upon notification of such approval and ratification in the *Gazette*, be as valid and effectual as if it were herein enacted.

Interpretation. 8. In this Ordinance, unless the context otherwise requires—

“agricultural land” means any land used or capable of being used for the purposes of agriculture or horticulture or for any purpose of husbandry including the keeping or breeding of live-stock, poultry or bees and the cultivation of fruits, vegetables and the like ;

“Assistant Commissioner” means any person appointed under section 2 to be or to act as an Assistant Commissioner for the Redemption and Alienation of Lands ;

“Commissioner” means any person appointed under section 2 to be or to act as Commissioner for the Redemption and Alienation of Lands and includes an Assistant Commissioner ;

“Executive Committee” means the Executive Committee of Labour, Industry and Commerce ;

“mortgage decree” means a decree entered by a court in an action to enforce payment of a mortgage by a judicial sale of the mortgaged property ;

“prescribed” means prescribed by regulation ;

“regulation” means a regulation made by the Executive Committee under this Ordinance.

Effect of Ordinance.

9. Where the provisions of this Ordinance are inconsistent or in conflict with any other law, the provisions of this Ordinance shall prevail.

SCHEDULE.

Provision of the Land Acquisition Ordinance. (Chapter 203).	Exceptions or modifications.
Sections 1, 15, 16, 17, 18, 19, 21, 22, 24, 25, 27, 28, 29, 31, 32, 33, 35, 37, 40, 43, 44, 45, and 48.	Shall apply without any adaptation or modification.
Section 2.	(1) Immediately before the definition of “District Judge” and “District Court” there shall be inserted the following :— “ “Commissioner” means the Commissioner for the Redemption and Alienation of Lands appointed under the Land Redemption Ordinance, and includes an Assistant Commissioner appointed under that Ordinance ;”. (2) In the definition of “District Judge” and “District Court” for the words “such land” there shall be substituted the words “the land proposed to be acquired”. (3) The definition of “Government Agent” shall be omitted.
Sections 3, 4, 5, 12 (2), 12 (3), 12 (4), 20, 39, 46 and 47.	Shall not apply.
Section 6.	(1) For the words “The Government Agent shall thereupon cause” there shall be substituted the words “Where the Commissioner determines that any land shall be acquired for the purposes of the Land Redemption Ordinance, he shall cause”. (2) For the words “Government Agent” wherever those words occur collectively there shall be substituted the word “Commissioner”.
Sections 7, 8, 9, 10, 11, 14, 23, 26, 30, 34, 36, 38 and 41.	For the words “Government Agent” wherever those words occur collectively, there shall be substituted the word “Commissioner”.

Provision of the Land Acquisition Ordinance. (Chapter 203).	Exceptions or modifications.
Section 12 (1).	(1) For the words "Government Agent" there shall be substituted the word "Commissioner". (2) For the words "and has notified the same to the Governor, it shall be lawful for the Governor to direct" there shall be substituted the words "the Commissioner may direct".
Section 13.	(1) For the words "Government Agent" wherever those words occur collectively there shall be substituted the word "Commissioner". (2) In paragraph (c), the words "the amount awarded for damages under section 4," shall be omitted.
Section 42.	For the words "If the surveyor or any of his assistants or any person acting under his or their orders" there shall be substituted the words "If the Commissioner or any person acting under his authority".
Schedule.	In the Form A, for the words "the Land Acquisition Ordinance _____ of _____, entitled _____," there shall be substituted the words "the Land Acquisition Ordinance and the Land Redemption Ordinance,".

Objects and Reasons.

The object of this Bill is to make provision for the acquisition by Government of lands sold between December 31, 1928 and December 31, 1939, (both days inclusive) in execution of mortgage decrees, and for the alienation of such lands to the original owners or to persons domiciled in Ceylon who are not the owners of other agricultural land. Investigation has shown that, during the years of depression, mortgagees instituted actions for the recovery of debts secured by mortgage of agricultural property and themselves purchased such property in execution of the decrees entered in such actions. It is considered desirable, in the interests of agriculturists who were so deprived of their lands, for the Government to acquire such lands out of public funds and to sell or lease the lands so acquired to the original owners on equitable terms for the payment of the purchase price or rent. As it is essential that the Government should secure indefeasible title to the lands prior to their re-alienation to the original owners or other persons, the provisions of the Land Acquisition Ordinance will, subject to necessary modifications and amendments, be applied for the purpose of acquiring the lands.

2. The new law will be administered by a Commissioner who, in the discharge of his duties, will be under the general direction and control of the Executive Committee of Labour, Industry and Commerce. In the application of the provisions of the Land Acquisition Ordinance, the "Commissioner" will be substituted for the "Government Agent" wherever reference is made to a Government Agent in that Ordinance. The provisions of the Bill are intended to be supplementary to those of the Mortgage (Suspension of Sales) Bill which is designed to afford equitable relief against enforced sales of immovable property.

G. C. S. COREA,

Minister for Labour, Industry and Commerce.

Colombo, January 30, 1941.

MINUTE.

The following Draft of a proposed Ordinance is published for general information:—

L. D.—O 5/36

An Ordinance to provide for the adoption of children, for the registration as custodians of persons having the care, custody or control of children of whom they are not the natural parents, and for matters connected with the matters aforesaid.

TABLE OF SECTIONS.

1. Short title and date of operation.

PART I.

Adoption of Children.

2. Power to make adoption orders.
3. Restrictions on making of adoption orders.

4. Matters with respect to which Court must be satisfied.
5. Terms and conditions of adoption order.
6. Effect of adoption order.
7. Power to make *interim* orders.
8. Provisions as to existing *de facto* adoptions.
9. Power to make subsequent orders in respect of children already adopted.
10. Adoption Register.
11. Search of Register and issue of copies of entries.
12. Books, &c.
13. Jurisdiction, procedure, &c.
14. Restriction of payments.
15. Savings as to marriage law.
16. Savings for adoption under Kandyan law or Tesawalamai.
17. Interpretation of Part I.

PART II.

Registration of Custodians of Children.

18. Registration of persons having custody of children on appointed date.
19. Registration as custodians of persons taking children into their custody.
20. Protected persons.
21. Duties of registered custodians.
22. Visits, inspections, &c.
23. Application to protected persons of law relating to domestic servants.
24. Savings for rights of parents.
25. Register of protected persons.
26. Offences and penalties.
27. Regulations.
28. Application of Part II.
29. Interpretation of Part II.

SCHEDULE.

An Ordinance to provide for the adoption of children, for the registration as custodians of persons having the care, custody or control of children of whom they are not the natural parents, and for matters connected with the matters aforesaid.

BE it enacted by the Governor of Ceylon, with the advice and consent of the State Council thereof, as follows:—

Short title
and date of
operation.

1. This Ordinance may be cited as the Adoption of Children Ordinance, No. of 1941, and shall come into operation on such date, (hereinafter referred to as "the appointed date"), as the Governor may appoint by Proclamation published in the *Gazette*.

PART I.

Adoption of Children.

Power to make
adoption
orders.

2. (1) Any person desirous of being authorised to adopt a child may make application to the Court in the manner provided by rules made under section 13, and upon such application being made, the Court may, subject to the provisions of this Part, make an order (hereinafter referred to as an "adoption order") authorising that person to adopt the child.

(2) No adoption order shall be made authorising two or more persons to adopt a child:

Provided, however, that the Court may, on application made in that behalf by two spouses jointly, make an adoption order authorising the two spouses jointly to adopt a child.

Restrictions
on making
of adoption
orders.

3. (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 child in respect of whom the application is made:

Provided, however, that where the child in respect of whom an application is made is—

- (i.) a direct descendant of the applicant; or
- (ii.) a brother or sister of the applicant by the full or the half blood or a descendant of any such brother or sister; or
- (iii.) the child of the wife or husband, as the case may be, of the applicant by another father or mother,

the Court may, if it thinks fit make an adoption order, notwithstanding that the applicant is less than twenty-one years older than the child.

(2) An adoption order shall not be made in any case where the sole applicant is a male and the child in respect of whom the application is made is a female, unless the Court is satisfied that there are special circumstances which justify 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 child in respect of whom the application is made, or who has the actual custody of the child, or who is liable to contribute to the support of the child:

Provided that the Court may dispense with any consent required by the preceding provisions of this sub-section if satisfied that the person whose consent is to be dispensed with has abandoned or deserted the child or cannot be found or has been adjudged by a competent court to be of unsound mind, or, being a person liable to contribute to the support of the child, 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.

A man who marries a woman having a child (whether legitimate or illegitimate) at the time of the marriage shall be deemed for the purposes of this sub-section to be a person liable to contribute to the support of the child.

(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 the preceding provisions of this sub-section if satisfied that the person whose consent is to be dispensed with cannot be found or has been adjudged by a competent court to be of unsound mind, or that the spouses have been judicially separated by a decree of a competent Court.

(5) An adoption order shall not be made in respect of a child over the age of ten years except with the consent of such child.

(6) An adoption order shall not be made in favour of any applicant who is not resident and domiciled in Ceylon or in respect of any child who is not a British subject and so resident.

4. The Court before making an adoption order shall be satisfied —

- (a) that every person whose consent is necessary under this Part 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 child, due consideration being for this purpose given to the wishes of the child, having regard to the age and understanding of the child ; 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.

Matters with respect to which Court must be satisfied.

5. 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.

Terms and conditions of adoption order.

6. (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 to the marriage of the child, or to give notice forbidding the issue of a certificate for the solemnization of such 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 :

Effect of adoption order.

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) The Court which makes an adoption order in respect of any child shall, unless in its discretion it considers it inexpedient so to do, by that order confer on the child the surname or family name of the adopter or such other name as would, having regard to the customs of the community to which the adopter belongs, be conferred on a child born in lawful wedlock of the adopter.

(3) Upon an adoption order being made, the adopted child shall for all purposes whatsoever be deemed in law to be the child born in lawful wedlock of the adopter :

Provided, however, that unless the contrary intention clearly appears from any instrument (whether such instrument takes effect *inter vivos* or *mortis causa*), such adopted child shall not by such adoption—

- (a) acquire any right, title or interest in any property—
 - (i) devolving on any child of the adopter by virtue of any instrument executed prior to the date of the adoption order ;
 - (ii) burdened with a *fidei commissum* in favour of the descendants of the adopter ; or
 - (iii) devolving on the heirs *ab intestato* of any child born in lawful wedlock of the adopter ;
- (b) become entitled to any succession (whether by will or *ab intestato*) *jure representationis* the adopter.

(4) An adoption order shall not deprive the adopted child of any right to or interest in any 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 date of the adoption order.

(5) Upon the death intestate of any person in respect of whom an adoption order has been made, neither the adopter nor any person claiming through or under him shall, by reason of the adoption, acquire any right to succeed to the estate or any part of the estate of the person adopted :

Provided, however, that where any part of the estate consists of immovable property which had accrued to or devolved on the adopted person by reason of his having been deemed in law to be the child born in lawful wedlock of the adopter, or which had been transferred to him by way of gift by the adopter or by any ascendant or descendant or brother or sister of the adopter, the adopter and persons claiming under him shall, notwithstanding anything in any written or other law to the contrary, be entitled to succeed to that immovable property in like manner as though the person adopted were the child born in lawful wedlock of the adopter.

Power to make *interim* orders.

7. (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 Part) giving the custody of the child 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 child 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.

Provisions as to existing *de facto* adoptions.

8. Where at the appointed date any child 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 that date 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 child a female, make an adoption order authorising him, her or them to adopt the child without requiring the consent of any parent or guardian of the child 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 child that no such consent should be required and that an adoption order should be made.

Power to make subsequent orders in respect of children already adopted.

9. An adoption order or an *interim* order may be made in respect of a child 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 child for all the purposes of this Ordinance.

Adoption Register.

10. (1) The Registrar-General shall establish and maintain at his office a register to be called the Adoption Register; together with an Index thereof, and shall make or cause to be made in that Register such entries as may be directed to be made therein by adoption orders.

(2) The Court which makes any adoption order shall in that order direct the Registrar-General to make in the Adoption Register an entry recording the adoption in the form set out in the Schedule to this Ordinance.

(3) Where, upon any application for an adoption order in respect of any child, the date of the birth of that child and the identity of that child with a child to whom any entry or entries in any register of births kept under the Births and Deaths Registration Ordinance relates, is proved to the satisfaction of the Court, the Court shall if the adoption order is made, in that order direct the Registrar-General—

Cap. 94.

- (a) to cause such birth entry or entries in the register of births to be marked with the word "Adopted"; and
- (b) to include in the entry made under sub-section (2) in the Adoption Register in respect of that order, the date of the birth of the child as specified in the order.

(4) Every Court which makes an adoption order shall cause the adoption order to be communicated to the Registrar-General, and upon receipt of such communication the Registrar-General shall cause compliance to be made with the directions contained in such order in regard both to marking any entry in the Registers of Births with the word "Adopted" and in regard to making the appropriate entry in the Adoption Register.

(5) The Registrar-General shall not cause or permit any entry to be made in the Adoption Register other than an entry which is, by an adoption order, directed to be made therein :

Provided, however, that—

- (a) the Registrar-General or any person authorised by him may correct any clerical error which may at any time be discovered in any entry made in the Adoption Register ;
 - (b) where the Registrar-General is satisfied that any particulars in any such entry relating to any matter of fact or substance do not correspond with the particulars directed by an adoption order to be entered in the Adoption Register, the Registrar-General may cause the error to be corrected by an entry made under his hand in the margin of the Register.
- (6) A certified copy of any entry in the Adoption Register if purporting to be made under the hand of the Registrar-General or any Assistant Registrar-General shall—
- (a) where the entry does not contain any record of the date of the birth of the adopted child, be received as *prima facie* 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, be received as *prima facie* evidence not only of the adoption to which the same relates but also of the date of the birth of the adopted child to which the same relates in all respects as though such copy were a certified copy purporting to be made under the hand of the Registrar-General, of an entry in a register of births.

11. The Adoption Register and the Index kept under section 10 shall be deemed to be books kept by the Registrar-General under the Births and Deaths Registration Ordinance, and all the provisions of section 41 of that Ordinance relating to searches of such books, to the issue of certified copies of entries, and to the stamps to be supplied in respect of such searches or copies, shall apply accordingly.

Search of Register and issue of copies of entries.

12. The Registrar-General shall, in addition to the Adoption Register and the Index thereof, keep such other books and registers and make such entries therein as may be necessary to record and make traceable the connexion between any entry in any register of births which has been marked "Adopted" in accordance with the provisions of section 10, and any corresponding entry in the Adoption Register :

Book, &c.

Provided that no books and registers kept under this section shall be open to public inspection or search, and that the Registrar-General shall not, except under an order of a Court of competent jurisdiction, furnish any person with any information contained in, or with any copy or extract from, any such register or book.

13. (1) The Court having jurisdiction to make an adoption order under this Part shall be the Court of Requests having jurisdiction in the place at which the applicant, or the child in respect of whom the application is made, resides.

Jurisdiction, procedure, &c.

(2) It shall be lawful for the Judges of the Supreme Court or any five of them, of whom the Chief Justice shall be one, to make rules prescribing the manner in which applications to the Court are to be made and the procedure to be followed in the hearing of such applications, and providing for all matters connected with or incidental to the matters aforesaid.

Such rules may provide for applications for adoption orders being heard and determined otherwise than in open court.

Cap. 6.

(3) The matters for which rules may be made under sub-section (2) shall be deemed to be added to the list of matters in respect of which rules may be made under section 49 and 50 of that Ordinance; and the provisions of sections 49 and 50 of that Ordinance shall apply accordingly in the case of any rule made in respect of any of the matters referred to in sub-section (2).

Cap. 86.

(4) For the purpose of any application under this Part, the Court shall, subject to any rules made under this section, appoint some person or body of persons to act as guardian *ad litem* of the child upon the hearing of the application with the duty of safeguarding the interests of the child before the Court.

Cap. 189.

(5) For the purposes of the Civil Procedure Code and of the Stamp Ordinance an application to the Court for an adoption order shall be deemed to be an action of the value of one hundred rupees :

Provided, however, that no stamp duty shall be chargeable in respect of any such application.

Restriction of payments.

14. Any adopter who shall receive, except with the sanction of the Court, any payment or other reward in consideration of the adoption of any child under this Part, or who shall make or give or agree to make or give to any adopter any such payment or reward, shall be guilty of an offence and shall, on conviction after summary trial before a Magistrate, be liable to a fine not exceeding one thousand rupees or to imprisonment of either description for a term which may extend to six months, or to both such fine and imprisonment.

Savings as to marriage law.

15. Nothing in this Part shall be construed to authorise any marriage that could not lawfully have been contracted if this Ordinance had not been enacted; nor shall anything in this Part contained place an adopting parent or an adopted child as against each other's relatives by consanguinity or affinity within the degrees within which marriage is prohibited by the provisions of any other written law.

Savings for adoption under Kandyan law or Tesawalamai.

16. The provisions of this Part shall be in addition to and not in substitution of the provisions of any written or other law relating to the adoption of children by persons subject to the Tesawalamai or the Kandyan law; and notwithstanding anything to the contrary in such other law, an adoption order may be made authorising any such person to adopt a child, and where made, shall have effect in accordance with the provisions of this Part.

Interpretation of Part I.

17. In this Part, unless the context otherwise requires—

“adopter” means the person authorised by an adoption order to adopt a child, and where such an order is made in favour of a husband and wife on their joint application, means both husband and wife;

“child” means a person under the age of fourteen years;

“Court” means the Court of Requests having jurisdiction under section 13 to make an adoption order

“guardian” in relation to a child includes any person who, in the opinion of the Court, has for the time being charge of or control over the child.

PART II.

Registration of Custodians of Children.

Registration of persons having custody of children on appointed date.

18. (1) Save as otherwise provided in section 28, no person who on the appointed date has in his care, custody or control any child of whom he is not the natural parent, shall continue to keep the child in his care, custody or control after the expiry of a period of three months from that date unless he gives notice in the prescribed form to an authorised officer to the effect that the child is, in his custody.

(2) An authorised officer shall, on receipt of a notice under sub-section (1) from any person, transmit the notice to the Assistant Government Agent of the district in which that person is resident; and the Assistant Government Agent shall thereupon register that person as the custodian of the child and deliver to him a certificate of registration in the prescribed form.

(3) Nothing in the preceding provisions of this section shall be deemed to prejudice the power of an Assistant Government Agent to register any person under sub-section (2) as the custodian of a child, notwithstanding that the notice given by that person under sub-section (1) is received after the expiry of the period mentioned in that sub-section.

(4) In this section, “authorised officer” includes any police officer for the time being in charge of a police station, and any Registrar appointed under the Births and Deaths Registration Ordinance or the Marriage Registration Ordinance.

Cap. 94.

Cap. 95.

19. (1) Save as otherwise provided in section 28, no person shall on or after the appointed date, take or receive into his care, custody or control any child of whom he is not the natural parent, unless he has been registered by an authorised officer as the custodian of that child.

Registration as custodians of persons taking children into their custody.

(2) An authorised officer shall not register any person under this section as the custodian of any child—

- (a) unless application is made to him in the prescribed form by the applicant for such registration ;
- (b) unless he considers it expedient, after such inquiry as he may deem necessary, in the interests of the child that the child should be placed in the care, custody and control of the applicant ;
- (c) unless the parents of the child consent, or in the case of an illegitimate child, the mother consents, in the presence of the officer, to deliver the child into the care, custody and control of the applicant :

Provided, however, that an authorised officer may dispense with the consent of any person whose consent is required under paragraph (c), if the officer is satisfied that the person whose consent is to be dispensed with is dead or cannot be found, or has abandoned, deserted or neglected the child, or has been adjudged by a competent court to be of unsound mind.

(3) An authorised officer shall, upon the registration by him of any person as the custodian of a child, issue to that person a certificate of registration in the prescribed form, and transmit a copy of the certificate to the Assistant Government Agent of the district in which that person is resident.

20. Where any person is registered under this Ordinance as the custodian of a child, the child shall, until he attains the age of eighteen years, be a protected person for the purposes of this Part and the provisions of sections 21 to 25 shall apply accordingly :

Protected persons.

Provided, however, that nothing in any of those sections shall apply in the case of any such protected person if he permanently leaves or is permanently removed from the care, custody or control of the person registered as his custodian.

21. It shall be the duty of every person who is registered as the custodian of a protected person—

Duties of registered custodians.

- (a) to furnish to the Assistant Government Agent of the district in which he is resident such returns and information, relating to the protected person, as the Assistant Government Agent may from time to time require ;
- (b) after the protected person has attained the age of twelve years, and until he attains the age of eighteen years, to deposit each month to the credit of an account in the name of the protected person, at the Ceylon Post Office Savings Bank, a sum the amount of which shall be determined in accordance with such scales as may be prescribed.

22. It shall be lawful for any prescribed officer or for any other person specially or generally authorised in that behalf by the Minister—

Visits, inspections, &c.

- (a) from time to time to visit and examine any protected person and to make such inquiries as may be necessary relating to the treatment and welfare of the protected person ; and
- (b) for the purpose of any such visit, examination or inquiry, to enter and inspect at any reasonable time during the day, any premises in which the protected person is for the time being resident or employed.

23. A protected person shall not, while he is in the care, custody or control of the person who is registered as his custodian, be deemed to be employed as a domestic servant for the purposes of any other written law relating to the registration or wages of domestic servants.

Application to protected persons of law relating to domestic servants.

24. The registration of any person as the custodian of any protected person shall not be deemed in any way to prejudice or affect the right of the natural parents or of the lawful guardian of the protected person to remove the protected person from the care, custody and control of the custodian.

Savings for rights of parents.

25. The Assistant Government Agent of every district shall cause a register to be maintained in the prescribed form containing such particulars as may be prescribed relating to protected persons who are in the care, custody or control of custodians resident in that district.

Register of protected persons.

Offences and penalties.

26. (1) Any person who—

- (a) acts in contravention of any provision of this Part ;
- (b) fails or refuses to furnish any return or information when required to do so under this Part ; or in furnishing any such return or information, makes any statement which he knows to be incorrect ;
- (c) fails or refuses to comply with the provisions of section 21 (b) ; or
- (d) resists or obstructs any prescribed officer or other person in the exercise of the powers conferred on such officer or person by section 22,

shall be guilty of an offence, and shall, on conviction after summary trial before a Magistrate, be liable to a fine not exceeding five hundred rupees or to imprisonment of either description for a term not exceeding three months or to both such fine and imprisonment.

(2) Where any person is convicted of the offence of having failed or refused to deposit any sum in the name of any protected person in accordance with the requirements of paragraph (b) of section 21, the Magistrate may direct that the whole or any specified part of any fine imposed for that offence shall, when recovered, be deposited in the name of that protected person in accordance with the provisions of that paragraph.

Regulations.

27. (1) The Executive Committee of Home Affairs may make regulations for or in respect of any matter stated or required in this Part to be prescribed, or for which regulations are required or authorised to be made under this Part, and generally for the purpose of carrying out or giving effect to the principles and provisions of this Part.

(2) Every regulation shall be published in the *Gazette* and shall come into operation upon such publication.

(3) Every regulation shall, as soon as may be after the date of the publication thereof in the *Gazette*, be brought before the State Council by a motion that such regulation be approved, and if so approved shall be submitted to the Governor for ratification.

(4) Every regulation which is approved by the State Council and ratified by the Governor shall, upon the notification in the *Gazette* of such approval and ratification, be as valid and effectual as though it were herein enacted.

(5) Any regulation which the State Council refuses to approve or the Governor to ratify shall be deemed to be rescinded with effect from the date of such refusal, but without prejudice to the validity of anything previously done or suffered to be done thereunder. Notification of the date on which any such regulation is deemed to be rescinded shall be published in the *Gazette*.

Cap. 2.

(6) The provisions of section 7 of the Interpretation Ordinance shall apply in relation to the power to make regulations under this section in like manner as they apply in the case of the power to make rules or issue orders under any Ordinance.

Application of Part II.

28. (1) Nothing in this Part shall apply in any case where a child is in, or is taken or received into, the care, custody or control of any person—

- (a) who is a relative or the lawful guardian of the child ;
- (b) who adopts or has adopted the child in pursuance of an adoption order made under Part I., or has the care, custody or control of the child by virtue of an *interim* order made under that Part ;
- (c) in whose care or under whose supervision the child is placed by an order made by a court under the provisions of any other written law ;
- (d) who is for the time being in charge of any orphanage, hospital, home or other institution maintained by the Government, or of any other institution which is declared by notification in the *Gazette* under the hand of the Minister to be an approved institution for the purposes of this paragraph ;
- (e) who is for the time being in charge of any school which is maintained by the Government, or which is in receipt of a grant from State funds, or is declared by notification in the *Gazette* under the hand of the Minister to be an approved school for the purposes of this paragraph ;
- (f) who belongs to any such class of persons as may be exempted by regulation from the provisions of this Part.

(2) In this section, "relative" when used with reference to a legitimate child, means a grandparent, brother, sister, uncle, aunt or child of an uncle or aunt, by consanguinity or affinity ; and when used with reference to an illegitimate child, means any person who would be so related to the child if the child were legitimate.

29. (1) In this Part, unless the context otherwise requires—

Interpretation
of Part II.

“ authorised officer ” means any Government Agent, Assistant Government Agent, Magistrate or Unofficial Magistrate or any officer of the Department of Medical and Sanitary Services for the time being in charge of a Government Hospital, and includes any other officer or person who belongs to any class of persons declared by regulation to be authorised officers for the purposes of section 19 ;

“ child ” means a person under the age of fourteen years ;

“ Minister ” means the Minister for Home Affairs ;

“ prescribed ” means prescribed by regulation ;

“ regulation ” means a regulation made by the Executive Committee of Home Affairs under this Part.

(2) For the purpose of the application of the provisions of this Part in any case where a province has not been divided into districts, any reference in this Part to a district or to the Assistant Government Agent of a district shall be deemed to include a reference to the province or to the Government Agent of the province, as the case may be.

SCHEDULE.

Section 10.

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.

Objects and Reasons.

The object of this Bill is to make provision for the adoption of children by process of law and for the registration as custodians of persons having the care, custody and control of children of whom they are not the natural parents. The Bill gives effect to the recommendations relating to the adoption and custody of children which were made by a Joint Sub-Committee of the Executive Committees of Home Affairs and Education in Sessional Paper II. of 1935.

2. Part I. of the Bill has been modelled on the Adoption of Children Act, 1926, of the Imperial Parliament, and on the South African Adoption of Children Act, 1923.

Jurisdiction to entertain applications for adoption orders will be vested in Courts of Requests which will be empowered to make such orders authorising the adoption of children under the age of fourteen years.

3. Under Clause 3 of the Bill, the applicant for an adoption order must be over 25 years of age and must, except in special cases where he is closely related to the child, be at least 21 years older than the child he proposes to adopt ; and it is only in special circumstances that a female child may be adopted by a male person who is the sole applicant for an adoption order. This Clause also deals with the necessary consents which must be given before an adoption order can be made and provides for the cases in which such consents may be dispensed with.

Applicants for adoption orders must be resident and domiciled in Ceylon, and such orders may only be made in respect of children who are British subjects resident in Ceylon.

4. Under Clause 4, the Court is required, before making an adoption order, to be satisfied that the parties properly understand the effect of an order and that the order will be for the welfare of the child, and Clause 5 empowers a Court to impose terms and conditions when making an adoption order, and, in particular, to require the adopter to make proper provision for the adopted child.

5. Clause 6 contains important provisions dealing with the effect of an adoption order. The provisions of section 8 of the South African Adoption of Children Act, 1923, have, with certain modifications, been reproduced in this clause.

Parental rights and duties will become vested in the adopting parent to the entire exclusion of the natural parents of the child, and the adoption order will, unless otherwise provided, confer on the child the surname of the adopter, or such other name as would ordinarily be conferred on a lawful child of the adopter.

So far as property rights are concerned, the child will be deemed for all purposes in law to be born in lawful wedlock of the adopter, but in the absence of express provision to the contrary will not acquire any right, title or interest in any property devolving on the children of the adopter by virtue of an instrument executed prior to the date of the adoption order or burdened with a *fidei commissum* in favour of the adopter's descendants or devolving on the intestate heirs of a natural child of the adopter, nor will the child have any right to represent the adopting parent for the purpose of succeeding under a will or intestacy to any property. The interest of the child is further safeguarded by the provision that the right in any property to which he would have been entitled but for the order will remain unaffected.

An adopting parent will not generally be entitled to succeed to any part of the estate of the adopted child on the latter's death intestate, but where any part of the estate consists of immovable property which the child received by reason of his having been adopted, the adopter and persons claiming under him will be entitled to succeed to that property in the same way as they would be entitled to succeed to the estate of a lawful child of the adopter.

6. Clause 8 of the Bill provides for cases where children have been, for a period of two years before the date on which the new law comes into operation, brought up and educated by persons other than their parents, and permits a Court to make an adoption order in any such case without requiring the consents necessary in ordinary circumstances.

7. The Registrar-General will keep an Adoption Register and make the necessary entries therein, and provision is made to secure that particulars as to the date of birth of an adopted child may be inserted in that register. Provision is included for searches of the Register and for the issue of certified copies of entries made therein. (Clauses 10 and 11).

8. Clause 13 confers on Courts of Requests the necessary jurisdiction to entertain applications for adoption orders and provides that rules may be made by the Judges of the Supreme Court regulating the procedure to be observed in regard to applications for adoption orders. The usual practice will be to appoint a guardian *ad litem* to represent the interests of a child in respect of whom an application is made for an adoption order.

9. Part II. of the Kandyan Law Declaration and Amendment Ordinance, No. 39 of 1938, provides a statutory method of adoption in the case of Kandyans and defines the consequences of adoption under the Kandyan Law.

The Tesawalamai also contains rules as to the formalities to be observed for the purposes of adoption and sets out the consequences of adoption and the rights which are acquired by an adopted child in respect of the properties of the adopting parents.

The provisions of the Kandyan Law and Tesawalamai on the subject of adoption will not be affected by this Bill, but it will be possible for an adoption order to be made on the application of a person subject to such law, and to have the same effect as in other cases. (Clause 16).

10. Part II. of the Bill is intended to provide for the registration as custodians of persons who have the care, custody or control of children of whom they are not the lawful parents. Any person who when the new law comes into operation has in his care, custody or control a child of whom he is not the natural parent will be required to register himself within three months as the custodian of that child. The registration may, in this case, be effected by giving notice to an authorised officer, and such notice may be given *inter alia* to an officer who is for the time being in charge of a police station or to a Registrar of Births and Deaths or to a Registrar of Marriages. (Clause 18).

After the new law comes into operation, no person will be permitted to receive into his care, custody or control any child of whom he is not the natural parent unless he is registered as the custodian of that child. In such cases application for registration will have to be made to an authorised officer who will not effect the registration except after such inquiry as he may deem necessary and unless the parents of the child consent to deliver the child into the care of the applicant. The consent of parents can be dispensed with in exceptional circumstances. (Clause 19).

The Assistant Government Agent of every district will maintain a register of persons registered as custodians of children who are resident in his district.

Clause 28 contains special provision relating to the cases in which the provisions of clauses 18 and 19 will not be applicable. No registration will be necessary where a child is in or is taken or received into the care, custody or control of a close relative or of a lawful guardian or of a person who has obtained an adoption order or an interim order under the provisions of Part I. of the Bill; nor will such registration be necessary where a child is placed under the supervision of any person by an order of a competent court or in cases where children are resident in orphanages, hospitals, schools and other such institutions.

11. Upon the registration of a person as the custodian of a child—

- (a) the custodian will be bound to furnish to the Assistant Government Agent of the district such information as may be required relating to the child; and, after the child has attained the age of 12 years, to deposit in an account of the Post Office Savings Bank such sums as may be determined in accordance with scales which will be prescribed by regulation;
- (b) officers authorised in that behalf by regulations or by the Minister for Home Affairs will be empowered to visit the child and to make inquiries as to his treatment and welfare. (Clauses 21 and 22).

12. Clause 23 provides that a child who is in the care of a registered custodian will not be deemed to be employed by him as a domestic servant for the purposes of any other written law. Clause 24 saves the right of the natural parents or the lawful guardian of the child to remove him from the care, custody or control of the person who is registered as his custodian.

13. Under clause 26 a person who acts in contravention of the provisions of Part II. will be guilty of an offence and liable to a fine not exceeding five hundred rupees or to imprisonment for a term not exceeding three months. Special provision is included for the deposit in a Post Office Savings Bank of the whole or any specified part of a fine imposed on any person who has failed to comply with the obligation to make such a deposit.

D. B. JAYATILAKA,
Minister for Home Affairs.

Colombo, February 7, 1941.