

Overview of the Act Partially Amending the Civil Code and Related Acts

Civil Affairs Bureau, Ministry of Justice

Review Process Timeline

| | | | |
|---------------|--|----------------|--|
| June 2018 | Legislative Council asked to consult by Minister of Justice | Feb. 14, 2019 | Finalization/recommendation of outline |
| June 2018 | Beginning of investigation and deliberations in Legislative Council committee meetings | March 15, 2019 | Cabinet decision/submission to Diet |
| Jan. 29, 2019 | Compilation of outline draft | June 7, 2019 | Enactment of amending Act (Effective April 01, 2020) |

Objective of the Amendments

These amendments facilitate the use of the system for special adoptions by relaxing the requirements and rationalizing the necessary proceedings, so that children living in foster care facilities and in other such circumstances can be raised as part of a family.

A Ministry of Health, Labour and Welfare Study Group survey of **child welfare consultation centers and private adoption agencies nationwide** found that **things such as *the strictness of the requirements* were the reason that the special adoption system could not be used in 298 cases** (from 2014 to 2015). (Of these, the need to have *the birth parents' consent* was the issue in **205 cases**, and *the maximum age* was the issue in **46 cases**.)

Main Points of the Revisions

- (1) Expanding the range of ages covered by the special adoption system (Section 1)
- (2) Reducing the burden on prospective adoptive parents by rationalizing family court proceedings (Section 2)

Section 1 Raising the Maximum Age for Prospective Adoptees (Amendment of the Civil Code)

1. Existing System

Maximum Age of Prospective Adoptees

General Rule The prospective adoptee must be under the age of six at the time of the petition for a ruling allowing a special adoption.
Exception If the prospective adoptive parents have been raising the child continuously since before the child turned six
⇒ An exception can be made for a prospective adoptee under the age of eight.

The reason for the maximum age under the existing system being set at under six as a general rule, with an exception for prospective adoptees under eight, is that:

- (1) It is easier for a **meaningful parent/child relationship** to form if the prospective adoptee's upbringing begins in early childhood.
- (2) As this is a new system, initial implementation has been **limited to cases of unambiguous necessity**.

People on the frontlines of child welfare and other interested parties have noted that...
...the special adoption system cannot be used for older children.

2. The Amending Act

Raises the Maximum Age for Prospective Adoptees and Prescribes Related Amendments

1) The prospective adoptee's maximum age at the time of the petition [New Civil Code, Article 817-5, first sentence of paragraph (1), paragraph (2)]

General Rule The prospective adoptee must be **under the age of 15** at the time of the petition for a ruling allowing a special adoption.
Exception (1) If the prospective adoptive parents **have been raising the child continuously** since before the child turned 15
(2) If **there is a compelling reason** for why the petition could not be filed by the time the child turned 15 } ⇒ An exception can be made for a prospective adoptee **over the age of 15**.

* The age of 15 was decided upon in consideration of the fact that **persons 15 and over can enter into standard adoptive relationships of their own accord**.

2) The prospective adoptee's maximum age at the time the ruling becomes final and binding [New Civil Code, Article 817-5, second sentence of paragraph (1)]

A person who would be **18 years old** when the ruling allowing the special adoption becomes final and binding cannot be adopted.

3) Consent of the prospective adoptee [New Civil Code, Article 817-5, paragraph (3)]

A prospective adoptee who is **15 or over** at the time of the proceedings **must consent to the special adoption**. (Adequate consideration must be given to the wishes of prospective adoptees who are under 15, as well.)

Section 2 Revision of Special Adoption Proceedings (Amendment of the Domestic Relations Case Procedure Act and the Child Welfare Act)

1. Existing System

A single proceeding based on the petition of the prospective adoptive parents

Prospective Adoptive Parents
File Petition

Special Adoption Hearing

Ruling Allowing a Special Adoption

Facts That Must Be Established

- That it is exceedingly difficult or inappropriate for the **birth parents** to raise the child, or that there are other special circumstances
- Whether the **birth parents** consent (**consent can be withdrawn up until the ruling allowing the special adoption becomes final and binding**), or that this is not required
- That the **adoptive parents and child** would be a good fit
 - * **Based on a trial adoption of at least 6 months**

- The birth parents' ability to raise the child (based on things such as their financial circumstances and youth)
- Whether the child has been abused

- The adoptive parents' ability to raise the child
- The compatibility of the adoptive parents and the adopted child

People on the frontlines of child welfare and other interested parties have noted that this burdens prospective adoptive parents because...

- (1) They have to proceed with the trial adoption **without knowing whether the court will find that there is a problem with the circumstances in which the birth parents have been raising the child.**
- (2) They have to proceed with the trial adoption with the **fear that the birth parents might withdraw their consent.**
- (3) They have to **stand against the birth parents in raising allegations and producing evidence of things such as the circumstances in which the birth parents have been raising the child.**

2. The Amending Act

Prescribes the Implementation of Proceedings in Two Stages

1) Implementation of proceedings in two stages [Re: **New Domestic Relations Case Procedure Act, Article 164 and Article 164-2**]

Two stages of hearings resulting in the following rulings give rise to a special adoption.

- (I) A hearing to assess the circumstances in which the **birth parents** have been raising the child and to determine whether the **birth parents** consent to the special adoption or that this is not required (resulting in a **ruling confirming that the child is eligible for special adoption**)
- (II) A hearing to determine whether the **adoptive parents and child** would be a good fit (resulting in a **ruling allowing the special adoption**)
 - ⇒ Prospective adoptive parents can **proceed with a trial adoption after the court's determination in the first stage of the hearings has become final and binding** (this addresses the points mentioned in (1) and (2), above).

2) Restriction of the withdrawal of consent [Re: **New Domestic Relations Case Procedure Act, Article 164-2, paragraph (5)**]

⇒ Birth parents consenting to a special adoption on a court date in the first stage of proceedings or on an equivalent occasion **cannot withdraw their consent once two weeks have passed** (this addresses the point mentioned in (2), above).

3) Involvement of the directors of child welfare consultation centers [New Child Welfare Act, Article 33-6-2 and Article 33-6-3]

⇒ **Acting as the petitioner or an intervenor in the first stage of the proceedings, the director of the relevant child welfare consultation center** raises the allegations and provides the evidence (this addresses the point mentioned in (3), above).

Flow of Proceedings

CWCC Director OR Prospective Adoptive Parents
File Petition

First Stage of Proceedings

Ruling Confirming That the Child Is Eligible for Special Adoption

The birth parents are not involved in the second stage, and cannot withdraw their consent.

Facts That Must Be Established

- The circumstances in which the birth parents have been raising the child
- Whether the birth parents consent, or that this is not required

Prospective Adoptive Parents
File Petition

Second Stage of Proceedings

Ruling Allowing the Special Adoption

If the people seeking to become the adoptive parents file the petition in the first stage of the hearings, they must file a petition for the second stage of proceedings at the same time.
It is also possible for **both hearings** to be held **at the same time.**

⇒ **This prevents proceedings from becoming overly drawn out.**

- Facts That Must Be Established*
- That the **adoptive parents and child** would be a good fit

* **Based on a trial adoption of at least 6 months**

If the trial adoption does not go well, the petition is **dismissed.**

Section 3 Effective Date

Effective April 01, 2020

検討の経過

| | | | |
|-----------|----------------|-----------|---------------------|
| H30. 6 | 法務大臣から法制審議会へ諮問 | H31. 2.14 | 要綱の取りまとめ・答申 |
| H30. 6~ | 法制審部会での調査審議開始 | H31. 3.15 | 閣議決定・国会提出 |
| H31. 1.29 | 要綱案の取りまとめ | R 1. 6. 7 | 改正法成立 (R 2. 4. 1施行) |

改正の目的

児童養護施設に入所中の児童等に家庭的な養育環境を提供するため、特別養子縁組の成立要件を緩和すること等により、制度の利用を促進。

厚労省検討会が全国の児童相談所・民間の養子あっせん団体に対して実施した調査の結果「要件が厳格」等の理由で特別養子制度を利用できなかった事例 298件 (H26~H27) (うち「実父母の同意」を理由とするもの 205件・「上限年齢」を理由とするもの 46件)

見直しのポイント

- ① 特別養子制度の対象年齢の拡大(第1)
- ② 家庭裁判所の手続を合理化して養親候補者の負担軽減(第2)

第1 養子候補者の上限年齢の引上げ(民法の改正)

1. 改正前

養子候補者の上限年齢

原則 特別養子縁組の成立の審判の申立ての時に6歳未満であること。

例外 6歳に達する前から養親候補者が引き続き養育 ⇒ 8歳未満まで可。

現行制度において上限年齢が原則6歳未満、例外8歳未満とされている理由

- ① 養子候補者が幼少の頃から養育を開始した方が実質的な親子関係を形成しやすい。
- ② 新たな制度であることから、まずは、必要性が明白な場合に限り導入。

【児童福祉の現場等からの指摘】

年長の児童について、特別養子制度を利用することができない。

2. 改正後

養子候補者の上限年齢の引上げ等

(1) 審判申立時における上限年齢(新民法第817条の5第1項前段・第2項)

原則 特別養子縁組の成立の審判の申立ての時に15歳未満であること。

例外 ①15歳に達する前から養親候補者が引き続き養育
②やむを得ない事由により15歳までに申立てできず } 15歳以上でも可。

※ 15歳以上の者は自ら普通養子縁組をすることができることを考慮して15歳を基準としたもの。

(2) 審判確定時における上限年齢(新民法第817条の5第1項後段)

審判確定時に18歳に達している者は、縁組不可。

(3) 養子候補者の同意(新民法第817条の5第3項)

養子候補者が審判時に15歳に達している場合には、その者の同意が必要。
(15歳未満の者についても、その意思を十分に考慮しなければならない。)

第2 特別養子縁組の成立の手続の見直し (家事事件手続法及び児童福祉法の改正)

1. 改正前

養親候補者の申立てによる1個の手続

養親候補者
申立て

特別養子縁組の成立の審判手続

特別養子
縁組成立
の審判

(審理対象)

- ・ 実親による養育が著しく困難又は不相当であること等
- ・ 実親の同意(審判確定まで撤回可能)の有無等
- ・ 養親子のマッチング
※ 6か月以上の試験養育

- ・ 養親の養育能力
- ・ 養親と養子の相性

- ・ 実親の養育能力
(経済事情や若年等)
- ・ 虐待の有無

【児童福祉の現場等からの養親候補者の負担についての指摘】

- ① 実親による養育状況に問題ありと認められるか分からないまま、試験養育をしなければならない。
- ② 実親による同意の撤回に対する不安を抱きながら試験養育をしなければならない。
- ③ 実親と対立して、実親による養育状況等を主張・立証しなければならない。

2. 改正後

二段階手続の導入

(1) 二段階手続の導入(新家事事務手続法第164条・第164条の2関係)

特別養子縁組を以下の二段階の審判で成立させる。

- (ア) 実親による養育状況及び実親の同意の有無等を判断する審判(特別養子適格の確認の審判)
- (イ) 養親子のマッチングを判断する審判(特別養子縁組の成立の審判)

⇒ 養親候補者は、第1段階の審判における裁判所の判断が確定した後に試験養育をすることができる(上記①及び②)。

(2) 同意の撤回制限(新家事事務手続法第164条の2第5項関係)

⇒ 実親が第1段階の手続の裁判所の期日等でした同意は、2週間経過後は撤回不可(上記②)。

(3) 児童相談所長の関与(新児童福祉法第33条の6の2・第33条の6の3)

⇒ 児童相談所長が第1段階の手続の申立人又は参加人として主張・立証をする(上記③)。

(イメージ図)

児相長 or
養親候補者
申立て

第1段階の手続

(審理対象)

- ・ 実親による養育状況
- ・ 実親の同意の有無等

特別養子
適格の確認
の審判

実親は、第2段階には関与せず、同意を撤回することもできない。

養親候補者
申立て

第2段階の手続

(審理対象)

- ・ 養親子のマッチング

特別養子
縁組成立
の審判

養親となる者が第1段階の審判を申し立てるときは、第2段階の審判と同時に申し立てなければならない。

二つの審判を同時にすることも可能。

⇒ 手続長期化の防止

※ 6か月以上の試験養育 ○○○

試験養育がうまくいかない場合には却下

第3 施行期日

令和2年4月1日施行