

Act on the Adoption Placement and the Ban on the Arrangement of Surrogate Mothers (Adoption Placement Act – AdVermiG)

Section 1

Adoption placement

Adoption placement is the union of children below the age of eighteen with persons who want to take care of a child (adoption applicants) with the aim of adopting this child. Adoption placement is also the proof of an opportunity of adopting a child or having a child adopted, even if the child has not been born or has not been conceived yet. The arrangement of a surrogate mother shall not be considered a placement for adoption.

Section 2

Adoption placement offices

(1) The youth welfare office and the Land youth welfare office is responsible for adoption placement. The youth welfare office may carry out an adoption placement only, if an adoption placement office has been set up; the Land youth welfare office has to set up a central adoption office. With the approval of the central adoption office of the Land youth welfare office, the youth welfare offices of neighbouring municipalities may set up a joint adoption placement office. Land youth welfare offices may set up a joint central adoption office. In the German Federal State of Berlin, Hamburg and Saarland, the Land youth welfare offices may be assigned with the tasks of the adoption placement office of the youth welfare office.

(2) Local and central offices of the Diakonisches Werk, of the German Caritas Union, of the Workers' Welfare Organisation and of the specialised organisations affiliated to these bodies as well as other organisations with their headquarters in Germany shall be authorised to carry out adoption placements, if and when these offices have been recognised by the central adoption office of the Land youth welfare offices as adoption placement offices.

(3) The adoption placement offices of the youth welfare offices and of the central adoption offices of the Land youth welfare offices shall co-operate in partnership with the adoption placement offices mentioned in sub-section 2.

Section 2a

International adoption placement

(1) The stipulations of this Act on international adoption placement shall be applied in all cases, in which the child or the adoption applicants have their habitual residence outside of Germany or in which the

child has been brought into Germany within two years prior to the placement.

(2) The scope of the Hague Convention of 29 May 1993 on the Protection of Children and the Co-operation in the Field of International Adoption (German Federal Law Gazette 2001 II, p. 1034) (Adoption Convention) shall be supplemented with the stipulations of the Adoption Convention Implementation Act of 5 November 2001 (German Federal Law Gazette I, p. 2950).

(3) International adoption placements shall be permitted by:

1. the central adoption office of the Land youth welfare office;
2. the adoption placement office of the youth welfare office, if and when the central adoption office of the Land youth welfare office has approved these activities relative to one or several countries in general or in individual cases;
3. a recognised international adoption placement office (section 4, sub-section 2) within the framework of the approval given;
4. a foreign approved organisation in keeping with the Adoption Convention, provided the Federal Central Office (sub-section 4, sentence 1) has approved this activity in the individual case.

(4) In order to co-ordinate international adoption placements, the bodies mentioned in sub-section 3 and in section 15, sub-section 2 shall co-operate with the Federal Office of Justice as the Federal Central Office for International Adoptions (Federal Central Office). Acting in agreement with the German Federal Ministry of Justice, the German Federal Ministry for Family Affairs, Senior Citizens, Women and Youth may determine by statutory instrument with the approval of the German Upper House of Parliament (Bundesrat) that the Federal Central Office may carry out in whole or in part the corresponding tasks, such as the communication with countries party to the Convention, relative to individual countries which are not party to the Adoption Conventions whereby these tasks may be defined in detail.

(5) The offices mentioned in sub-section 3 and in section 15, sub-section 2 shall have to

1. report to the Federal Central Office in each placement case within the meaning of sub-section 1, as from the first participation of a foreign body onwards, the respectively available data on the person (name, sex, date of birth, place of birth, nationality, family status and residence or habitual

residence) of the child, his/her parents and the adoption applicants as well as on the status of the placement proceedings,

2. to summarise to the Federal Central Office each year the scope, progress and result of their work in the field of international adoption placement,
3. render information to the Federal Central Office on the individual placement cases in keeping with sub-section 1 upon request, provided this is required for the fulfilment of the tasks in compliance with section 4 and section 2, sub-section 2, sentence 1 of the Adoption Placement Implementation Act of 5 November 2001 (German Federal Law Gazette I, p. 2950).

The obligation of reporting within the meaning of sentence 1 No. 1 shall be limited to a report on the completion of the placement proceedings, provided this does not affect the relationship to other countries party of the Adoption Convention or to such countries which have been determined by statutory instrument in keeping with sub-section 4, sentence 2.

(6) The Federal Central Office shall keep the data rendered in keeping with sub-section 5, sentence 1, No. 1 in a central file. The transmission of the data shall have to be recorded. The data on an individual placement case shall have to be deleted thirty years after receipt of the last message on the corresponding case of placement.

Section 3

Personal and functional competence of the staff members

(1) Specialists only may be entrusted with adoption placements, who on account of their personality, their training and the professional experience are suitable. The same requirements shall apply to persons, who may give functional instructions to the staff entrusted with the placements of adoptions. Staff who have not been entrusted directly with placement tasks shall have to meet the requirements which corresponds to the responsibility entrusted with.

(2) The adoption placement offices (section 2, sub-section 1 and 2) shall have to be staffed with at least two full-time specialists or a corresponding number of part-time specialists; these specialists must not be dealing with tasks foreign to placements primarily. The central adoption office of the Land youth welfare office may permit exceptions.

Section 4

Recognition as an adoption placement office

(1) The recognition as an adoption placement office within the meaning of section 2, sub-section 2 can be gained, if the evidence is furnished that the office

1. meets the pre-requisites in section 3,
2. can be expected to fulfil its tasks correctly in particular on account of its method of working and the financial position of its legal entity, and
3. is operated by a legal entity or an association of persons which wishes to pursue tax-privileged purposes in compliance with sections 51 to 68 of the German Fiscal Code.

The adoption placement shall not be the object of a taxable economic enterprise.

(2) The performance of international adoption placement by means of an adoption placement office in keeping with section 2, sub-section 2 shall require the special approval, which shall be granted for the placement of children from one or several countries (home countries). The approval shall permit the use of the designation of "recognised international placement office"; without approval this designation may not be used. The approval may be granted when the evidence has been furnished that the office meets the recognition pre-requisites in section 1 to a special degree required for the work in the field of international adoption; the approval shall be refused, if the predominant interests in the co-operation with the corresponding home country are in opposition. The central adoption office of the Land youth welfare office and the Federal Central Office shall inform each other on matters which refer to the conditions of the recognised international placement office mentioned in section 1.

(3) The recognition in keeping with section 1 or the approval in keeping with section 2 shall be withdrawn if the pre-requisites for their granting were not fulfilled. They shall be withdrawn, if the pre-requisites cease to exist subsequently. Collateral clauses on a recognition or approval as well as the consequences of a violation against an obligation shall be subject to general regulations.

(4) In order to examine as to whether the pre-requisites in keeping with section 1 or section 2, sentence 2 continue to exist, the central adoption office of the Land youth welfare office shall be permitted to collect information on the work of the adoption placement office in general and in detail, on the personal and functional competence of its managers and staff members as well as on the legal and organisational conditions as well as the financial standing of their legal entity. Provided it is required for this purpose,

1. the central adoption office may request information, insight into documents as well as the presentation of evidence,
2. the employees commissioned with the examination shall be permitted to enter real estate and business premises within the usual office hours; the fundamental right of the inviolability of the home (article 13 of the German Basic Law) shall be restricted in this respect.

(5) Objections and actions for rescission against orders of the central adoption office shall have no suspensive effect.

Section 5

Bans on placement

(1) The youth welfare offices and Land youth welfare offices authorised in keeping with section 2, sub-section 1 and the offices authorised in keeping with section 2, sub-section 2 only shall be permitted to place adoptions; others shall be prohibited from placing adoptions.

(2) The ban on placement shall not apply

1. for persons who are related naturally up to the third degree or by marriage with the adoption applicant or the child;
2. for other persons who in an individual case and free of charge can prove the opportunity to adopt or have adopted a child, provided they immediately inform an adoption placement office or a youth welfare office.

(3) It shall be prohibited to cause pregnant women, who have their residence or habitual abode within the reach of this Act, by commercially granting them or enabling them to give birth outside of the reach of this Act, and

1. to give away their children for adoption there;
2. to help them with such an action.

(4) It shall be prohibited to carry out placement activities with the aim of having a third party take care of a child permanently, in particular by the fact that a man recognises the paternity for a child he has not fathered. Placement authorisations which are based on other legal provisions shall remain unaffected.

Section 6

Adoption advertisements

(1) It shall be prohibited to search or offer children for adoption or adoption applicants by public statement, in

particular by newspaper advertisements or newspaper reports. This shall not apply, if

1. the statement contains the note that offers or enquiries are to be directed to an adoption placement office identified by address or to a central adoption office (section 2, sub-sections 1 and 2), and
2. if no private address is given in the statement.

Section 5 shall remain unaffected.

(2) The publication of the statement described in sub-section 1 under a box number shall be prohibited.

(3) Sub-section 1, sentence 1 shall apply *mutatis mutandis* for public statements, which refer to the placement activities in keeping with section 5, sub-section 4, sentence 1.

(4) The sub-sections 1 to 3 shall be applicable also, if the child has not been born or conceived yet, unless the statement refers to surrogate maternity.

Section 7

Preparation for placement

(1) When the adoption placement office learns that an adoption placement of a child may be taken into consideration, the said shall carry out relevant investigations immediately of the adoption applicants, the child and his/her family in preparation of the placement. In the process investigations shall be carried out in particular whether the adoption applicants are suitable to adopt the child taking into consideration the personality of the child and his/her special needs. The investigations of the adoption applicants shall be started prior to the birth of the child already, if it may be expected that the approval for adoption is granted. The respectively concerned parties shall be informed of the result of the investigations of the adoption applicants and of the family of the child.

(2) The local adoption placement office (section 9a), in the area of which the adoption applicants habitually reside, shall take over the relevant investigations of the adoption applicants upon request of another adoption placement office (section 2, sub-sections 1 and 2).

(3) Upon request, the local adoption placement office shall investigate the general suitability of the adoption applicants with their habitual residence in its area for the adoption of a child with habitual residence outside Germany. If the adoption placement office considers the adoption applicants suitable in general, the said shall prepare a report on the results of the investigation, in which it expresses its views on the legal qualification and the suitability of the adoption applicants to take over the responsibility in conjunction with an international adoption as well as on the characteristic features of children, for which they are suitable to care.

The report shall contain the data on the personality of the adoption applicants, their personal and familial circumstances, their health status, their social surroundings and their motivation for the adoption, required for judgement in keeping with sentence 2. It shall be incumbent on the adoption applicants to furnish data and suitable evidence required for the investigation and the report. Sub-section 1, sentence 4 shall be applicable *mutates mutandis*. The report shall be forwarded to the recipient indicated by the adoption applicants. This recipient may be as follows:

1. a body mentioned in section 2a, sub-section 3 and section 15, sub-section 2, or
2. a competent body with its headquarters in the home country.

(4) Upon application, the Federal Central Office shall attest to German adoption applicants with their habitual residence outside Germany whether they have the legal qualification to adopt a child according to the German material regulations. The attestation shall not cover the health of the adoption applicants or their suitability to adopt a child otherwise; this fact shall have to be pointed out in words in the attestation. If the stipulations of international private law refer to foreign material regulations, the competent foreign legal order shall be mentioned in addition.

Section 8

Beginning of the adoptive care

In order to get used to the adoption applicants, the child may be placed in care with the adoption applicants (adoptive care), if it is certain that the adoption applicants are suitable for the adoption of the child.

Section 9

Adoption consultation

(1) In conjunction with the placement and the adoption, the adoption placement office, with the approval of the adopting party, shall consult the child and his/her parents in detail, in particular before the child is given in care and during the familiarisation period.

(2) Provided it is needed to fulfil the adoption requirements set by a foreign country, the adoption applicants and the adoption placement office may agree in writing that the said shall observe the development of the child for a period of time after the adoption to be determined in the agreement and to report to the competent office in the corresponding country. With the approval of another adoption placement office, it may be agreed upon that this office carries out investigations in keeping with sentence 1 and forwards the results to the adoption placement office within the meaning of sentence 1.

Section 9a

Local adoption placement office

The youth welfare offices shall have to ensure the performance of the tasks in keeping with sections 7 and 9 in their respective area.

Section 9b

Placement files

(1) Records and documents on each individual case of placement (placement files) shall be kept for sixty years reckoned from the date of birth of the child. If the adoption placement office is given up, the placement files shall have to be handed over for safekeeping to the office which takes over the tasks in keeping with section 2, sub-section 1, sentence 3 or sentence 4, or to the central adoption office of the Land youth welfare office, in the area of which the adoption placement office had its headquarters. After the expiry of the period of time mentioned in sentence 1 the placement files shall have to be destroyed.

(2) If the placement files deal with the descent and life history of the child or if there is a justified interest otherwise, the legal representative of the child, and if the child has reached the age of sixteen, he or she shall be given permission upon request to inspect the documents under guidance by a specialist. The inspection shall be refused, if overriding matters of a concerned person are in opposition.

Section 9c

Implementing regulations

(1) Acting in agreement with the German Federal Ministry of Justice, the German Federal Ministry for Family Affairs, Senior Citizens, Women and Youth shall be authorised to determine by statutory instrument with the approval of the German Upper House of Parliament (Bundesrat) the details of the recognition and the supervision of adoption placement offices in keeping with section 2, sub-section 2 and the sections 3 and 4, the co-operation in the field of international adoption placement in keeping with section 2a, sub-sections 4 and 5, the relevant investigations in keeping with section 7, sub-section 1, the suitability test in keeping with section 7, sub-section 3, the attestation in keeping with section 7, sub-section 4, the adoption consultation in keeping with section 9 and the granting of file inspection in keeping with section 9b as well as the principles to be observed by the adoption placement offices. The statutory instrument within the meaning of sentence 1 may determine in particular as follows:

1. Point in time, classification and form of the reports in keeping with section 2a, sub-section 5, sentence 1, Nos. 1 and 2 as well as sentence 2;

2. Requirements on the personal and functional suitability of the staff employed by an adoption placement office (sections 3 and 4, sub-section 1, sentence 1, No. 1);
3. Requirements on the method of working and the financial situation of the legal entity of the adoption placement office (section 4, sub-section 1, sentence 1, No. 2);
4. Special requirements on the approval for international adoption placement (section 4, sub-section 2);
5. Filing of an application and the evidence to be furnished in the proceedings in compliance with section 7, sub-section 4;
6. Point in time and form of information of the adopting party on the services of adoption consultation in keeping with section 9, sub-section 1.

(2) By statutory instrument in keeping with section 1, sentence 1, it may be provided furthermore that the providers of the state adoption placement offices shall charge fees as well as request the reimbursement for the procurement of deeds and translations and for the remuneration of specialists from the adoption applicants for a suitability test in keeping with section 7, sub-section 3 or for an international adoption placement. The chargeable circumstances and the fee rates shall have to be determined in the process; the total fee of Euro 2,000 shall not be exceeded for an individual case of placement. As long as the German Federal Ministry for Family Affairs, Senior Citizens, Women and Youth has not availed itself of the authorisation in keeping with sub-section 1, sentence 1 in combination with sentence 2, this right may be exercised by the government of a Land; the government of the Land may transfer this authorisation to the highest Land authority by statutory instrument.

Section 9d

Data protection

(1) The collection, processing and use of personal data shall be based on the Second Chapter of the Tenth Book of the German Code of Social Law with the proviso that data which are collected for the purposes of this Act may be processed or used only for the purposes of the adoption placement or adoption consultation, the recognition, approval or supervision of adoption placement offices, the transmission of bans on placement, the prosecution of indictable offences or other violations of considerable significance or for the international co-operation in this field. The regulations on legal international assistance shall remain unaffected.

(2) The Federal Central Office shall transmit to the competent offices upon request the personal data required for the purposes mentioned in sub-section 1.

The request shall state for which purpose the data are required.

(3) The requesting body shall be responsible for the permissibility of the transmission. The Federal Central Office shall check only whether the transmittal request is within the framework of the tasks of the requesting body, unless there is a special cause for the verification of the permissibility of the transmittal.

(4) In the transmittal to a foreign body or to a domestic non-public body, the Federal Central Office shall point out that the data may be processed and used only for the purpose, for which they have been transmitted.

(5) If a responsible body causes damage to the person concerned by an impermissible or incorrect collection, processing or use of his or her personal data in keeping with this Act or with another regulation, sections 7 and 8 of the German Federal Data Protection Act shall be applied.

Section 10

Information of the central adoption office of the Land youth welfare office

(1) The adoption placement office shall have to inform the central adoption office of the Land youth welfare office, if a child cannot be placed in care with adoption applicants with the aim of adoption within three months after completion of the investigations carried out. The information shall not be required, if it is safe on expiry of the deadline that the child is placed in adoptive care.

(2) Sub-section 1 shall apply *mutatis mutandis*, if the adoption applicants, on whom the investigations have been carried out, are willing and suitable to adopt a difficult-to-place child, provided the adoption applicants approve of the information of the central adoption office.

(3) In the cases of sub-section 1, sentence 1, the adoption placement office and the central adoption office shall search for suitable adoption applicants. They shall keep each other informed about the latest status of their efforts. In individual cases, the central adoption office shall carry out the placement of a child itself.

Section 11

Tasks of the central adoption office of the Land youth welfare office

(1) The central adoption office of the Land youth welfare office shall assist the adoption placement office in its work, in particular by substantive consultation,

1. if a child is difficult to place,

2. if an adoption applicant or the child has a foreign nationality or is stateless,
3. if an adoption applicant or the child has his or her residence or habitual abode outside of the scope of this Act
4. in other serious individual cases.

(2) In the cases of sub-section 1, Nos. 2 and 3, the central adoption office of the Land youth welfare office shall be involved right from the beginning of the investigations (section 7, sub-section 1) by the adoption placement offices in their district. Documents of the type mentioned in article 16 of the Adoption Convention shall be presented to the central adoption office for verification.

Section 12

Investigations in case of children in institutions

Without prejudice to the responsibilities of the youth welfare office, the central adoption office of the Land youth welfare office in co-operation with the office competent for the supervision of the institution, in which children live who come into question for adoption, shall carry out the investigations. For this purpose the said may cause or carry out the substantive investigations and examinations of the institutionalised children. The fundamental right of the inviolability of the home (article 13, section 1 of the German Basic Law) shall be restricted in this respect. In case of children in the district of the central adoption office of another youth welfare office, the said shall have to be informed. Section 46, sub-section 1, sentence 2 of the Eighth Book of the German Code of Social Law shall apply *mutatis mutandis*.

Section 13

Staff of the central adoption office of the Land youth welfare office

In order to meet its tasks the central adoption office shall have available at least one paediatrician or child psychiatrist, a psychologist with experience in the field of child psychology and a legal expert as well as a social education work or social work with several years of professional experience.

Second Article Surrogate maternity

Section 13a

Surrogate mother

A surrogate mother is a woman who based on an agreement is prepared

1. to undergo artificial or natural insemination or
2. to have an embryo, which is not hers, transferred to her or to carry a baby otherwise to the full term

and after the birth to give the child to third parties for adoption or other permanent care.

Section 13b

Placement of surrogate mothers

The placement of a surrogate mother shall be considered the union of persons who want to adopt or permanently care in another way for a child produced by surrogate motherhood (ordering parents) with a woman, who is prepared to accept surrogate motherhood. Placement of a surrogate mother shall also be considered the evidence of a potential agreement described in section 13a.

Section 13c

Ban on the placement of surrogate motherhood

The placement of surrogate mothers shall be prohibited.

Section 13d

Advertising ban

It shall be prohibited to seek or offer surrogate mothers or ordering parents by public statement, in particular by advertisements in newspapers or in newspaper reports.

Third Article

Provisions as to offences punishable with imprisonment or fines

Section 14

Provisions as to offences punishable with fines

(1) An administrative offence shall be deemed to be committed by any person who

1. performs placement activities in opposition to section 5, sub-sections 1 or 4, sentence 1, or
2. in opposition to section 6, sub-section 1, sentence 1, also in combination with sections 2 or 3 or section 13d searches or offers by public statement
 - a) children for adoption or adoption applicants

b) children or third parties for the purposes mentioned in section 5, sub-section 4, sentence 1 or

c) surrogate mothers or ordering parents.

(2) An administrative offence shall also be deemed to be committed by any person who

1. in opposition to section 5, sub-sections 1 or 4, sentence 1, performs placement activities and thus causes that a child is taken into the reach of this Act or from the reach of this Act or

2. for commercial purposes

a) causes a pregnant woman to have her child adopted in opposition to section 5, sub-section 3, No. 1 or

b) renders assistance to a pregnant woman to have her child adopted in opposition to section 5, sub-section 3, No. 2.

(3) In cases of sub-section 1 the administrative offence shall be punished by a fine up to ten thousand Deutsch Mark; in cases of sub-section 2 the administrative offence shall be punished by a fine up to fifty thousand Deutsch Mark.

Section 14a

(repealed)

Section 14b

Penal provisions against the placement of surrogate mothers

(1) Any person who performs a placement of surrogate mothers in opposition to section 13c shall be punished by imprisonment up to one year or by a fine.

(2) Any person who gains or has promised a pecuniary benefit for the placement of a surrogate mother shall be punished by imprisonment up to two years or by a fine. If the offender acts on a commercial basis, this act shall be under a penalty of imprisonment of up to three years or by a fine.

(3) In the case of sub-sections 1 and 2, the surrogate mother and the ordering parents shall not be punished.

Forth Article Transitional provisions

Section 15

Continuance in force of the authorisation to place adoption

(1) An authorisation to act as an adoption placement office issued prior to 1 January 2002 shall continue provisionally. This authorisation shall cease, if a recognition is not applied for again by 31 December 2002 or, in case of application in due time, when the non-appealability of the decision on the application becomes final.

(2) If an adoption placement office authorised prior to 1 January 2002 has performed international adoption placements in conjunction with a certain country and if this office has indicated its intention to continue this placement work to the central adoption office of the Land youth welfare office, section 1 as well as section 4, sub-section 2, sentence 4 shall apply *mutatis mutandis*. Section 4, sub-section 2, sentence 2 of this Act as well as section 1, sub-section 3 of the Adoption Convention Implementation Law shall remain unaffected.

(3) The state adoption placement offices (section 2, sub-section 1) shall have to ensure that the requirements of section 3 are met by 1 January 2003.

Section 16

Applicable law

After the date of the entry into force of a modification of this Act, the further procedures of a placement commenced prior to the modification coming into force shall be based on the modified regulations, unless something to the contrary has been stipulated.

Sections 17 to 22

(repealed)

