

CHILDREN AMENDMENT ACT 2002



**BERMUDA
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CHILDREN AMENDMENT ACT 2002

[Date of Assent: 30 December 2002]

[Operative Date: 19 January 2004]

ARRANGEMENT OF SECTIONS

- 1 Citation
- 2 Amendment of section 2 of principal Act
- 3 Insertion of new Part IIA in principal Act
- 4 Amendment of section 35 of principal Act
- 5 Insertion of new Parts IVA and IVB in principal Act
- 6 Repeal of Legitimacy Act 1933
- 7 Repeal of Affiliation Act 1976
- 8 Amendments to other statutory provisions
- 9 Commencement

WHEREAS it is expedient to amend the Children Act 1998 to remove any distinction in law between children born inside or outside marriage, to make provision for the determination of parentage, to reform the law governing custody of and access to children, to revise the law relating to the obligation of parents to support their children and to make changes to other enactments for connected purposes:

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:—

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Citation

1 This Act which amends the Children Act 1998 ("the principal Act") may be cited as the Children Amendment Act 2002.

Amendment of section 2 of principal Act

2 Section 2 of the principal Act is amended —

(a) by designating the existing section as subsection (1) by deleting paragraph (b) of the definition of "family proceedings" and substituting the following —

"(b) under Parts II, IV, IVA or IVB of this Act;"

and by deleting paragraph (c)(v) of that definition;

(b) by adding the following —

"(2) In interpreting this Act the court shall give effect to the principle of gender equality and recognize that both fathers and mothers play critical roles in the development of children and each should have liberal access to their children notwithstanding with whom the children live."

Insertion of new Part IIA in principal Act

3 The principal Act is amended by inserting after Part II the following as Part IIA —

"PART IIA STATUS OF CHILDREN

EQUAL STATUS OF CHILDREN

Abolition of distinction between legitimate and illegitimate children

18A (1) Subject to subsection (2), for all purposes of the law of Bermuda a person is the child of his natural parents and his status as their child is independent of whether he is born inside or outside marriage.

(2) Where an adoption order has been made under the Adoption of Children Act 1963 or the law of any other jurisdiction, the child is in law the child of the adopting parents as if they were the natural parents.

(3) Kindred relationships shall be determined according to the relationships described in subsection (1) or (2).

(4) Any distinction between the status of a child born inside marriage and a child born outside marriage is abolished and the

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relationship of parent and child and kindred relationship flowing from that relationship shall be determined in accordance with this section.

(5) This section applies in respect of every person whether born before or after this Act comes into force and whether born in Bermuda or not and whether or not his father or mother has ever been domiciled in Bermuda.

Rule of construction

18B (1) For the purpose of construing an instrument or statutory provision, a reference to a person or group or class of persons described in terms of relationship to another person by blood or marriage shall be construed to refer to and include a person who comes within the description by reason of the relationship of parent and child as determined under section 18A.

(2) The use of the words "legitimate" or "lawful" shall not prevent the relationship being determined in accordance with section 18A.

Application

18C This Part applies to —

- (a) any statutory provision made before, on or after the day this Part comes into operation; and
- (b) any instrument made on or after the day this Part comes into operation,

but does not affect —

- (c) any instrument made before this Part comes into operation; and
- (d) a disposition of property made before this Part comes into operation.

Purpose

18D The purpose of this Part is to ensure that the rights of a child are not affected by the fact that his parents were not married.

ESTABLISHMENT OF PARENTAGE

Declaration of parentage

18E (1) Any person having an interest may apply to the Supreme Court (in this Part referred to as the "court") for a declaration that a male person is recognized in law to be the father of a child or that a female person is the mother of a child.

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(2) Where the court finds that a presumption of paternity exists under section 18I, the court shall make a declaratory order confirming that the paternity is recognized in law unless it is established, on the balance of probabilities, that the presumed father is not the father of the child.

(3) Where the court finds on the balance of probabilities that the relationship of mother and child has been established, the court may make a declaratory order to that effect.

(4) Subject to section 18G, an order made under this section shall be recognized and have effect for all purposes.

Declaration of paternity where no presumption

18F (1) Where there is no person recognized in law under section 18I to be the father of a child, any person may apply to the court for a declaration that a male person is his father, or any male person may apply to the court for a declaration that a person is his child.

(2) An application shall not be made under subsection (1) unless both the persons whose relationship is sought to be established are living.

(3) Where the court finds on the balance of probabilities that the relationship of father and child has been established, the court may make a declaratory order to that effect and, subject to section 18G, the order shall be recognized for all purposes.

Reopening issue on new evidence

18G (1) Where a declaration has been made under section 18E or 18F and evidence becomes available that was not available at the previous hearing, the court may, upon application, discharge or vary the order and make such other orders or give such directions as the court considers appropriate.

Admissibility in evidence of acknowledgment against interest

18H A written acknowledgment of parentage that is admitted in evidence in any civil proceeding against the interest of the person making the acknowledgment is *prima facie* proof of the fact.

Presumption of paternity

18I (1) Unless the contrary is proven on a balance of probabilities, there is a presumption that a male person is, and he shall be recognized in law to be, the father of a child in any one of the following circumstances —

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- (a) the person is married to the mother of the child at the time of the birth of the child;
- (b) the person was married to the mother of the child by a marriage that was terminated by death or judgment of nullity within 300 days before the birth of the child or by divorce where the divorce was granted within 300 days before the birth of the child;
- (c) the person marries the mother of the child after the birth of the child and acknowledges that he is the natural father;
- (d) the person was cohabiting with the mother of the child at the time of the birth of the child or the child is born within 300 days after they ceased to cohabit;
- (e) the person has certified the child's birth as the child's father under the Registration (Births and Deaths) Act 1949;
- (f) the person has been found or recognized in his lifetime by a court in Bermuda to be the father of the child.

(2) For the purpose of subsection (1), where a man and woman go through a form of marriage with each other, in good faith, that is void and cohabit, they shall be deemed to be married during the time they cohabit and the marriage shall be deemed to be terminated when they cease to cohabit.

(3) Where circumstances exist that give rise to a presumption or presumptions of paternity by more than one person under subsection (1), no presumption shall be made as to paternity and no person is recognized in law to be the father.

Blood tests

18J (1) Upon the application of a party in a civil proceeding in which the court is called upon to determine the parentage of a child, the court may give the party leave to obtain blood tests of such persons as are named in the order granting leave and to submit the results in evidence.

(2) Leave under subsection (1) may be given subject to such terms and conditions as the court thinks proper.

(3) Where leave is given under subsection (1) and a person named therein refuses to submit to the blood test, the court may draw such inferences as it thinks appropriate.

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(4) Notwithstanding subsection (3), the court may compel a person to submit to a blood test where the court considers it necessary to do so to protect health of a child.

(5) Where a person named in an order granting leave under subsection (1) is not capable of consenting to having a blood test taken, the consent shall be deemed to be sufficient —

- (a) where the person is a minor of the age of sixteen years or more, if the minor consents;
- (b) where the person is a minor under the age of sixteen years, if the person having the charge of the minor consents; and
- (c) where the person is without capacity for any reason other than minority, if the person having his charge consents and a legally qualified medical practitioner certifies that the giving of a blood sample would not be prejudicial to his proper care and treatment.

(6) In this section and section 18K a reference to a blood test includes a test of any sample of bodily fluid or bodily tissue taken for the purpose of determining paternity or maternity.

Regulations for blood tests

18K (1) The Minister may make regulations governing blood tests for which leave is given by a court under section 18J including —

- (a) the method of taking blood samples and the handling, transportation and storage thereof;
- (b) the conditions under which a blood sample may be tested;
- (c) designating persons or facilities or classes thereof who are authorized to conduct blood tests for the purposes of section 18J;
- (d) prescribing procedures respecting the admission of reports of blood tests in evidence;
- (e) prescribing forms for the purpose of section 18J and this section and providing for their use.

(2) Regulations under subsection (1) shall be subject to the negative resolution procedure.

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Filing of court decisions respecting parentage

18L (1) The Registrar of the Supreme Court and the clerk of the magistrates' court shall furnish the Registrar-General with a certified copy of each order or judgment of the court that confirms or makes a finding of parentage and the Registrar-General shall file the order or judgment.

(2) Upon application and upon payment of the fee prescribed under the Government Fees Act 1965, any person may inspect an order or judgment filed under subsection (1) and obtain a certified copy thereof from the Registrar-General.

Amendment of register

18M Nothing in this Act shall be construed to require the Registrar-General to amend a registration showing parentage other than in recognition of an order made under section 18E.

RECOGNITION OF OVERSEAS DETERMINATION OF PARENTAGE

Interpretation

18N In sections 18O to 18S —

"overseas declaratory order" means an order in the nature of a declaration provided for in section 18E but made by a court outside Bermuda;

"overseas finding of parentage" means a judicial finding of parentage that is made incidentally in the determination of another issue by a court outside Bermuda and that is not an overseas declaratory order.

Recognition of orders made outside Bermuda

18O An overseas declaratory order that was made outside Bermuda shall be recognized and have the same effect as if made in Bermuda if —

- (a) at the time the proceeding was commenced or the order was made, either parent was domiciled —
 - (i) in the territorial jurisdiction of the court making the order, or
 - (ii) in a territorial jurisdiction in which the order is recognized;
- (b) the court that made the order would have had jurisdiction to do so under the rules that are applicable in Bermuda;

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- (c) the child was habitually resident in the territorial jurisdiction of the court making the order at the time the proceeding was commenced or the order was made; or
- (d) the child or either parent had a real and substantial connection with the territorial jurisdiction in which the order was made at the time the proceeding was commenced or the order was made.

Exceptions

18P A court may decline to recognize an overseas declaratory order and may make a declaratory order under this Act where —

- (a) new evidence that was not available at the hearing becomes available; or
- (b) the court is satisfied that the overseas declaratory order was obtained by fraud or duress.

Filing with Registrar-General

18Q (1) A copy of an overseas declaratory order, certified under the seal of the court that made it, may be filed in the office of the Registrar-General but the copy shall be accompanied by —

- (a) the opinion of a lawyer in Bermuda that the declaratory order is entitled to recognition under the law of Bermuda;
- (b) a sworn statement by a lawyer or public official in the overseas territorial jurisdiction as to the effect of the declaratory order; and
- (c) such translation, verified by affidavit, as the Registrar-General requires.

(2) Upon the filing of an overseas declaratory order under this section, the Registrar-General shall amend the register of births accordingly, but where the overseas declaratory order contradicts parentage found by an order already filed, the Registrar-General shall restore the original record and disregard that order and previous orders.

(3) The Registrar-General is not liable for any consequences resulting from filing under this section material that is apparently regular on its face.

Findings of parentage outside Bermuda

18R An overseas finding of parentage that is made outside Bermuda by a court that has jurisdiction to determine the matter in which the

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finding was made as determined by the conflict of laws rules of Bermuda shall be recognized and have the same effect as if made in Bermuda under the same circumstances.

Application

18S Sections 18N to 18R apply to overseas declaratory orders and findings of parentage whether made before or after this Part comes into force."

Amendment of section 35 of principal Act

4 Section 35(6) of the principal Act is amended by inserting after paragraph (f) the following —

"(f.1) under Part IVA (custody jurisdiction and access);".

Insertion of new Parts IVA and IVB in principal Act

5 The principal Act is amended by inserting after Part IV the following as Parts IVA and IVB: —

"PART IVA CUSTODY JURISDICTION AND ACCESS

INTERPRETATION

Definitions

36A In this Part —

"overseas order" means an order, or that part of an order of an overseas tribunal that grants to a person custody of or access to a child;

"overseas tribunal" means a court or tribunal outside Bermuda that has jurisdiction to grant to a person custody of or access to a child;

"parent" in relation to a child, means the father or mother of the child whether or not they are or have been married to each other.

Purposes

36B The purposes of this Part are —

(a) to ensure that applications to the court in respect of custody of, incidents of custody of and access to, children will be determined on the basis of the welfare of the children;

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- (b) to recognize that the concurrent exercise of jurisdiction by judicial tribunals of more than one state or territory in respect of the custody of the same child ought to be avoided, and to make provision so that the courts of Bermuda will, unless there are exceptional circumstances, refrain from exercising or decline jurisdiction in cases where it is more appropriate for the matter to be determined by a tribunal having jurisdiction in another place with which the child has a closer connection; and
- (c) to provide for the more effective enforcement of custody and access orders and for the recognition and enforcement of custody and access orders made outside Bermuda.

CUSTODY AND ACCESS

Persons entitled to custody

36C (1) Except as otherwise ordered by a court, the father and the mother of a child have parental responsibility for the child, are joint guardians of the child and are equally entitled to custody of the child.

(2) A person entitled to custody of a child has the rights and responsibilities of a parent in respect of the person of the child, including —

- (a) the right to care and control of the child;
- (b) the right to direct the education and moral and religious training of the child.

(3) Where more than one person is entitled to custody of a child, any one of them may exercise the rights and accept the responsibilities of a parent on behalf of them in respect of the child.

(4) Where the parents of a child live separate and apart and the child lives with one of them with the consent of the other of them, the right of the other to exercise the entitlement to custody and the incidents of custody, but not the entitlement to access, is suspended until a separation agreement or order otherwise provides.

(5) The entitlement to access to a child includes the right to make reasonable inquiries and to be given information as to the health, education and welfare of a child.

(6) The entitlement to custody of or access to a child terminates on the marriage of the child.

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(7) Any entitlement to custody or access or incidents of custody under this section is subject to alteration by an order of the court or by separation agreement.

Application for order

36D (1) A parent of a child or any other person may apply to a court for an order respecting custody of or access to the child or determining any aspect of the incidents of custody of or access to the child.

(2) On an application under this section, the court may require the Director to cause an investigation to be made and to report to the court on all matters relating to the custody, maintenance and education of the child.

Assessment

36E (1) The court before which an application is brought in respect of custody of or access to a child, by order, may appoint a person who has technical or professional skill to assess and report to the court on the needs of the child and the ability and willingness of the parties or any of them to satisfy the needs of the child.

(2) An order may be made under subsection (1) on or before the hearing of the application in respect of custody of or access to the child and with or without a request by a party to the application.

(3) The court shall, if possible, appoint a person agreed upon by the parties, but if the parties do not agree the court shall choose and appoint the person.

(4) The court shall not appoint a person under subsection (1) unless the person has consented to make the assessment and to report to the court within the period of time specified by the court.

(5) In an order under subsection (1), the court may require the parties, the child and any other person who has been given notice of the proposed order, or any of them, to attend for assessment by the person appointed by the order.

(6) Where a person ordered under this section to attend for assessment refuses to attend or to undergo the assessment, the court may draw such inferences in respect of the ability and willingness of any person to satisfy the needs of the child as the court considers appropriate.

(7) The person appointed under subsection (1) shall file his report with the registrar or clerk of the court.

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(8) The registrar or clerk of the court shall give a copy of the report to each of the parties and to counsel, if any, representing the child.

(9) The report mentioned in subsection (7) is admissible in evidence in the application.

(10) Any of the parties, and counsel, if any, representing the child, may require the person appointed under subsection (1) to attend as a witness at the hearing of the application.

(11) Upon motion, the court by order may give such directions in respect of the assessment as the court considers appropriate.

(12) The appointment of a person under subsection (1) does not prevent the parties or counsel representing the child from submitting other expert evidence as to the needs of the child and the ability and willingness of the parties or any of them to satisfy the needs of the child.

Powers of court

36F (1) The court to which an application is made under section 36D —

- (a) by order may grant the custody of or access to the child to one or more persons;
- (b) by order may determine any aspect of the incidents of the right to custody or access; and
- (c) may make such additional order as the court considers necessary and proper in the circumstances.

(2) Where the court is satisfied that a parent has failed to comply with an order granting access to the other parent, the court may —

- (a) impose conditions on the order to ensure that access is enjoyed;
- (b) require the parents to submit to mediation of the matters in dispute by a children's officer or other person appointed by the court; or
- (c) require that rights of access conferred by the order be monitored or supervised by a children's officer.

(3) The court may vary an order where there has been a material change in circumstances that affects or is likely to affect the welfare of the child or where the court is satisfied that a parent has abused a right of custody or access conferred by an order.

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Effect of divorce proceedings

36G Where a petition for divorce is presented under the Matrimonial Causes Act 1974, any application under this Part in respect of custody of or access to a child that has not been determined is stayed except by leave of the court.

PROCEDURE

Application

36H (1) An application under this Part may be made in the same proceeding and in the same manner as a complaint under the Matrimonial Proceedings (Magistrates' Courts) Act 1974 or in another proceeding.

(2) An application under this Part may be an original application or for the variation of an order previously given or to supersede an order of an overseas tribunal.

(3) The parties to an application under this Part in respect of a child shall include —

- (a) the mother and the father of the child;
- (b) a person who has demonstrated a settled intention to treat the child as a child of his or her family;
- (c) a person who had the actual care and upbringing of the child immediately before the application; and
- (d) any other person whose presence as a party is necessary to determine the matters in issue.

(4) Where, in an application under this Part, it appears to the court that it is necessary or desirable for the welfare of the child to have other matters first or simultaneously determined, the court may direct that the application stand over until such other proceedings are brought or determined as the court considers appropriate.

Evidence of child

36I (1) In considering an application under this Part, a court where possible shall take into consideration the views and preferences of the child to the extent that the child is able to express them.

(2) The court may interview the child to determine the views and preferences of the child.

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Closed hearings

36J The court may exclude the public from a hearing, or any part thereof, where, in the opinion of the presiding judge, the desirability of protecting against the consequences of possible disclosure of intimate financial or personal matters outweighs the desirability of holding the hearing in public and the court by order may prohibit the publication of any matter connected with the application or given in evidence at the hearing.

Consent orders

36K (1) Upon the consent of the parties in an application under this Part the court may make any order that the court is otherwise empowered to make by this Part, subject to the duty of the court to have regard to the welfare of the child.

(2) Any matter provided for in this Part and in a parental agreement or separation agreement may be incorporated in an order made under this Part.

JURISDICTION

Jurisdiction

36L (1) A court shall only exercise its jurisdiction to make an order for custody of or access to a child where —

- (a) the child is habitually resident in Bermuda at the commencement of the application for the order; or
- (b) although the child is not habitually resident in Bermuda, the court is satisfied —
 - (i) that the child is physically present in Bermuda at the commencement of the application for the order,
 - (ii) that substantial evidence concerning the welfare of the child is available in Bermuda,
 - (iii) that no application for custody of or access to the child is pending before an overseas tribunal in another place where the child is habitually resident,
 - (iv) that no overseas order in respect of custody of or access to the child has been recognized by a court in Bermuda,
 - (v) that the child has a real and substantial connection with Bermuda, and

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(vi) that, on the balance of convenience, it is appropriate for jurisdiction to be exercised in Bermuda.

(2) A child is habitually resident in the place where he resided —

- (a) with both parents;
- (b) where the parents are living separate and apart, with one parent under a separation agreement or with the consent or implied consent of the other or under a court order; or
- (c) with a person other than a parent on a permanent basis for a significant period of time,

whichever last occurred.

(3) The removal or withholding of a child without the consent of the person having custody of the child does not alter the habitual residence of the child unless there has been acquiescence or undue delay in commencing due process by the person from whom the child is removed or withheld.

Serious harm to child

36M Notwithstanding sections 36L and 36P, a court may exercise its jurisdiction to make or to vary an order in respect of the custody of or access to a child where —

- (a) the child is physically present in Bermuda; and
- (b) the court is satisfied that the child would, on the balance of probabilities, suffer serious harm if —
 - (i) the child remains in the custody of the person legally entitled to custody of the child,
 - (ii) the child is returned to the custody of the person legally entitled to custody of the child, or
 - (iii) the child is removed from Bermuda.

Declining jurisdiction

36N A court having jurisdiction in respect of custody or access may decline to exercise its jurisdiction where it is of the opinion that it is more appropriate for jurisdiction to be exercised outside Bermuda.

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OVERSEAS ORDERS

Interim powers of court

36O Upon application, a court —

- (a) that is satisfied that a child has been wrongfully removed to or is being wrongfully retained in Bermuda;
or
- (b) that may not exercise jurisdiction under section 36L or that has declined jurisdiction under section 36N or 36Q,

may do any one or more of the following —

- (c) make such interim order in respect of custody or access as the court considers is appropriate for the welfare of the child.
- (d) stay the application subject to —
 - (i) the condition that a party to the application promptly commence or proceed expeditiously with a similar proceeding before an overseas tribunal; or
 - (ii) such other conditions as the court considers appropriate;
- (e) order a party to return the child to such a place as the court considers appropriate and, in the discretion of the court, order payment of the cost of the reasonable travel and other expenses of the child and any parties to or witnesses at the hearing of the application.

Enforcement of overseas orders

36P (1) Upon application by any person in whose favour an order for the custody of or access to a child has been made by an overseas tribunal, a court shall recognize the order unless the court is satisfied that —

- (a) the respondent was not given reasonable notice of the commencement of the proceeding in which the order was made;
- (b) the respondent was not given an opportunity to be heard by the overseas tribunal before the order was made;
- (c) the law of the place in which the order was made did not require the tribunal to have regard to the welfare or best interests of the child;

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(d) the order of the overseas tribunal is contrary to public policy in Bermuda; or

(e) in accordance with section 36L, the overseas tribunal would not have jurisdiction if it were a court in Bermuda.

(2) An order made by an overseas tribunal that is recognized by a court shall be deemed to be an order of the court and enforceable as such.

(3) A court presented with conflicting orders made by overseas tribunals for the custody of or access to a child that, but for the conflict, would be recognized and enforced by the court under subsection (1), shall recognize and enforce the order that appears to the court to be most in accord with the welfare of the child.

(4) A court that has recognized an overseas order may make such further orders as the court considers necessary to give effect to the order.

Superseding order, material change in circumstances

36Q (1) Upon application, a court by order may supersede an overseas order in respect of custody of or access to a child where the court is satisfied that there has been a material change in circumstances that affects or is likely to affect the welfare of the child, and —

(a) the child is habitually resident in Bermuda at the commencement of the application for the order; or

(b) although the child is not habitually resident in Bermuda, the court is satisfied that —

(i) the child is physically present in Bermuda at the commencement of the application for the order,

(ii) the child no longer has a real and substantial connection with the place where the overseas order was made,

(iii) substantial evidence concerning the welfare of the child is available in Bermuda,

(iv) the child has a real and substantial connection with Bermuda, and

(v) on the balance of convenience, it is appropriate for jurisdiction to be exercised in Bermuda.

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(2) A court may decline to exercise its jurisdiction under this section where it is of the opinion that it is more appropriate for jurisdiction to be exercised outside Bermuda.

Superseding order, serious harm

36R Upon application, a court by order may supersede an overseas order in respect of custody of or access to a child if the court is satisfied that the child would, on the balance of probability, suffer serious harm if the child —

- (a) remains in the custody of the person legally entitled to custody of the child;
- (b) is returned to the custody of the person entitled to custody of the child; or
- (c) is removed from Bermuda.

ENFORCEMENT

Order restraining harassment

36S Upon application, a court may make an order restraining any person from molesting, annoying or harassing the applicant or a child in the lawful custody of the applicant and may require the respondent to enter into such recognizance, with or without sureties, or to post such bond as the court considers appropriate.

Order where child unlawfully withheld

36T (1) Where a court is satisfied upon application by a person in whose favour an order has been made for custody of or access to a child that there are reasonable and probable grounds for believing that any person is unlawfully withholding the child from the applicant, the court by order may authorize the applicant or someone on behalf of the applicant to apprehend the child for the purpose of giving effect to the rights of the applicant to custody or access, as the case may be.

(2) Where a court is satisfied upon application that there are reasonable and probable grounds for believing that —

- (a) any person is unlawfully withholding a child from a person entitled to custody of or access to the child;
- (b) a person who is prohibited by court order or separation agreement from removing a child from Bermuda proposes to remove the child or have the child removed from Bermuda; or

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(c) a person who is entitled to access to a child proposes to remove the child or to have the child removed from Bermuda and that the child is not likely to return,

the court by order may direct the Provost Marshall General or a police officer, or both, to locate, apprehend and deliver the child to the person named in the order.

(3) An order may be made under subsection (2) upon an application without notice where the court is satisfied that it is necessary that action be taken without delay.

(4) The Provost Marshall General or police officer directed to act by an order under subsection (2) shall do all things reasonably able to be done to locate, apprehend and deliver the child in accordance with the order.

(5) For the purpose of locating and apprehending a child in accordance with an order under subsection (2), the Provost Marshall General or police officer may enter and search any place where he has reasonable and probable grounds for believing that the child may be with such assistance and such force as are reasonable in the circumstances.

(6) An entry or a search referred to in subsection (5) shall be made only between sunrise and sunset unless the court, in the order, authorizes entry and search at another time.

(7) An order made under subsection (2) expires six months after the day on which it was made, unless the order specifically provides otherwise.

(8) An application under subsection (1) or (2) may be made in an application for custody or access or at any other time.

Application to prevent unlawful removal of child

36U (1) Where a court, upon application, is satisfied upon reasonable and probable grounds that a person prohibited by court order or separation agreement from removing a child from Bermuda proposes to remove the child from Bermuda, the court in order to prevent the removal of the child from Bermuda may make an order under subsection (3).

(2) Where a court, upon application, is satisfied upon reasonable and probable grounds that a person entitled to access to a child proposes to remove the child from Bermuda and is not likely to return the child to Bermuda, the court in order to secure the prompt, safe return of the child to Bermuda may make an order under subsection (3).

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(3) An order mentioned in subsection (1) or (2) may require a person to do any one of more of the following —

- (a) transfer specific property to a named trustee to be held subject to the terms and conditions specified in the order;
- (b) where payments have been ordered for the support of the child, make the payments to a specified trustee subject to the terms and conditions specified in the order;
- (c) post a bond, with or without sureties, payable to the applicant in such amount as the court considers appropriate;
- (d) deliver the person's passport, the child's passport and any other travel documents of either of them that the court may specify to the court or to an individual or body specified by the court.

(4) In an order under paragraph (a) of subsection (3), the court may specify terms and conditions for the return or the disposition of the property as the court considers appropriate.

(5) A court or an individual or body specified by the court in an order under paragraph (d) of subsection (3) shall hold a passport or travel document delivered in accordance with the order in safekeeping in accordance with any directions set out in the order.

(6) In an order under subsection (3), a court may give such directions in respect of the safekeeping of the property, payments, passports or travel documents as the court considers appropriate.

Further evidence

36V (1) Where a court is of the opinion that it is necessary to receive further evidence from a place outside Bermuda before making a decision, the court may send to the Attorney-General, Minister of Justice or similar officer of the place outside Bermuda such supporting material as may be necessary together with a request —

- (a) that the Attorney-General, Minister of Justice or similar officer take such action as may be necessary in order to require a named person to attend before the proper tribunal in that place and produce or give evidence in respect of the subject-matter of the application; and

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(b) that the Attorney-General, Minister of Justice or similar officer or the tribunal send to the court a certified copy of the evidence produced or given before the tribunal.

(2) A court that acts under subsection (1) may assess the cost of so acting against one or more of the parties to the application or may deal with such cost as costs in the cause.

Referral to court

36W (1) Where the Attorney-General receives from an overseas tribunal a request similar to that referred to in section 36V and such supporting material as may be necessary, it is the duty of the Attorney-General to refer the request and the material to the proper court.

(2) A court to which a request is referred by the Attorney-General under subsection (1) shall require the person named in the request to attend before the court and produce or give evidence in accordance with the request.

Information as to address

36X (1) Where, upon application to a court, it appears to the court that for the purpose of—

(a) bringing an application in respect of custody or access;
or

(b) the enforcement of an order for custody or access,

the proposed applicant or person in whose favour the order is made has need to learn or confirm the whereabouts of the proposed respondent or person against whom the order referred to in paragraph (b) is made, the court may order any person or public authority to provide the court with such particulars of the address of the proposed respondent or person against whom the order referred to in paragraph (b) is made as are contained in the records in the custody of the person or public authority, and the person or public authority shall give the court such particulars as are contained in the records and the court may then give the particulars to such person as the court considers appropriate.

(2) The giving of information in accordance with an order under subsection (1) shall be deemed for all purposes not to be a contravention of any Act or regulation or any common law rule of confidentiality.

Court may take notice of foreign law

36Y For the purposes of an application under this Act, a court may take notice, without requiring formal proof, of the law of a jurisdiction outside Bermuda and of a decision of an overseas tribunal.

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APPLICATION TO CHILDREN IN CARE OF DIRECTOR

Application

36Z This Part does not apply in respect of a child who has been ordered by the court to be committed permanently to the care of the Director pursuant to Part IV or the enforcement of any equivalent order made by an overseas tribunal.

PART IVB SUPPORT OBLIGATIONS

36.1A In this Part —

"clerk" means the clerk of the court;

"court" means the Family Court;

"dependant" means a person to whom another has an obligation to provide support under this Part.

Obligation of parent to support child

36.1B (1) Every parent has an obligation, to the extent the parent is capable of doing so, to provide support, in accordance with need, for his or her child who is unmarried and is under the age of eighteen years or, if eighteen years of age or over, is enrolled in a full-time program of education or is unable, by reason of illness, disability or other cause, to withdraw from the charge of his or her parents or to obtain the necessities of life.

(2) The obligation under subsection (1) does not extend to a child who is sixteen years of age or older and has withdrawn from parental control.

Order for support

36.1C (1) A court may, on application, order a person to provide support for his or her dependants and determine the amount of support.

(2) An application for an order for the support of a dependant may be made by the dependant or the dependant's parent.

(3) In making an order under this section in respect of a child the court shall —

(a) recognize that the parents have a joint financial responsibility to maintain the child; and

(b) apportion that obligation between the parents according to their relative abilities to contribute to the performance of their obligations.

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(4) In determining the amount of payments to be made under an order in respect of a child the court shall consider all the circumstances of the case including —

- (a) the mother's and father's current assets and means;
- (b) the assets and means that the mother and father are likely to have in the future;
- (c) the mother's capacity to provide support for the child;
- (d) the father's capacity to provide support for the child;
- (e) the mother's and father's age and physical and mental health;
- (f) the needs of the child;
- (g) the measures available for the mother or father to become able to provide for the support of the child and the length of time and cost involved to enable the mother or father to take those measures;
- (h) any legal obligation of the mother or father to provide support for another person;
- (i) the desirability of the mother or father remaining at home to care for the child.

(5) In an application for support under this Part the court may make a determination of paternity pursuant to Part IIA.

Powers of court

36.1D (1) In an application under section 36.1C, the court may make an interim or final order —

- (a) requiring that an amount be paid periodically, whether annually or otherwise and whether for an indefinite or limited period, or until the happening of a specified event;
- (b) requiring that a lump sum be paid or held in trust;
- (c) requiring that some or all of the money payable under the order be paid into court or to another appropriate person or agency for the dependant's benefit;
- (d) requiring that support be paid in respect of any period before the date of the order;
- (e) requiring payment of expenses in respect of a child's prenatal care and birth;

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(f) requiring the securing of payment under the order, by a charge on property or otherwise.

(2) An order for support binds the estate of the person having the support obligation unless the order provides otherwise.

(3) In an order made under subsection (1)(a), the court may provide that the amount payable shall be increased annually on the order's anniversary date by the indexing factor as defined in subsection (4).

(4) The indexing factor for a given month is the percentage change in the Consumer Price Index for Bermuda for prices of all items since the same month of the previous year, as published by the Department of Statistics.

Variation of order

36.1E (1) A dependant or respondent named in an order made under this Part may apply to the court for variation of the order.

(2) If the court is satisfied that there has been a material change in the dependant's or respondent's circumstances or that evidence not available on the previous hearing has become available, the court may discharge, vary or suspend a term of the order, prospectively or retroactively, relieve the respondent from the payment of part or all the arrears and make any other order under section 36.1D that the court considers appropriate in the circumstances.

(3) No application for variation shall be made within six months after the making of the order for support or the disposition of another application for variation in respect of the same order, except by leave of the court.

Financial statement

36.1F (1) In an application under section 36.1C or 36.1E, each party shall serve on the other and file with the court a financial statement verified by oath in such form as the court may direct.

Parental agreement for support

36.1G If a man and woman who are not married to each other enter into an agreement for —

- (a) the payment of the expenses of a child's prenatal care and birth;
- (b) support for the child; or
- (c) funeral expenses for the child or mother,

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on the application of either of them the court may incorporate the agreement in an order and the order shall have effect as if it were an order of the court under section 36.1D.

Order for return by employer

36.1H (1) In a application under section 36.1C or 36.1E, the court may order the employer of a party to the application to make a written return to the court showing the party's wages or other remuneration during the preceding twelve months.

(2) A return purporting to be signed by the employer may be received in evidence as proof, in the absence of evidence to the contrary, of its contents.

Order restraining harassment

36.1I (1) On application, a court may make an interim or final order restraining the respondent from molesting, annoying or harassing the applicant or children in the applicant's lawful custody, or from communicating with the applicant or children, except as the order provides, and may require the respondent to enter into such recognizance as the court considers appropriate.

(2) A person who contravenes a restraining order is guilty of an offence and upon summary conviction is liable —

(a) in the case of a first offence, to a fine of not more than \$5,000 or to imprisonment for a term of not more than three months, or to both; and

(b) in the case of a second or subsequent offence, to a fine of not more than \$10,000 or to imprisonment for a term of not more than two years, or to both.

(3) A police officer may arrest without warrant a person the police officer believes on reasonable and probable grounds to have contravened a restraining order.

Application for custody

36.1J The court may direct that an application for support be deferred until an application for custody under Part IVA has been determined.

Administration of payments

36.1K (1) Where the court makes an order under this Part it shall direct that all payments under the order shall be made to the clerk.

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(2) It shall be the duty of the clerk to pay forthwith to the person entitled thereto the sums directed to be paid under the order or such part thereof as he receives.

(3) The clerk shall monitor payments directed to be paid and payments received under an order and shall advise the court when any payment to be made is 7 days in arrears and the court may issue a warrant for the payor to be arrested and brought before the court.

(4) Any person who has been ordered under this Part to make a payment to the clerk and fails, without reasonable excuse, to notify the clerk of his change of address is guilty of an offence and is liable on summary conviction to a fine of \$1,000.

Enforcement

36.1L Where any person who has been ordered to make a payment under the Part fails without reasonable cause to comply with the order, the court may, after giving the person an opportunity to be heard, do one or more of the following —

- (a) enforce payment by issuing a warrant for distress and sale of his goods;
- (b) attach any pension income, salary or wages payable to him or garnishee debts owing to him by a third party;
- (c) require him to surrender his passport or other documents enabling him to travel outside Bermuda;
- (d) after having considered all sanctions other than imprisonment that are reasonable in the circumstances and after being satisfied that the person has wilfully refused to make payments under the order, impose a term of imprisonment.

(2) Where the court imposes a term of imprisonment it shall —

- (a) in the first instance, imprison him for a period of one week and impose a requirement that he undergo such counselling as the court may direct;
- (b) in the case of a continuing wilful refusal to make payments, imprison him for a period of three months.

(3) The court may direct that a term of imprisonment be served intermittently.

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Saving of other Acts relating to support and maintenance

36.1M Nothing in this Part shall be construed to abrogate or derogate from the provisions of—

- (a) Part IV of the Matrimonial Causes Act 1974 in relation to financial provision for a child of the family;
- (b) section 3(1)(g) of the Matrimonial Proceedings (Magistrates' Courts) Act 1974 in relation to the maintenance of a child of the family;
- (c) section 12(2) of the Minors Act 1950 in relation to the maintenance of a minor; or
- (d) the Maintenance Orders (Reciprocal Enforcement) Act 1974 in relation to the reciprocal enforcement of maintenance orders in relation to a child.

Repeal of Legitimacy Act 1933

6 The Legitimacy Act 1933 is repealed.

Repeal of Affiliation Act 1976

7 The Affiliation Act 1976 is repealed.

Amendments to other statutory provisions

8 The statutory provisions set out in the Schedule are amended to the extent set out in that Schedule.

Commencement

9 This Act comes into operation on such day as the Minister responsible for child and family services may appoint by notice published in the Gazette.

SCHEDULE

(section 8)

AMENDMENTS

- 1 The Adoption of Children Act 1963 is amended —
- (a) in the definition of "relative" in section 1, in paragraph (a) by deleting "born in lawful wedlock" and by deleting paragraph (b);
 - (b) in section 14 —
 - (i) in subsection (1), by deleting "in lawful wedlock" where it twice occurs,

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- (ii) in the proviso to subsection (1), by deleting "lawful" where it twice occurs,
 - (iii) in subsection (2), by deleting "born in lawful wedlock",
 - (iv) in subsection (3)(iii), by deleting "born in lawful wedlock",
 - (v) in subsection (4), by deleting all the words preceding "dies" and substituting "Without prejudice to subsection (2), where the natural parent of a child";
 - (c) in section 15(1) and (2), by deleting "who is illegitimate";
 - (d) in the heading to section 20 by deleting "**legitimation on**";
 - (e) in section 20(1), by deleting "Where any person adopted by his father or mother alone has subsequently become a legitimated person on the marriage of his father and mother" and substitute "Where, subsequent to the adoption of any person by his father or mother alone, his father and mother marry each other".
- 2 The Adoption Rules 1964 are amended —
- (a) in the First Schedule —
 - (i) in Form 6, in item 31 by deleting "(if the infant is legitimate)" and by deleting item 32,
 - (ii) by deleting paragraph (5) of Forms 12 and 13;
 - (b) in paragraph 19 of Form 1 of the First Schedule by deleting the word "putative";
 - (c) in the Second Schedule, by deleting paragraph 9.
- 3 The Bermuda Immigration and Protection Act 1956 is amended —
- (a) in section 16(2)(a), by deleting "legitimate or legitimated";
 - (b) by deleting sections 16(2)(b) and (2A);
 - (c) by deleting section 18(4);
 - (d) by deleting paragraphs (d) and (e) of section 20D(2) and substituting the following:

"or

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- (d) a brother or sister or half-brother or half-sister born out of wedlock.";
- (e) by deleting section 20E(2) and substituting the following:
 - "(2) In this section "child" means—
 - (a) a child whether born within or outside that person's marriage;
 - (b) a step-child born within an earlier marriage of that person's spouse or former spouse; or
 - (c) a child who has been adopted by that person in a manner recognised by law.";
 - (f) in section 22(1)(d), by deleting "or child born out of wedlock";
 - (g) by deleting subsections (7) and (8) of section 31B;
 - (h) in section 104(c), by deleting "(including in the case of a woman, her child born out of wedlock)";
 - (i) by deleting the note to paragraph 2A of the First Schedule A.

4 The Bermuda Status by Birth or Grant Register Act 1992 is amended in Part A of the Second Schedule by deleting paragraph (d)(ii) of both X's case and Y's case and substituting the following:

in X's case —

"(ii) X's natural parents married each other after X's birth;"

and in Y's case —

"(ii) Y's natural parents married each other after Y's birth;"

5 The Court Fees and Expenses Rules 1972 are amended in paragraph 3 of the First Schedule by deleting "Affiliation Act 1976" and substituting "Part IVB of the Children Act 1998".

6 The Criminal Code Act 1907 is amended in section 203 by deleting ", or, in the case of an illegitimate child, is its mother or claimed to be its father".

7 The Criminal Injuries Compensation Act 1973 is amended in section 1(1) —

- (a) in the definition of "child" by deleting ",illegitimate child";

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- (b) in the definition of "relative" by deleting "and, in respect of an illegitimate victim, includes his or her mother, father, brother, sister, half-brother or half-sister".
- 8 The Fatal Injuries (Actions for Damages) Act 1949 is amended —
- (a) by deleting section 1(3)(b);
- (b) by deleting section 2A(2)(b) and substituting the following:
- "(b) of his parents where the deceased was a minor who was never married".
- 9 The Government Fees Regulations 1976 are amended by deleting Head 33.
- 10 The Interpretation Act 1951 is amended in section 7(1) by inserting in the appropriate alphabetical place the following:
- "parent" in relation to a child means the biological mother or father of the child except that where an adoption order has been made, "parent" means the adopting parent.
- 11 The Life Insurance Act 1978 is amended in section 8(a) by deleting "including illegitimate children or grandchildren".
- 12 The Magistrates Act 1948 is amended by deleting section 27(1)(a) and substituting the following —
- "(a) the payment of sums payable under an order made under Part IVB of the Children Act 1998;".
- 13 The Maintenance Orders (Reciprocal Enforcement) Act 1974 is amended by deleting section 7(3) and substituting the following —
- "(3) An order which by virtue of this section is enforceable by a magistrates' court shall be enforceable as if were an order made under Part IV B of the Children Act 1998.".
- 14 The Magistrates' Court (Matrimonial Proceedings) Rules 1974 are amended in Rule 10(2) by deleting —
- "The father of an illegitimate child shall not be treated as a parent of that child for the purpose of subparagraph (b) unless he has been adjudged by a court to be the father of that child.".
- 15 The Marriage Act 1944 is amended in the headings of the Third Schedule by deleting "LEGITIMATE" and "ILLEGITIMATE" and substituting "BORN INSIDE MARRIAGE" and "BORN OUTSIDE MARRIAGE" respectively.
- 16 The Matrimonial Causes Act 1974 is amended —

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- (a) in section 1, in the definition of "child" by deleting "illegitimate or";
- (b) in section 44A —
 - (i) in subsection (1), by deleting "an affiliation order is enforced under section 17 of the Affiliation Act 1976" and substitute "and order is enforced under section 36.1L of the Children Act 1998;"
 - (ii) by deleting subsection (2).
- (c) in the heading to section 48 by deleting the words "**of legitimacy etc.**";
- (d) in section 48(1), by deleting the words "on his legitimacy or" and "that he is the legitimate child of his parents, or";
- (e) by deleting section 48(2).

17 The Matrimonial Proceedings (Magistrates' Courts) Act 1974 is amended —

- (a) in section 1 —
 - (i) in the definition of "child" by deleting "illegitimate or";
 - (ii) by deleting the definition of "collecting officer" and substituting the following —

""collecting officer" means the clerk of the court;"
- (b) in section 5(6), by deleting the proviso.
- (c) in section 13(1), by deleting "section 17 of the Affiliation Act 1976" and substituting "section 36.1L of the Children Act 1998";
- (d) by deleting section 13(2).

18 The Mental Health Act 1968 is amended in section 8(2) by deleting ",and an illegitimate person shall be treated as the legitimate child of his mother".

19 The Merchant Shipping (Official Log Books) Regulations 1991 are amended in item 32(b)(iv) of the Schedule by deleting "illegitimate" and substituting "born outside marriage".

20 The Merchant Shipping (Returns of Births and Deaths) Regulations 1980 are amended in paragraph 3 of the First Schedule by deleting "illegitimate" and substituting "born outside marriage".

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21 The Ministers and Members of the Legislature (Salaries and Pensions) Act 1975 is amended in section 1 in the definition of "child" by deleting ",stepchild and a child born out of wedlock" and substituting "and a stepchild".

22 The Minors Act 1950 is amended by deleting section 9.

23 The Non-Contentious Probate Rules 1974 are amended by deleting Rule 20(7).

24 The Public Health Act 1949 is amended in section 108 by deleting the definition of "parent" and substituting the following —

""parent" in relation to a child, includes the person for the time being having the custody of the child;"

25 The Public Service Superannuation Act 1981 is amended in section 2(1) in the definition of "child" by deleting ", stepchild and illegitimate child" and substituting "and stepchild".

26 The Registrar-General (Recording of Documents) Act 1955 is amended in section 9(7) by deleting the definition of "parent".

27 The Registration (Births and Deaths) Act 1949 is amended —

(a) in section 8 —

- (i) in subsection (1)(b), by deleting "illegitimate" and substituting "born outside marriage";
- (ii) in subsection (1)(c), by deleting "an illegitimate child" and substituting "a child born outside marriage".

(b) in section 9 —

- (i) in the heading, by deleting "**illegitimate child**" and substituting "**child born outside marriage**",
- (ii) in subsections (1) and (2), by deleting "an illegitimate child" and substituting "a child born outside marriage",
- (iii) in subsection (3), by —
 - (i) deleting "illegitimate",
 - (ii) deleting "putative" wherever it occurs,
- (iv) by adding the following subsection —

"(4) Any person who —

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- (a) is not registered as the father of a child under this Act; and
 - (b) claims to be the father of that child,

may apply for a declaration of paternity under Part IIA of the Children Act 1998."
 - (c) in the First Schedule —
 - (i) in the note to Form B, by deleting "illegitimate" and substituting "born outside marriage";
 - (ii) in the notes to Form C and Form D by deleting "an illegitimate child" and substituting "a child born outside marriage".
- 28 The Succession Act 1974 is amended —
- (a) in section 1(1) —
 - (i) by deleting the definition of "child" and substituting the following —

"child" means any child whether or not his parents are or were married to each other at any time relevant for the purposes of this Act;"
 - (ii) by deleting the definitions of "child born in wedlock" and "child not born in wedlock".
 - (b) by deleting sections 11 and 11A;
 - (c) in section 25, by deleting "the Legitimacy Act 1933",
- 29 The Wills Act 1988 is amended —
- (a) in section 2(2), by deleting "legitimated child" and substituting "child whose father and mother marry each other after his birth";
 - (b) by deleting section 3(c) and substituting —
 - "(c) the father of the child is identified and is adjudged by a court having jurisdiction as the father."