

## CHILDREN ACT 1998

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**BERMUDA**  
**1998 : 38**

## CHILDREN ACT 1998

[Date of Assent 17 July 1998]

[Operative Date 1 January 2000]

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WHEREAS it is expedient to make new provision for the care and protection of children; to provide for mandatory reporting of child abuse; to revise the law governing foster care and day care; and to make supplementary provision for those purposes:

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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:—

### **PART I**

#### INTERPRETATION AND INTRODUCTORY PROVISIONS

##### **Citation**

1 This Act may be cited as the Children Act 1998.

##### **Interpretation**

2 In this Act, unless the context otherwise requires—

"Board" means the Child Care Placement Board established under section 12;

"care order" means an order under section 25 and includes an interim care order made under section 32;

"child" means, except in Part IX, a person who is under the age of 18 years;

"child assessment order" means an order made under section 37;

"children's home" means a home which, whether or not for reward, provides care and accommodation for more than three children at any one time, but does not include a home in which a child is cared for by a parent, relative or person who has parental responsibility for him;

"children's officer" means a person designated as a children's officer under section 10;

"contribution order" means an order made under section 81;

"court" means the Family Court and, where the context so requires, includes the Magistrates' Court and the Supreme Court;

"custody order" means an order relating to the custody of, or access to, a child;

"Director" means the Director of Child and Family Services;

"emergency protection order" means an order made under section 39;

"family proceedings" means proceedings in relation to a child—

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- (a) under the inherent jurisdiction of the Supreme Court;
- (b) under Part IV of this Act;
- (c) under the following enactments—
  - (i) the Matrimonial Causes Act 1974;
  - (ii) the Matrimonial Proceedings (Magistrates Court) Act 1974;
  - (iii) the Adoption of Children Act 1963;
  - (iv) the Domestic Violence (Protection Orders) Act 1997;
  - (v) the Affiliation Act 1976;

"ill-treatment" includes sexual abuse and forms of ill-treatment which are not physical;

"the Minister" means the Minister for the time being responsible for child and family services;

"operate" includes to conduct, manage or maintain;

"parent" includes a step-parent and a guardian;

"public holiday" means a day declared to be a public holiday under the Public Holidays Act 1947;

"record" includes a record stored by use of a computer;

"registered children's home" means a children's home registered under section 46;

"residential home" means a facility operated by the Minister or a person or organization approved by the Minister that provides a programme of residential care for children of twelve years or older including assessment, treatment and secure accommodation;

"supervision order" means an order made under section 25(1)(b) and includes an interim supervision order made under section 32;

### **Meaning of significant harm**

3 For the purpose of this Act "significant harm", in relation to a child, means ill-treatment or impairment of health or development of a child and includes circumstances where—

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- (a) the child has suffered physical harm inflicted by a parent of the child or caused by the failure of a parent to supervise and protect the child adequately;
- (b) there is a substantial risk that the child will suffer physical harm inflicted or caused as described in paragraph (a);
- (c) the child has been sexually abused by a parent of the child or by another person where the parent of the child knows or should know of the possibility of sexual abuse and fails to protect the child;
- (d) there is a substantial risk that the child will be sexually abused as described in paragraph (c);
- (e) the child requires medical treatment to cure, prevent or alleviate physical harm or suffering, and the child's parent does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm;
- (f) the child has suffered emotional harm demonstrated by severe anxiety, depression, withdrawal, or self-destructive or aggressive behaviour and the child's parent does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm;
- (g) there is a substantial risk that the child will suffer emotional harm of the kind described in paragraph (f) and the parent does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm;
- (h) the child suffers from a mental, emotional or developmental condition that, if not remedied, could seriously impair the child's development and the child's parent does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the condition;
- (i) the child has suffered physical or emotional harm caused by being exposed to repeated domestic violence by or towards a parent of the child, and the child's parent fails or refuses to obtain services or treatment to remedy or alleviate the violence;

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- (j) the child has suffered physical or emotional harm caused by chronic and serious neglect by a parent of the child, and the parent does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm;
- (k) there is a substantial risk of physical, mental or emotional harm to the child by reason of neglect or the failure of the parent or person having parental responsibility to provide adequate food, clothing, medical treatment or accommodation for the child, and a person who leaves a child of tender years unattended for an unreasonable length of time without making reasonable provision for the child's safety and supervision shall be deemed to have neglected the child;
- (l) there is substantial risk of physical, mental or emotional harm to the child by reason of substance abuse or other injurious behaviour by the parent or person having parental responsibility;
- (m) the child has displayed violent behaviour and threatens to become a danger to himself or others or is otherwise beyond parental control;
- (n) the child has been abandoned, the child's only parent has died or is unavailable to exercise custodial rights over the child and has not made adequate provision for the child's care and custody, or the child is in the care of another person and the parent of the child refuses or is unable or unwilling to resume the child's care and custody;
- (o) the child has been the victim of an offence under section 19 or an offence referred to in sub-paragraphs (ii) to (vii) of section 55(1)(a);
- (p) the child is by reason of his environment or associations exposed to moral danger; or
- (q) the child is pregnant and refuses or is unable to provide properly and adequately for the health and welfare needs of her child in the womb.

### **Meaning of parental responsibility**

4 (1) For the purpose of this Act "parental responsibility" means all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property.

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(2) A person who—

- (a) does not have parental responsibility for a particular child; but
- (b) has care and control of the child,

may, subject to the provisions of this Act, do what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child's welfare.

### **Purposes of the Act**

5 The purposes of this Act are to protect children from harm, to promote the integrity of the family and to ensure the welfare of children.

### **Welfare principle**

6 In the administration and interpretation of this Act the welfare of the child shall be the paramount consideration.

### **Delay**

7 In any proceedings under Part IV (care and supervision) or Part V (protection of children), the court shall have regard to the fact that any delay in determining any question with respect to the upbringing of a child is likely to prejudice the welfare of the child.

## **PART II**

### **ADMINISTRATION**

#### **Responsibilities of Minister**

8 The Minister has responsibility for the general supervision of the administration of this Act and the regulations and may give such directions as he considers necessary in the public interest.

#### **Responsibilities of Director**

- 9 (1) The Director of Child and Family Services shall—
- (a) arrange for the investigation of any allegation or report that a child may be in need of protection, care or supervision and, where necessary, arrange for the delivery of child care services for the benefit of the child;
  - (b) when a child is in the care of the Director—
    - (i) provide accommodation for him; and
    - (ii) maintain him,



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and may discharge those responsibilities by—

- (iii) placing him with a family member, a relative of his or a fit person on such terms as the Director may determine;
  - (iv) maintaining him in a licensed foster home, a registered children's home or a residential home; or
  - (v) making such other arrangements as the Director considers appropriate for him to live with—
    - (A) his parent;
    - (B) a person who is not his parent but has parental responsibility for him;
    - (C) a person who had custody of him before the care order was made; or
    - (D) a relative, friend or other person connected with him;
- (c) advise the Minister on matters relating to child welfare;
  - (d) register children's homes;
  - (e) direct and supervise the inspection of the operations and records of any facility or other place where a child is placed.

(2) The Director may delegate to a children's officer the exercise of any functions conferred on the Director by this Act.

(3) The Director, a children's officer or any person authorized by the Director may appear and be heard in any court in respect of any matter arising under this Act and may intervene in proceedings instituted by any other person.

### **Children's officers**

10 The Minister may designate public officers as children's officers.

### **Disclosure of information**

11 (1) No children's officer or person employed in the administration of this Act shall communicate or allow to be communicated information obtained in the performance of his duties under this Act except where—

- (a) giving evidence in any court; or

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(b) authorized by the Director or the Minister.

(2) Any person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine not exceeding \$2000.

### **Child Care Placement Board**

12 (1) There is established a Child Care Placement Board which, subject to this Act, shall be responsible for—

(a) advising the Minister on matters related to the care of children and, in particular, the placement of children in children's homes, in foster-care and in residential homes;

(b) encouraging and fostering community interest and involvement in child care issues;

(c) monitoring the progress of, and acting as an advocate for, children in care.

(2) The Board shall consist of a Chairman, a Deputy Chairman and not less than 7 other persons appointed by the Minister in writing.

(3) Every member of the Board shall hold office for such period not exceeding three years as may be specified in the instrument of appointment and, on the initial formation of the Board, the appointments shall be staggered to establish a rotation.

(4) A member whose term has expired may be re-appointed.

(5) The Minister may refer to the Board any matter relating to residential child care and foster care and the Board shall enquire into and report to the Minister upon any matter so referred.

(6) The Board shall make an annual report to the Minister on the state of children in care in Bermuda and such report shall be laid by the Minister before both Houses of the Legislature and may be published in such manner as the Minister may, after consultation with the Board, determine.

(7) The quorum of the Board shall be such number as the Minister may fix being not less than one-half of the total number of members of the Board.

(8) Fees shall be paid to the members of the Board in accordance with the Government Authorities (Fees) Act 1971.

(9) Subject to this section, the Board may regulate its own procedure.

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### **Family Court**

13 The jurisdiction conferred upon the court by or under this Act shall be exercised by a Special Court established under section 12 of the Magistrates Act 1948, and a Special Court when sitting to exercise such jurisdiction shall be known as the Family Court.

### **Decision to make order**

14 (1) Where the court is considering whether or not to make one or more orders under this Act, it shall not make an order unless it considers that doing so would better promote the welfare of the child than making no order at all.

### **Attendance of parent at court**

15 (1) Where under this Act a child is brought before the court, the parents of the child shall attend at the court during all stages of the proceedings unless the court is satisfied that it would be unreasonable to require their attendance.

(2) The court, for the purpose of enforcing the attendance of a parent, has the same powers as a court of summary jurisdiction to enforce the attendance of witnesses.

### **Sittings of the court**

16 In the exercise of the jurisdiction conferred upon it by this Act the court shall, as far as practicable, sit in a different building or room from that in which sittings of courts other than the Family Court are held.

### **Exclusion of the public**

17 Except by leave of the court no person shall be present at any sitting of the court other than the parties to the case, their counsel and other persons directly concerned in the case.

### **Appeals**

18 Any child or other person aggrieved by any order made under this Act may appeal from the order to the Supreme Court in the manner and subject to the conditions provided by the Criminal Appeal Act 1952 as though the order appealed against were an order made on a conviction by a court of summary jurisdiction.

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### **PART III**

#### **ABUSE OF CHILDREN**

##### **Mistreatment, abandonment etc of child**

19 Any person who, having the care and control of, or parental responsibility for, any child, wilfully abuses, mistreats, neglects, deserts or abandons the child or causes or procures the child to be abused, ill-treated, neglected, deserted or abandoned is guilty of an offence and is liable on summary conviction to a fine not exceeding \$3,000 or imprisonment for a term not exceeding 6 months.

##### **Mandatory reporting of child abuse**

20 (1) Every person who has information indicating that a child is suffering or has suffered significant harm, shall forthwith report that information to the Director.

(2) Notwithstanding subsection (1) or any statutory provision, a person who performs professional or official duties with respect to a child, including—

- (a) a physician, nurse, dentist, pharmacist, psychologist or other health care professional;
- (b) a school principal, teacher, counsellor, social worker, youth or recreational leader, member of the clergy or child care worker; or
- (c) a police officer, probation officer or youth care worker,

who, in the course of that person's professional or official duties, has reasonable grounds to suspect that a child is suffering or has suffered significant harm, shall forthwith report the suspicion to the Director together with the information upon which it is based.

(3) Subsections (1) and (2) apply whether or not the information is confidential or privileged except that nothing in this section shall be taken to affect or abrogate the privilege that attaches to a communication between a solicitor and his client.

(4) No civil action lies against a person by reason of that person reporting information pursuant to subsection (1) or (2) unless the reporting of that information is done falsely and maliciously.

- (5) Every person who—
- (a) contravenes subsection (2) or (6); or

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- (b) falsely and maliciously reports information to the Director indicating that a child is suffering significant harm or is suspected thereof,

is guilty of an offence and is liable on summary conviction to a fine not exceeding \$3,000 or imprisonment for a term not exceeding 6 months.

(6) No person shall reveal or be compelled to reveal the identity of a person who has reported information to the Director pursuant to subsection (1) or (2).

(7) On receiving a report pursuant to subsection (1) or (2) the Director shall—

- (a) cause an investigation to be made into the circumstances of the case;
- (b) arrange for the provision of such child care services as he considers necessary; and
- (c) make application for such order under this Act as he considers appropriate.

### **Child Abuse Register**

21 (1) The Minister shall establish and maintain a Child Abuse Register ("the Register").

(2) The Minister shall enter the name of a person and such information as the Minister may determine in the Register where—

- (a) the court finds that a child has suffered significant harm at the hand of that person in circumstances where the child—
  - (i) has suffered physical harm, inflicted by the person or caused by the person's failure to supervise and protect the child adequately;
  - (ii) has been sexually abused by the person or by another person where the person having the care of the child knows or should know of the possibility of sexual abuse and fails to protect the child; or
  - (iii) has suffered serious emotional harm, demonstrated by severe anxiety, depression, withdrawal, or self-destructive or aggressive behaviour, caused by the intentional conduct of the person; or

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- (b) that person is convicted of an offence against a child pursuant to the Criminal Code as set out in subparagraphs (ii) to (vii) of section 55(1)(a).

### **Notice of entry in Register**

22 (1) A person whose name is entered in the Register shall be given written notice of registration.

(2) A person whose name is entered on the Register may apply to the court at any time to have his name removed from the Register and, if the court is satisfied by him that he no longer poses a risk to children, the court shall order that his name be removed from the Register.

(3) Any person aggrieved by a decision of the court pursuant to subsection (2) may appeal to the Supreme Court and the hearing shall be held in chambers.

### **Confidentiality of information in Register**

23 (1) The information in the Register is confidential and shall be available only as provided in this section.

(2) A person whose name is entered in the Register is entitled to inspect the information relating to him entered in the Register.

(3) With the approval of the Minister, the information in the Register may be—

- (a) disclosed to any authority for the purpose of investigating whether a child is in need of care or supervision; or

- (b) used for the purposes of research.

(4) Upon the receipt of a request in writing from a person and with the written consent of the person to whom the request relates, the Minister may disclose information in the Register concerning—

- (a) a person applying to adopt a child or to be a foster parent; or

- (b) a person, including a volunteer, who is or would be caring for or working with children,

and the person who receives the information shall treat the information as confidential.

(5) Every person who contravenes subsection (4) and every director, officer or employee of a corporation who authorizes, permits or concurs in such a contravention by the corporation is guilty of an offence

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and upon summary conviction is liable to a fine of not more than \$5,000 or to imprisonment for a period not exceeding one year.

### **PART IV**

#### CARE AND SUPERVISION

##### **Court orders, relevant factors**

24 In making, varying or discharging an order under this Part, the court shall have regard in particular to—

- (a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);
- (b) his physical, emotional and educational needs;
- (c) the likely effect on him of any change in circumstances;
- (d) his age, sex, background and any characteristics of his which the court considers relevant;
- (e) any harm which he has suffered or is at risk of suffering;
- (f) how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs;
- (g) the importance of the child's development of a positive relationship with the parent and a secure place as a member of a family;
- (h) the child's relationships with relatives;
- (i) the importance of continuity in the child's care and the possible effect on the child of the disruption of that continuity;
- (j) the bonding that exists between the child and the child's parent;
- (k) the range of powers available to the court under this Act in the proceedings in question;

##### **Care and supervision orders**

25 (1) On the application of the Director, the court may make an order—

- (a) placing the child with respect to whom the application is made in the care of the Director; or

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(b) putting him under the supervision of the Director or a probation officer.

(2) The court may only make a care order or supervision order if it is satisfied—

(a) that the child concerned is suffering, or is likely to suffer, significant harm; and

(b) that the harm, or likelihood of harm, is attributable to—

(i) the care given to the child or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give him; or

(ii) the child's being beyond parental control.

(3) No care order or supervision order may be made with respect to a person who has reached the age of 18 years (or 16 years, in the case of a child who is married).

(4) An application under this section may be made on its own or in any other family proceedings.

(5) The court may—

(a) on an application for a care order, make a supervision order;

(b) on an application for a supervision order, make a care order.

### **Timely disposal of applications**

26 The court hearing an application for an order under this Part shall—

(a) draw up a timetable with a view to disposing of the application without delay; and

(b) give such directions as it considers appropriate for the purpose of ensuring, so far as it is reasonably practicable, that that timetable is adhered to.

### **Effect of care order**

27 (1) Where a care order is made with respect to a child, it shall be the duty of the Director to receive the child into his care and to keep him in care while the order remains in force, and the Director may place the child—

(a) in accommodation operated by the Minister;



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- (b) in a registered children's home;
- (c) in accommodation provided by a fit person; or
- (d) in a residential home.

(2) Where a care order is in force with respect to a child, the Director shall—

- (a) have parental responsibility for the child; and
- (b) have the power (subject to the following provisions of this section) to determine the extent to which a parent of the child may meet his parental responsibility for the child.

(3) The Director may not exercise the power in subsection (2)(b) unless he is satisfied that it is necessary to do so in order to safeguard or promote the child's welfare.

(4) Nothing in subsection (2)(b) shall prevent a parent of the child who has care of him from doing what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting his welfare.

(5) While a care order is in force with respect to a child, the Director shall not—

- (a) so far as is practicable, cause the child to be brought up in any religious persuasion other than that in which he would have been brought up if the order had not been made; or
- (b) have the right—
  - (i) to agree or refuse to agree to the making of an adoption order;
  - (ii) to appoint a guardian for the child.

(6) Where a care order is in force with respect to a child, no person shall cause the child to be known by a new name without an order of the court.

### **Parental contact with children in care**

28 (1) Where the child is in the care of the Director, the Director shall (subject to the provisions of this section) allow the child reasonable contact with—

- (a) his parents;

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- (b) where there is a custody order in force with respect to the child immediately before the care order was made, the person in whose favour the custody order was made; and
- (c) where, immediately before the care order was made, a person had care of the child by virtue of an order made in the exercise of the Supreme Court's inherent jurisdiction with respect to children, that person.

(2) On an application made by the Director or the child the court may make such order as it considers appropriate with respect to the contact which is to be allowed between the child and any named person.

(3) On an application made by—

- (a) any person mentioned in paragraphs (a) to (c) of subsection (1); or
- (b) any person who has obtained the leave of the court to make the application.

the court may make such order as it considers appropriate with respect to the contact which is to be allowed between the child and that person.

(4) On an application made by the Director or the child, the court may make an order authorizing the Director to refuse to allow contact between the child and any person who is mentioned in paragraphs (a) to (c) of subsection (1) and named in the order.

(5) When making a care order with respect to a child, or in any family proceedings in connection with a child who is in the care of the Director, the court may make an order under this section, even though no application for such an order has been made with respect to the child, if it considers that the order should be made.

(6) The Director may refuse to allow the contact that would otherwise be required by virtue of subsection (1) or an order under this section if—

- (a) he is satisfied that it is necessary to do so in order to safeguard or promote the child's welfare; and
- (b) the refusal—
  - (i) is decided upon as a matter of urgency; and
  - (ii) lasts no more than 28 days or such longer period as the Director may determine.

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(7) An order under this section may impose such conditions as the court considers appropriate.

(8) The court may vary or discharge any order made under this section on the application of the Director, the child concerned or the person named in the order.

(9) An order under this section may be made either at the same time as the care order itself or later.

(10) Before making a care order with respect to any child the court shall—

- (a) consider the arrangements which the Director has made, or proposes to make, for affording any person contact with a child to whom this section applies; and
- (b) invite the parties to the proceedings to comment on those arrangements.

### **Supervision orders**

29 (1) Where a supervision order is in force, it is the duty of the supervisor—

- (a) to advise, assist and monitor the progress of, the supervised child; and
- (b) to take such steps as are reasonably necessary to give effect to the order.

(2) The First Schedule makes further provision with respect to supervision orders.

### **Powers of the court in family proceedings**

30 (1) Where, in any family proceedings in which a question arises with respect to the welfare of any child, it appears to the court that it may be appropriate for a care order to be made with respect to him, the court may direct the Director to undertake an investigation of the child's circumstances.

(2) Where the court gives a direction under this section the Director shall, when undertaking the investigation, consider whether he should—

- (a) apply for a care order or for a supervision order in respect of the child;
- (b) arrange for the delivery of services or assistance for the child and his family; or

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(c) take any other action with respect to the child.

(3) Where the Director undertakes an investigation under this section, and decides not to apply for a care order or supervision order with respect to the child concerned, he should inform the court of—

(a) his reasons for so deciding;

(b) any service or assistance which has been provided or is intended to be provided to the child and his family; and

(c) any other action which he has taken or proposes to take with respect to the child.

(4) The information shall be given to the court before the end of the period of 6 weeks beginning the date of the direction, unless the court otherwise directs.

(5) If, on the conclusion of any investigation or review under this section, the Director decides not to apply for a care order or a supervision order with respect to the child—

(a) he should consider whether it would be appropriate to review the case at a later date; and

(b) if he decides that it would be, he should determine the date on which the review is to begin.

### **Plan of care for child**

31 (1) The court shall, before making a care order or a supervision order, obtain and consider a plan for the child's care, prepared in writing by the Director and including—

(a) a description of the services to be provided to remedy the condition or situation on the basis of which the child was found in need of care or supervision;

(b) a statement of the criteria by which the Director will determine when his care or supervision is no longer required;

(c) an estimate of the time required to achieve the purpose of the Director's intervention; and

(d) where the Director proposes to remove the child from the care of a parent—

(i) an explanation of why the child cannot be adequately protected while in the care of the parent and a description of any past efforts to do so, and

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- (ii) a statement of what efforts, if any, are planned to maintain the child's contact with the parent.
- (2) Where the court makes an order, the court shall—
  - (a) give a statement of the plan for the child's care that the court is applying in its decision;
  - (b) give the reasons for its decision, including—
    - (i) a statement of the evidence on which the court bases its decision; and
    - (ii) where the order has the effect of removing or keeping the child from the care or custody of the parent, a statement of the reasons why the child cannot be adequately protected while in the care or custody of the parent; and
  - (c) state the duration of the order.
- (3) The Director shall make a report to the court, in relation to the plan of care under subsection (1), within 6 months of the initial order and thereafter as the court may direct.

### **Interim orders**

- 32 (1) Where—
- (a) in any proceedings on an application for a care order or supervision order, the proceedings are adjourned; or
  - (b) the court gives a direction under section 30(1),
- the court may make an interim care order or an interim supervision order with respect to the child concerned.
- (2) A court shall not make an interim care order or interim supervision order under this section unless it is satisfied that there are reasonable grounds for believing that the circumstances with respect to the child are as mentioned in section 25(2).
- (3) Where, in any proceedings on an application for a care order or supervision order, a court makes a custody order with respect to the child concerned, it shall also make an interim supervision order with respect to him unless satisfied that his welfare will be satisfactorily safeguarded without an interim order being made.
- (4) An interim order made under or by virtue of this section shall have effect for such period as may be specified in the order, but shall in any event cease to have effect on whichever of the following events first occurs—

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(a) the expiry of the period of 6 weeks beginning with the date on which the order is made; or

(b) the disposal of the application.

(5) Where the court makes an interim care order, or interim supervision order, it may give directions (if any) as it considers appropriate with regard to the medical or psychiatric examination or other assessment of the child and parent.

(6) A direction under subsection (5) may be to the effect that there is to be—

(a) no such examination or assessment; or

(b) no such examination or assessment unless the court directs otherwise.

(7) A direction under subsection (5) may be—

(a) given when the interim order is made or at any time while it is in force; and

(b) varied at any time on the application of any party to the proceedings in which the direction is given.

### **Discharge and variation of care orders and supervision orders**

33 (1) A care order may be discharged by the court on the application of—

(a) any person who has parental responsibility for the child;

(b) the child himself; or

(c) the Director.

(2) A supervision order may be varied or discharged by the court on the application of—

(a) any person who has parental responsibility for the child;

(b) the child himself; or

(c) the Director.

(3) On the application of a person who is not entitled to apply for the order to be discharged, but who is a person with whom the child is living, a supervision order may be varied by the court in so far as it imposes a requirement which affects that person.

(4) Where a care order is in force with respect to a child the court may, on the application of any person entitled to apply for the order to be discharged, substitute a supervision order for the care order.

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(5) When a court is considering whether to substitute one order for another under subsection (4) any provision of this Act which would otherwise require section 25(2) to be satisfied at the time when the proposed order is substituted or made shall be disregarded.

### **Orders pending appeals in cases about care or supervision orders**

34 (1) Where—

(a) a court dismisses an application for a care order; and

(b) at the time when the court dismisses the application, the child concerned is the subject of an interim care order,

the court may make a care order with respect to the child to have effect subject to such directions (if any) as the court may see fit to include in the order.

(2) Where—

(a) a court dismisses an application for a care order, or an application for a supervision order; and

(b) at the time when the court dismisses the application, the child concerned is the subject of an interim supervision order,

the court may make a supervision order with respect to the child to have effect subject to such directions (if any) as the court may see fit to include in the order.

(3) Where a court grants an application to discharge a care order or supervision order, it may order that—

(a) its decision is not to have effect; or

(b) the care order, or supervision order, is to continue to have effect but subject to such directions as the court sees fit to include in the order.

(4) An order made under this section shall only have effect for such period, not exceeding the appeal period, as may be specified in the order.

(5) Where—

(a) an appeal is made against any decision of a court under this section; or

(b) any application is made to the Supreme Court in connection with a proposed appeal against that decision,

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the Supreme Court may extend the period for which the order in question is to have effect, but not so as to extend it beyond the end of the appeal period.

- (6) In this section "the appeal period" means—
- (a) where an appeal is made against the decision in question, the period between the making of that decision and the determination of the appeal; and
  - (b) otherwise, the period during which an appeal may be made against the decision.

### **Representation of child and of his interests in certain proceedings**

35 (1) For the purpose of any specified proceedings, the court shall appoint a litigation guardian for the child concerned unless satisfied that it is not necessary to do so in order to safeguard his interests.

(2) The litigation guardian shall be under a duty to safeguard the interests of the child.

- (3) Where—
- (a) the child concerned is not represented by counsel; and
  - (b) any of the conditions mentioned in subsection (4) is satisfied,

the court may appoint counsel to represent him.

- (4) The conditions are that—
- (a) no litigation guardian has been appointed for the child;
  - (b) the child has sufficient understanding to instruct counsel and wishes to do so;
  - (c) it appears to the court that it would be in the child's best interests for him to be represented by counsel.

(5) Counsel appointed under or by virtue of this section shall be appointed, and shall represent the child, in accordance with rules of court.

(6) In this section "specified proceedings" means any proceedings—

- (a) on an application for a care order or supervision order;



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- (b) in which the court has given a direction under section 30(1) and has made, or is considering whether to make, an interim care order;
- (c) on an application for the discharge of a care order or the variation or discharge of a supervision order;
- (d) on an application under section 33(4);
- (e) in which the court is considering whether to make a custody order with respect to a child who is the subject of a care order;
- (f) with respect to contact between a child who is the subject of a care order and any other person;
- (g) under Part V (protection of children);
- (h) on an appeal against—
  - (i) the making of, or refusal to make, a care order, supervision order or any order under section 28;
  - (ii) the making of, or refusal to make, a custody order with respect to a child who is the subject of a care order;
  - (iii) the variation or discharge, or refusal of an application to vary or discharge, an order of a kind mentioned in sub-paragraph (i) or (ii);
  - (iv) the refusal of an application under section 33(4); or
  - (v) the making of, or refusal to make, an order under Part V; or
- (i) which are specified for the time being, for the purposes of this section, by rules of court.

(7) The Minister may establish panels of persons from whom litigation guardians appointed under this section must be selected.

### **Right of litigation guardian to have access to Director's records**

36 (1) Where a person has been appointed as a litigation guardian under this Act he shall have the right at all reasonable times to examine and take copies of any records of, or held by, the Director which were compiled in connection with the making, or proposed making, by any person of any application under this Act with respect to the child concerned.

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(2) Where a litigation guardian takes a copy of any record which he is entitled to examine under this section, that copy or any part of it shall be admissible as evidence of any matter referred to in any—

- (a) report which he makes to the court in the proceedings in question; or
- (b) evidence which he gives in those proceedings.

(3) Subsection (2) has effect regardless of any enactment or rule of law which would otherwise prevent the record in question being admissible in evidence.

### **PART V**

#### PROTECTION OF CHILDREN

##### **Child assessment orders**

37 (1) On the application of the Director for an order to be made under this section with respect to a child, the court may make the order if, but only if, it is satisfied that—

- (a) the Director has reasonable cause to suspect that the child is suffering, or is likely to suffer, significant harm;
- (b) an assessment of the state of the child's health or development, or of the way in which he has been treated, is required to enable the Director to determine whether or not the child is suffering, or is likely to suffer, significant harm; and
- (c) it is unlikely that such an assessment will be made, or be satisfactory, in the absence of an order under this section.

(2) A court may treat an application under this section as an application for an emergency protection order.

(3) The court shall not make a child assessment order if it is satisfied—

- (a) that there are grounds for making an emergency protection order with respect to the child; and
- (b) that it ought to make such an order rather than a child assessment order.

(4) A child assessment order shall—

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- (a) specify the date by which the assessment is to begin; and
- (b) have effect for such period, not exceeding 14 days beginning with that date, as may be specified in the order.

(5) Where a child assessment order is in force with respect to a child it shall be the duty of any person who is in a position to produce the child—

- (a) to produce him to a children's officer or police officer; and
- (b) to comply with such directions relating to the assessment of the child as the court thinks fit to specify in the order.

(6) A child assessment order authorizes any person carrying out the assessment, or any part of the assessment, to do so in accordance with the terms of the order.

(7) The child may only be kept away from his home or normal place of residence—

- (a) in accordance with directions specified in the order;
- (b) if it is necessary for the purposes of the assessment; and
- (c) for such period as may be specified in the order.

(8) Where the child is to be kept away from his home or normal place of residence, the order shall contain such directions as the court thinks fit with regard to the contact that he must be allowed to have with other persons while away from his home or normal place of residence.

(9) The Director shall take such steps as are reasonably practicable to ensure that notice of the application is given to—

- (a) the child's parents;
- (b) any person who is not a parent of his but who has parental responsibility for him;
- (c) any other person caring for the child;
- (d) any person in whose favour a custody order is in force;
- (e) any person who is allowed to have contact with the child by virtue of an order under section 28; and
- (f) the child,

before the hearing of the application.

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(10) The Director and any of the persons mentioned in subsection (9) may apply to the court for a child assessment order to be varied or discharged.

### **Protective intervention order**

38 (1) Upon the application of the Director, the court may make a protective intervention order pursuant to this section directed to any person where the court is satisfied that the person's contact with a child is causing, or is likely to cause, the child to suffer significant harm.

(2) The court may make a protective intervention order, ordering that the person named in the order—

- (a) cease to reside with the child;
- (b) not contact the child or associate in any way with the child,

and imposing such terms and conditions as the court considers appropriate for implementing the order and protecting the child.

(3) Where an order is made pursuant to this section, the Director may enlist the assistance of a police officer to enforce the order.

(4) Any person who contravenes a protective intervention order is guilty of an offence and upon summary conviction shall be liable to a fine of not more than \$3,000 or to imprisonment for a period not exceeding 6 months.

### **Emergency protection orders**

39 (1) On the application of the Director for an order under this section with respect to a child, the court may make the order if, but only if, it is satisfied that—

- (a) there is reasonable cause to believe that the child is likely to suffer significant harm if—
  - (i) he is not removed to accommodation provided by or on behalf of the Director; or
  - (ii) he does not remain in the place in which he is then being accommodated; or
- (b) enquiries are being made with respect to the child under section 42(1)(b), and those enquiries are being frustrated by access to the child being unreasonably refused to a person seeking access and that the Director has reasonable cause to believe that access to the child is required as a matter of urgency.

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(2) While an order under this section ("an emergency protection order") is in force it—

(a) operates as a direction to any person who is in a position to do so to comply with any request to produce the child to the Director;

(b) authorizes—

(i) the removal of the child at any time to accommodation provided by or on behalf of the Director and his being kept there; or

(ii) the prevention of the child's removal from any hospital, or other place, in which he was being accommodated immediately before the making of the order; and

(c) gives the Director parental responsibility for the child.

(3) Where an emergency protection order is in force with respect to a child, the Director—

(a) shall only exercise the power given by virtue of subsection (2)(b) in order to safeguard the welfare of the child; and

(b) shall take, and shall only take, such action in meeting his parental responsibility for the child as is reasonably required to safeguard or promote the welfare of the child (having regard in particular to the duration of the order);

(4) Where the court makes an emergency protection order, it may give such directions (if any) as it considers appropriate with respect to—

(a) the contact which is, or is not, to be allowed between the child and any named person;

(b) the medical or psychiatric examination or other assessment of the child.

(5) A direction under subsection (4)(a) may impose conditions and one under subsection (4)(b) may be to the effect that there is to be—

(a) no such examination or assessment; or

(b) no such examination or assessment set out unless the court directs otherwise.

(6) A direction under subsection (4) may be—

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- (a) given when the emergency protection order is made or at any time while it is in force; and
- (b) varied at any time on the application of—
  - (i) the Director;
  - (ii) the parties to the application for the emergency protection order;
  - (iii) the litigation guardian; or
  - (iv) any person named in the direction.

(7) Where an emergency protection order is in force with respect to a child and—

- (a) the Director has exercised the power given by subsection (2)(b)(i) but it appears to him that it is safe for the child to be returned; or
- (b) the Director has exercised the power given by subsection (2)(b)(ii) but it appears to him that it is safe for the child to be allowed to be removed from the place in question,

he shall return the child or, as the case may be, allow him to be removed.

(8) Where he is required by subsection (7) to return the child the Director shall—

- (a) return him to the home or normal residence at which he resided immediately prior to the order being made;
- (b) if that is not reasonably practicable, return him to the care of—
  - (i) a parent of his;
  - (ii) any person who is not a parent of his but who has parental responsibility for him; or
  - (iii) such other person as the Director considers appropriate.

(9) Where the Director has been required by subsection (7) to return the child, or to allow him to be removed, he may again exercise his powers with respect to the child (at any time while the emergency protection order remains in force) if it appears to him that a change in the circumstances of the case makes it necessary for him to do so.

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(10) Where an emergency protection order has been made with respect to a child, the Director shall, subject to any direction given under subsection (6), allow the child reasonable contact with—

- (a) his parents;
- (b) any person who is not a parent of his but who has parental responsibility for him;
- (c) any person with whom he was living immediately before the making of the order;
- (d) any person in whose favour a custody order is in force with respect to him;
- (e) any person who is allowed to have contact with the child by virtue of an order under section 28; and
- (f) any person acting on behalf of any of those persons.

(11) Wherever it is reasonably practicable to do so, an emergency protection order shall name the child; and where it does not name him it shall describe him as clearly as possible.

(12) A person shall be guilty of an offence if he intentionally obstructs any person exercising the power under subsection (2)(b) to remove, or prevent the removal of, a child.

(13) A person guilty of an offence under subsection (12) shall be liable on summary conviction to a fine not exceeding \$1,000.

### **Duration of emergency protection order and other supplemental provisions**

40 (1) An emergency protection order shall have effect for such period, not exceeding 28 days, as may be specified in the order.

(2) Where—

- (a) the court making an emergency protection order would, but for this subsection, specify a period of 28 days as the period for which the order is to have effect; but
- (b) the last of those 28 days is a public holiday,

the court may specify a period which ends at noon on the first later day which is not such a holiday.

(3) The Director may apply to the court for the period during which the emergency protection order is to have effect to be extended.

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(4) On an application under subsection (3) the court may extend the period during which the order is to have effect, by such period, not exceeding 14 days, as it thinks fit.

(5) An emergency protection order may only be extended once.

(6) Regardless of any enactment or rule of law which would otherwise prevent it from doing so, a court hearing an application for, or with respect to, an emergency protection order may take account of—

- (a) any statement contained in any report made to the court in the course of, or in connection with, the hearing; or
- (b) any evidence given during the hearing,

which is, in the opinion of the court, relevant to the application.

(7) Subject to subsection (10), any of the following may apply to the court for an emergency protection order to be discharged—

- (a) the child;
- (b) a parent of his;
- (c) any person who is not a parent of his but who has parental responsibility for him; or
- (d) any person with whom he was living immediately before the making of the order.

(8) No application for the discharge of any emergency protection order shall be heard by the court before the expiry of the period of 72 hours beginning with the making of the order.

(9) No appeal may be made against the making of, or refusal to make, an emergency protection order or against any direction given by the court in connection with such an order.

(10) Subsection (7) does not apply where the person who would otherwise be entitled to apply for the emergency protection order to be discharged—

- (a) was given notice of the hearing at which the order was made; and
- (b) was present at that hearing.

(11) A court making an emergency protection order may direct that the applicant may, in exercising any powers which he has by virtue of the order, be accompanied by a registered medical practitioner or a registered nurse, if he so chooses.



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### **Power of police officer to detain child**

41 Where a police officer has reasonable and probable grounds to believe that a child is suffering, or is likely to suffer, significant harm, the police officer may detain the child and shall forthwith take such reasonable steps as are necessary to—

- (a) notify the Director of the detention and also, where practicable—
  - (i) the child's parents;
  - (ii) every person who is not a parent of his but who has parental responsibility for him; and
  - (iii) any other person with whom the child was living immediately before such detention; and
- (b) deliver the child to the Director or make appropriate arrangements for the temporary detention of the child until the Director assumes responsibility for the care of the child.

### **Duty of Director to investigate**

42 (1) Where the Director—

- (a) has obtained an emergency protection order in respect of a child; or
- (b) has reasonable cause to suspect that a child is suffering, or is likely to suffer, significant harm,

the Director shall make, or cause to be made, such enquiries he considers necessary to enable him to decide whether he should take any action, and if so, what action should be taken, to safeguard or promote the child's welfare.

(2) The enquiries shall, in particular, be directed toward establishing—

- (a) whether the Director should make any application to the court, or exercise any other powers under this Act, with respect to the child;
- (b) whether, in the case of a child—
  - (i) with respect to whom an emergency protection order has been made; and
  - (ii) who is not in accommodation provided by or on behalf of the Director,

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it would be in the child's best interest, (while an emergency protection order remains in force) for him to be in such accommodation.

(3) Where enquiries are being made under subsection (1) with respect to the child, the Director shall (with a view to enabling him to determine what action, if any, to take with respect to him) take such steps as are reasonably practicable—

- (a) to obtain access to the child; or
- (b) to ensure that access to the child is obtained, on his behalf, by a person authorized by him for the purpose, unless he is satisfied that he already has sufficient information with respect to the child.

(4) Where, as a result of any such enquiries, it appears to the Director that there are matters connected with the child's education which should be investigated, he should consult with the Department of Education.

(5) Where, in the course of enquiries made under this section any person authorized by the Director to act on his behalf in connection with those enquiries—

- (a) is refused access to the child concerned; or
- (b) is denied information as to his whereabouts,

the Director shall apply for an emergency protection order, a child assessment order, a care order or supervision order with respect to the child unless the Director is satisfied that his welfare can be satisfactorily safeguarded without so doing.

(6) If, on the conclusion of any enquiries or review made under this section, the Director decides not to apply for an emergency protection order, a child assessment order, a care order or supervision order he shall—

- (a) consider whether it would be appropriate to review the case at a later date; and
- (b) if he decides that it would be, determine the date on which that review is to begin.

(7) Where, as a result of complying with this section, the Director concludes that he should take action to safeguard or promote the child's welfare, he shall take that action (so far as it is both within his power and reasonably practical for him to do so).

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(8) Where the Director is conducting enquiries under this section, it shall be the duty of any person to assist him with those enquiries (in particular by providing relevant information and advice) if called upon by the Director to do so.

### **Powers to assist in discovery of children who may be in need of emergency protection**

43 (1) Where it appears to a court making an emergency protection order that adequate information as to the child's whereabouts—

- (a) is not available to the Director; but
- (b) it is available to another person,

it may include in the order a provision requiring that other person to disclose, if asked to do so by the Director, any information he may have as to the child's whereabouts.

(2) An emergency protection order may authorize the Director to enter premises specified in the order where the Director believes the child may be found and search for the child with respect to whom the order is made.

(3) Where the court is satisfied that there is reasonable cause to believe that there may be another child on those premises with respect to whom an emergency protection order ought to be made, it may make an order authorizing the Director to search for that other child on those premises.

(4) Where—

- (a) an order has been made under subsection (3);
- (b) the child concerned has been found on the premises; and
- (c) the Director is satisfied that the grounds for making an emergency protection order exist with respect to him,

the order shall have effect as if it were an emergency protection order.

(5) Where an order has been made under subsection (3), the Director shall notify the court of its effect.

(6) A person shall be guilty of an offence if he intentionally obstructs any person exercising the power of entry and search under subsection (2) or (3).

(7) A person guilty of an offence under subsection (6) shall be liable on summary conviction to a fine not exceeding \$1,000.

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(8) Where, on an application made by the Director for a warrant under this section, it appears to the court—

- (a) that the Director attempting to exercise powers under an emergency protection order has been prevented from doing so by being refused entry to the premises concerned or access to the child concerned; or
- (b) that the Director is likely to be so prevented from exercising any such powers,

it may issue a warrant authorizing any police officer to assist the Director in the exercise of those powers, using reasonable force if necessary.

(9) Every warrant issued under this section shall be addressed to, and executed by, a police officer who shall be accompanied by the person applying for the warrant if—

- (a) that person so desires;
- (b) the court by whom the warrant is issued does not direct otherwise.

(10) A court granting an application for a warrant under this section may direct that the police officer concerned may, in executing the warrant, be accompanied by a registered medical practitioner or registered nurse if he so chooses.

(11) Where it is reasonably practicable to do so, an order under subsection (3), an application for a warrant under this section and any such warrant shall name the child; and where it does not name him it shall describe him as clearly as possible.

### **Abduction of children in care etc**

44 (1) A person shall be guilty of an offence if, knowingly and without lawful authority or reasonable excuse, he—

- (a) takes a child to whom this section applies away from the responsible person;
- (b) keeps such a child away from the responsible person; or
- (c) induces, assists or incites such a child to run away or stay away from the responsible person.

(2) This section applies in relation to a child who is—

- (a) in care; or
- (b) the subject of an emergency protection order or a child assessment order,

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and in this section "the responsible person" means any person who for the time being has care of him by virtue of the care order, the emergency protection order, or a child assessment order, as the case may be.

(3) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding \$3,000 or to imprisonment for a term not exceeding 6 months.

### **Recovery of abducted children etc**

45 (1) Where it appears to the court that there is reason to believe that a child to whom this section applies—

- (a) has been unlawfully taken away or is being unlawfully kept away from the responsible person;
- (b) has run away or is staying away from the responsible person; or
- (c) is missing,

the court may make an order under this section ("a recovery order").

(2) This section applies to the same children to whom section 44 applies and in this section "the responsible person" has the same meaning as in section 44.

(3) A recovery order—

- (a) operates as a direction to any person who is in a position to do so to produce the child on request to any authorized person;
- (b) authorizes the removal of the child by any authorized person;
- (c) requires any person who has information as to the child's whereabouts to disclose that information, if asked to do so, to a police officer or an officer of the court;
- (d) authorizes a police officer to enter any premises specified in the order and search for the child, using reasonable force if necessary.

(4) The court may make a recovery order only on the application of the Director.

(5) In this section—

"an authorised person" means—

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- (a) a children's officer or any person specified by the court;
  - (b) any police officer;
  - (c) any person who is authorized—
    - (i) after the recovery order is made; and
    - (ii) by the Director,to exercise any power under a recovery order.
- (6) Where a person is authorized as mentioned in subsection (5)(c)—
- (a) the authorization shall identify the recovery order; and
  - (b) any person claiming to be so authorized shall, if asked to do so, produce some duly authenticated document showing that he is so authorized.
- (7) A person shall be guilty of an offence if he intentionally obstructs an authorized person exercising the power under subsection (3)(b) to remove a child.
- (8) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding \$1,000.

## **PART VI**

### REGISTERED CHILDREN'S HOMES

#### **Registered Children's Homes**

- 46 (1) No child shall be cared for or accommodated in a children's home unless it is registered.
- (2) The Director shall maintain a register of children's homes.
- (3) Any person who carries on a children's home that is not registered under this Part is guilty of an offence and liable on summary conviction to a fine not exceeding \$3,000 unless he has a reasonable excuse.
- (4) The Second Schedule makes further provision with respect to registered children's homes.

#### **Welfare of children in children's home**

- 47 (1) It shall be the duty of the person carrying on a registered children's home to promote the welfare of children in the home.

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(2) In making any decision relating to the welfare of a child, the person carrying on the home shall, so far as is reasonably practicable, ascertain the wishes and feelings of—

- (a) the child;
- (b) the parents;
- (c) any other person who has parental responsibility for him;
- (d) any person whose wishes and feelings the person carrying on the home considers to be relevant,

regarding the matter to be decided.

(3) In making any such decision the person concerned shall give due consideration—

- (a) having regard to the child's age and understanding, to such wishes and feelings of the child as the person has been able to ascertain;
- (b) to such wishes and feelings of other persons mentioned in subsection (2) as he has been able to ascertain; and
- (c) to the child's religious persuasion, racial origin and cultural and linguistic background.

### **Inspection etc of registered children's homes**

48 (1) The Director shall satisfy himself that any registered children's home is satisfactorily safeguarding and promoting the welfare of the children in that home.

(2) The Director shall arrange for the children living in that home to be visited from time to time in the interests of their welfare.

(3) The Minister may give directions—

- (a) requiring every child who is in a registered children's home to be visited by a children's officer—
  - (i) in specified circumstances;
  - (ii) on specified occasions or within specified periods;
- (b) imposing requirements which must be met by the Director or a children's officer carrying out functions under this section.

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(4) When the Director is not satisfied that the welfare of any child, who is accommodated in a registered children's home, is being satisfactorily safeguarded or promoted, he shall take the necessary steps to ensure the welfare of that child.

(5) The Director or a children's officer may—

- (a) enter at any reasonable time and inspect any children's home;
- (b) inspect any child there;
- (c) require any person to furnish him with, or allow him to inspect, such records as he may at any time direct.

(6) Any representative of the Director exercising this power shall, if asked to do so, produce some duly authenticated document showing his authority to do so.

(7) Any person who intentionally obstructs the Director or a children's officer in the exercise of any power conferred by subsection (5) shall be guilty of an offence and liable on summary conviction to a fine not exceeding \$1,000.

### **Persons disqualified from carrying on, or being employed in, children's homes**

49 (1) Any person who is disqualified under section 55 from fostering a child shall not carry on, or be otherwise concerned in the management of, or have any financial interest in, a children's home unless he has—

- (a) disclosed to the Director the fact that he is so disqualified; and
- (b) obtained his written consent.

(2) No person shall employ a person who is so disqualified in a children's home unless he has—

- (a) disclosed to the Director the fact that that person is so disqualified; and
- (b) obtained his written consent.

(3) Where the Director refuses to give his consent under this section, he shall inform the applicant by a written notice which states—

- (a) the reason for the refusal;
- (b) the applicant's right to appeal against the refusal to the Minister; and



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(c) the time within which he may do so.

(4) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and liable on summary conviction to a fine not exceeding \$3,000 or to imprisonment for a term not exceeding 6 months.

(5) Where a person contravenes subsection (2), he shall not be guilty of an offence if he proves that he did not know, and had no reasonable grounds for believing, that the person whom he was employing was disqualified under section 55.

### **PART VII**

#### RESIDENTIAL HOMES

##### **Residential homes**

50 (1) The facilities operated and managed by the Minister known as the Youth Development Centre, the Observatory Cottage and the Brangman Home are residential homes and where a child is committed to the care of the Director, the Director may place the child in those facilities or other residential home approved by the Minister.

(2) A residential home may include—

- (a) a secure treatment facility;
- (b) a residential centre for the care and accommodation of children in care of the Director;
- (c) an assessment and treatment centre;
- (d) a facility for the detention of young offenders.

(3) No person or organization other than the Minister shall operate a residential home unless the home has been approved by the Minister.

(4) An application for approval of a residential home shall contain such information relating to the applicant, and such particulars relating to the premises to be used as a residential home, as the Minister may require.

(5) The Minister may impose conditions on the grant of approval under subsection (4).

(6) The Minister, or any person authorized by the Minister, may at any reasonable time enter, inspect and evaluate a residential home and examine the records, books and accounts relating to the home and

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the Minister may, for just and sufficient cause, revoke or suspend an approval given under subsection (3).

(7) The Minister may give directions as to the standards of physical plant, maintenance and programmes to be provided in a residential home.

(8) Any person who contravenes subsection (3) or who fails to comply with any direction under subsection (7) is guilty of an offence and is liable on summary conviction to a fine not exceeding \$3,000 or imprisonment for a term not exceeding 6 months.

### **Secure treatment order**

51 (1) The Director may apply to the court for a secure treatment order in respect of a child in his care.

(2) The court may appoint a litigation guardian to represent the child.

(3) After a hearing, the court may make a secure treatment order in respect of the child for a period of not more than 30 days if the court is satisfied that—

- (a) the child is suffering from an emotional or behavioural disorder;
- (b) it is necessary to confine the child in order to remedy or alleviate the disorder; and
- (c) the child refuses or is unable to consent to treatment.

(4) Upon the application of the Director and after a hearing before the expiry of a secure treatment order, a secure treatment order may be renewed in respect of the child, for a period of not more than 90 days in the case of a first or subsequent renewal, if the court is satisfied that the conditions set out in subsection (3)(a), (b) and (c) are satisfied and that there is an appropriate plan of treatment for the child.

(5) The Director, the child who is the subject of a secure treatment order and the parent of the child may apply to the court for a review of the order.

(6) An application for review may be made only once during the period the secure treatment order is in force.

(7) After hearing the application for review and after considering the conditions referred to in subsection (4), the court may confirm, vary or terminate the secure treatment order, but in no case shall the order be extended.

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(8) A secure treatment order is sufficient authority for a police officer or a children's officer to apprehend and convey the child named in the order to a residential home providing secure treatment and to detain the child while being conveyed to that home.

(9) Upon a secure treatment order being issued, the person in charge of a residential home providing secure treatment shall admit the child to the home, if the child is not already resident in the home, and shall be responsible for ensuring that the child is provided with diagnostic and treatment services in accordance with the terms of the order and the needs of the child.

(10) Where the child who is the subject of a secure treatment order leaves a residential home providing secure treatment when a leave of absence has not been granted or fails to return to such home in accordance with the terms of a leave of absence, a police officer or children's officer may apprehend the child and return the child to the home.

### **Transfer from residential home to senior training school**

52 (1) Where—

- (a) an order has been made under section 16(f) of the Young Offenders Act 1950; or
- (b) an order has been made under this Act,

committing a child to the care of the Director and the Director, having placed the child in a residential home, is of the opinion that the child is incorrigible or is exercising a bad influence on the other children of the home, the Director may, with the consent of the Minister, apply to the court which made the order for an order under this section.

(2) Where an application is made under subsection (1) and the court is satisfied that the child should be removed from the residential home it may make an order revoking the order committing the child to the residential home and by order under this section direct that the child be transferred to the senior training school (within the meaning of the Young Offenders Act 1950) and may commute the remainder of the period for which the child was committed to the residential home to such period of corrective training as the court may determine, being a term not exceeding the remainder of the period for which the child was committed to the residential home.

**PART VIII**

FOSTER CARE

**Definitions**

53 In this Part—

"foster child" means a child who is maintained or whom it is intended to maintain in a foster home;

"foster home" means a home which has been licensed as a foster home under section 54;

"foster parent" means a person whose name has been entered on the Register;

"Register" means the Register of Foster Parents maintained by the Director under section 54;

"relative" in relation to a child, means a grandparent, brother, sister, uncle or aunt, whether of the full blood or half blood or by affinity.

**Registration of foster parents and licensing of foster homes**

54 (1) Any person, other than a parent or relative of the child or person who has parental responsibility for him, who undertakes or intends to undertake for reward the care and maintenance of a particular child or of children generally shall apply to the Director in such form as the Director may approve—

(a) for registration as a foster parent; and

(b) for a licence in respect of the premises in which the child is to be maintained.

(2) For the purposes of subsection (1) an undertaking shall be deemed to be an undertaking for reward if in consideration of the undertaking there is any payment or gift of money or money's worth, irrespective of any intention as to maintenance of the child for profit or otherwise.

(3) The Director may impose upon the applicant requirements as to—

(a) the standard of the accommodation and equipment to be provided for the foster child;

(b) the arrangements to be made with respect to his health and safety; and

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(c) particular arrangements which must be made with respect to the provision of care for him,

and it shall be the duty of the applicant to comply with any such requirement.

(4) A requirement shall be imposed by a notice in writing addressed to the applicant and informing him of—

(a) the reason for imposing the requirement;

(b) his right under section 64 to appeal against it; and

(c) the time within which the applicant may do so.

(5) The Director may at any time vary a requirement, impose any additional requirement or remove any requirement.

(6) Where the Director is satisfied that the applicant is a fit and proper person to be the foster parent of the child he shall, subject to section 55, enter the name of that person in the Register together with such information as the Director may require.

(7) Where the Director is satisfied that the proposed foster home is a fit and proper place for the maintenance and care of the child, he shall issue a licence to the applicant in respect of the foster home.

(8) The Director may impose conditions on a licence issued under subsection (7) and the conditions shall be specified therein.

(9) Where it is made to appear to the Director that a foster parent has ceased to be a fit and proper person so to be or that the premises licensed as a foster home have ceased to be a fit and proper place for the maintenance of a foster child therein, then the Director may order the removal of the person's name from the Register or cause the licence of the foster home to be cancelled, as the case may be, and such removal or cancellation shall be notified forthwith to the person concerned.

(10) A licence under this section, unless earlier cancelled, shall expire two years from the date of issue.

(11) Where a relative assumes the care of a child and the Director is satisfied that it would otherwise be necessary to provide foster care for the child, the Director may provide financial support to that relative as if the relative were a registered foster parent.

### **Person prohibited from being foster parents**

55 (1) The Director shall not enter on the Register the name of, or issue a licence to, any person—

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- (a) who has been convicted of—
- (i) any offence declared by Part X of the Criminal Code (which Part relates to offences against morality);
  - (ii) any offence declared by section 323 to 326 of the Criminal Code (which sections relate to sexual assaults);
  - (iii) any offence declared by section 202 or 203 of the Criminal Code (which sections relate to the abduction of girls under 16 and taking away of children under 14);
  - (iv) the offence of manslaughter, where the act or omission constituting the offence arose in connection with the ill-treatment of a child or a failure to provide the necessaries of life for a child;
  - (v) an offence declared by section 316 of the Criminal Code (which section relates to failure to supply a person with the necessaries of life);
  - (vi) an offence declared by section 318 of the Criminal Code (which section relates to endangering the life of a child by abandonment or exposure);
  - (vii) an offence declared by section 204 of the Criminal Code (which section relates to the desertion of children);
  - (viii) an offence declared by this Act; or
  - (ix) any other offence declared by any Act involving an element of assault whereby bodily injury was caused to any person;
- (b) who, by reason of infirmity, ill-health, drug abuse or criminal associations or conduct, is unfit to have the care of a foster child; or
- (c) whose premises are overcrowded, unsanitary or dangerous or otherwise constitute an environment detrimental to the positive development of a foster child.
- (2) The Director shall not licence any premises as a foster home in which any person lives or is employed who has been convicted of any

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of the offences specified in subsection (1), and, if the premises are already licensed, the Director shall revoke the licence.

### **Limits on number of foster children**

56 (1) Subject to subsections (2) and (3), a person may not foster more than three children ("the usual fostering limit").

(2) A person may exceed the usual fostering limit if the children are siblings of each other.

(3) The Director may exempt a person from subsection (1) and in considering whether to do so shall have regard to—

- (a) the number of children whom the person proposes to foster;
- (b) the arrangements the person proposes for the care and accommodation of the foster children;
- (c) the intended and likely relationship between the person and the foster children;
- (d) the period of time for which he proposes to foster the children; and
- (e) whether the welfare of the fostered children (and any other children who are and or will be living in the accommodation) will be safeguarded and promoted.

(4) Where the Director exempts a person he shall inform him by notice in writing—

- (a) that he is so exempted;
- (b) of the children, described by name, whom he may foster; and
- (c) of any condition to which the exemption is subject.

(5) The Director may at any time by notice in writing—

- (a) vary or cancel an exemption;
- (b) impose, vary or cancel a condition to which the exemption is subject, and, in considering whether to do so, he shall have regard in particular to the considerations mentioned in subsection (3).

### **Effect of exceeding fostering limits**

57 (1) A person shall cease to be treated as a foster parent and shall be treated as carrying on a children's home if—

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- (a) he exceeds the usual fostering limit; or
- (b) where he is exempted under section 56—
  - (i) he fosters any child not named in the exemption; and
  - (ii) in doing so, exceeds the usual fostering limit.

(2) Subsection (1) does not apply if children concerned are all siblings of each other.

### **Complaints etc.**

58 The Director shall establish a procedure for considering any representations (including any complaint) made to him about the discharge of his functions under section 56 by a person exempted or seeking to be exempted under that section.

### **Insurable interest**

59 A person who fosters a child for reward shall be deemed for the purposes of the Life Insurance Act 1978 to have no insurable interest in the life of the child.

### **Duties of the Director to inspect foster homes**

60 (1) The Director shall satisfy himself that the welfare of foster children is being satisfactorily safeguarded and promoted and that advice and assistance is given to foster parents as may be required.

(2) The Director may require a children's officer or other person authorized by the Director to visit foster children and to inspect a foster home in such circumstances or at such regular intervals as the Director may direct.

(3) A children's officer or other person performing functions under subsection (2) shall, if so required, produce some duly authenticated document showing his authority to do so.

(4) Where a children's officer or other person referred to in subsection (3) is refused admission to any premises or has reason to believe that a child is being kept in any premises in contravention of this Part, he may apply to the court for the issue of a warrant; and the court, if satisfied that the admission has been so refused or that there is reasonable ground for believing that an offence under this Act has been committed, may issue a warrant authorizing him, together with any police officer or other person named in the warrant, to enter the premises for the purpose of ascertaining whether any such offence has been committed.



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### **Death of a foster child**

61 (1) Where a foster child dies while under the care and maintenance of a foster parent, the foster parent shall, as soon as practicable, give notice of the death to the Director and the Director—

(a) where reasonably practicable, shall notify each parent of the child and every person who is not a parent of the child but has parental responsibility for the child;

(b) may, with the consent (so far as it is practicable to obtain it) of every person who has parental responsibility for the child, arrange for the child's body to be buried or cremated;

(2) Where the Director has exercised his power under subsection (1)(b) with respect to a child, he may recover from any parent of the child any expenses incurred by him.

(3) Any sums so recoverable shall, without prejudice to any other method of recovery, be recoverable summarily as a civil debt.

(4) Nothing in this section affects any enactment regulating or authorizing the burial, cremation, or anatomical examination of the body of a deceased person.

### **Court may order refund of consideration**

62 If the consideration for the care and maintenance of a foster child consisted in whole or in part of a lump sum, where—

(a) the foster parent's name has been removed from the Register;

(b) the licence of the foster home in which the child is maintained has been cancelled; or

(c) the child has been returned to the Director and the person to whom the money consideration was paid is no longer acting as a foster parent for the child,

then the Director may apply to the court for an order that the money consideration, or such less sum as the court may consider just, be forfeited, and any sum so forfeited shall be paid into the Consolidated Fund.

### **Offences**

63 (1) Any person who—

(a) maintains a child for reward without being registered as a foster parent under section 54;

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- (b) maintains a child for reward in premises which are not licensed under section 54;
- (c) fails to comply with any condition imposed by the Director on a licence under section 54;
- (d) knowingly makes, or causes or procures any other person to make, any false statement in any application under section 54;
- (e) publishes an advertisement indicating that the person will foster or will arrange to foster a child;
- (f) refuses to allow a foster child to be visited by a children's officer or other person authorized by the Director;
- (g) fails, without reasonable excuse, to comply with any requirement imposed by the Director;
- (h) obstructs a children's officer, police officer or other person authorized by the Director in the performance of his functions,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding \$3,000 or to imprisonment for a term not exceeding 6 months.

(2) The court by which a person is convicted of an offence under subsection (1) may, without prejudice to any punishment which the court may impose upon the offender, order any child in respect of whom the offence has been committed to be removed and be placed in the care of the Director.

(3) If consideration for the care and maintenance of a child, in respect of whom an offence under subsection (1) has been committed, consisted in whole or in part of a lump sum then the person convicted of the offence shall, in addition to any other punishment which may be imposed upon him under subsection (1), be liable to forfeit that sum, or such less sum as the court by which the person was convicted may consider just, and any sum forfeited shall be paid into the Consolidated Fund.

(4) Where under section 62 or subsection (3) any sum is ordered to be forfeited the order may be enforced as if it were an order made by a court of summary jurisdiction for the payment of a debt or liquidated demand.

### **Appeals**

64 (1) A person aggrieved by—

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- (a) a requirement imposed under section 54(3);
- (b) a refusal to register a foster parent under section 54;
- (c) a refusal to issue a licence under section 54;
- (d) the removal of a name from the Register or cancellation of a licence under section 54(9);
- (e) a refusal to make an exemption under section 56(3);
- (f) a condition imposed in such an exemption; or
- (g) a variation or cancellation of such an exemption,

may appeal to the court.

(2) The appeal must be made within 14 days from the date on which the person appealing is notified of the requirement, refusal, condition, variation, revocation or cancellation.

(3) Where the appeal is against—

- (a) a requirement imposed under section 54(3);
- (b) a condition of an exemption imposed under section 53(3); or
- (c) a variation or cancellation of such an exemption,

the requirement, condition, variation, revocation or cancellation shall not have effect while the appeal is pending.

(4) Where it allows an appeal against a requirement, the court may, instead of cancelling the requirement vary the requirement, or allow more time for compliance with it.

(5) Any requirement varied by the court under subsection (4) shall be deemed for the purposes of this Part to have been imposed by the Director under section 54.

(6) Where it allows an appeal against a refusal to make an exemption, a condition imposed in such an exemption or a variation or cancellation of such an exemption, the court may—

- (a) make an exemption;
- (b) impose a condition; or
- (c) vary the exemption.

**PART IX**

DAY CARE

**Definitions**

65 In this Part—

"certificate of registration" means a certificate issued under section 76 authorizing a person to act as a day care provider;

"Chief Medical Officer" means the Chief Medical Officer as defined in section 2(1) of the Public Health Act 1949;

"child" means a child under the lower limit of compulsory school age;

"day care" means the temporary, non-residential care and supervision of a child for at least two hours during a day;

"day care centre" means a place in which day care is offered on a regular basis for reward to four or more children who are not of common parentage, whether known as a day care centre, child care centre, nursery, nursery school, kindergarten or by any other name;

"day care provider" means a person who provides day care for reward;

"inspector" means a person appointed by the Minister as an inspector under section 73;

"licence" means a licence issued by the Chief Medical Officer authorizing the holder of a licence to operate a day care centre;

"prescribed" means, except as provided in section 79(2), prescribed by the regulations made under section 79;

"programme" means a programme of activities in a day care centre designed to help the physical, social, emotional and learning development of the children in the centre.

**Application**

66 This Part does not apply to—

(a) child care provided by a parent or relative of a child or a person who has parental responsibility for the child or a foster parent;

(b) services to children governed by the Education Act 1996;

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- (c) child care provided by hospitals to children who are patients;
- (d) child care provided by a church during its service or as part of religious instruction;
- (e) child care provided to children in camps operated for seasonal or holiday periods where the children stay overnight;
- (f) child care provided by a nanny in the child's own home;
- (g) child care provided under any other Part of this Act.

### **Administration**

67 The Chief Medical Officer shall administer this Part and shall ensure that—

- (a) the operator and staff of day care centres are properly qualified;
- (b) the facilities, equipment, sanitation, nutrition and other programmes of day care centres are safe, of good quality and appropriate to the needs of the children.

### **Licence**

68 (1) No person shall operate a day care centre unless he is the holder of a licence issued under this section.

(2) A person may make application in the prescribed form and manner for a licence or the renewal of a licence to operate a day care centre.

(3) The Chief Medical Officer may issue or renew a licence where he is satisfied that—

- (a) the applicant and the day care centre comply with this Part and the regulations; and
- (b) the fee prescribed under section 79(2) is paid.

(4) The Chief Medical Officer may attach to any licence such terms and conditions or restrictions as he considers advisable.

(5) A licence shall be in the prescribed form and, subject to subsection (6), shall expire one year from the date on which it was issued or at such other time as the Chief Medical Officer may specify in the licence.

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(6) The Chief Medical Officer may issue a provisional licence for a period not exceeding 6 months and shall, during the provisional period, monitor the operation of the day care centre.

(7) A licence issued under this section shall be signed by the Chief Medical Officer and shall set out—

- (a) the name and location of the day care centre;
- (b) the name of the operator;
- (c) the maximum number of children for whom child care may be provided;
- (d) any conditions of the licence;
- (e) whether or not the licence is a provisional licence;
- (f) the serial number of the licence;
- (g) the date of expiry of the licence;
- (h) such other matters as may be prescribed.

(8) A licence is not transferable.

### **Renewal of licence**

69 (1) An applicant seeking renewal of a licence shall, at least 30 days before the date of its expiry, apply to the Chief Medical Officer setting out any alteration in the information given in the original application.

(2) The Chief Medical Officer, if satisfied that—

- (a) the prescribed standards are met; and
- (b) the renewal fee prescribed under section 79(2) has been paid,

shall renew the licence.

### **Cancellation, suspension or refusal of licence**

70 (1) The Chief Medical Officer, after giving the applicant or the holder of the licence an opportunity to be heard, may cancel, suspend, refuse to issue or refuse to renew a licence where he is satisfied that the applicant or the holder of the licence or an employee of the holder of the licence has violated any provision of this Act or the regulations or has not complied with any term, condition or restriction attached to the licence.

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(2) The Chief Medical Officer, at least 14 days before any cancellation, suspension or refusal to issue or renew a licence takes effect, give a written notice to the person affected—

- (a) setting out the reasons for his action; and
- (b) advising of the right to appeal the decision of the Chief Medical Officer to the Minister under section 78.

### **Alteration of day care centre**

71 No person shall permit or cause a day care centre for which a licence is in force to be altered so as to increase or decrease its capacity or to significantly affect the care of children without first submitting to the Chief Medical Officer plans of the alteration or addition and receiving the approval of the Chief Medical Officer.

### **Advertising**

72 No person shall advertise or hold out any place to be a day care centre or assume, use or display in connection with the place, any terms, signs, title or words which imply or lead the public to believe that the place is a day care centre, unless there is a valid licence for that day care centre.

### **Inspection and power of entry**

73 (1) The Minister may appoint persons to act as inspectors for the purposes of this Part, including child development project officers, children's officers, health visitors, environmental health officers and education officers.

(2) Inspectors shall inspect day care facilities in respect of which an application for a certificate of registration or licence is made, and shall make periodic inspections of premises used by day care providers and licensed day care centres.

(3) An inspector may enter and carry out an investigation in respect of any premises where he has reasonable grounds to suspect that a day care centre is operated in contravention of this Part.

(4) An inspector shall, if asked to do so, produce some duly authenticated document showing his authority to enter and inspect the premises.

### **Order for closure**

74 (1) The Minister may issue an order for closure to the operator of a day care centre directing him to cease to operate the centre or otherwise to comply with a decision of the Chief Medical Officer within such time as may be specified in the order.

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(2) Where an order has been made under subsection (1) directing that a day care centre cease to operate, the Minister may inform the public of that order in such manner as he considers appropriate.

(3) Any person who is aggrieved by an order under subsection (1) may, within 14 days of receipt of the order, appeal by notice in writing to the court and the court may confirm, reverse or vary the order and give such directions as it considers appropriate.

### **Records, returns and reports**

75 (1) The operator of a licensed day care centre shall maintain records including—

- (a) each child's name and address;
- (b) the name, address and telephone number of the child's parent;
- (c) the name, address and telephone number of a person to be contacted in the event of an emergency if a parent is not available;
- (d) the names of persons to whom the child may be released;
- (e) any medical, physical or developmental conditions relevant to the care of the child;
- (f) the name, address and telephone number of the child's physician and relevant health insurance information;
- (g) records of such other matters as may be prescribed.

(2) The operator of a licensed day care centre shall furnish to the Chief Medical Officer such records, returns and reports as the Chief Medical Officer requests in such form and manner and within such time as the Chief Medical Officer may require.

### **Registration of child care providers**

76 (1) The Chief Medical Officer shall maintain a register of day care providers.

(2) No person shall act as a day care provider unless that person's name is entered on the register.

(3) A person seeking to be registered as a day care provider shall apply to the Chief Medical Officer in the prescribed form and manner.



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(4) The Chief Medical Officer may enter the name of any person on the register and issue a certificate of registration if he is satisfied that—

- (a) the applicant is a fit and proper person to provide day care;
- (b) the premises in which the day care is to be provided meet the prescribed standards; and
- (c) the fee prescribed under section 79(2) is paid.

(5) The Chief Medical Officer may attach to any certificate of registration such terms, conditions or restrictions as he considers advisable.

(6) A certificate of registration shall be in the prescribed form and shall expire on such date as may be specified in the certificate.

(7) The Chief Medical Officer may cancel, suspend, refuse to issue or refuse to renew a certificate of registration where he is satisfied that the day care provider has violated any provision of this Act or the regulations or has not complied with any term, condition or restriction attached to the certificate or is not a fit and proper person to hold a certificate.

(8) Subsection 70(2) applies, with the necessary changes, to a cancellation, suspension, refusal to issue or refusal to renew a certificate of registration.

### **Offences**

77 Any person who—

- (a) fails to comply with any provision of this Part or the regulations;
- (b) fails to observe any term, condition or restriction attached to a licence or a certificate of registration;
- (c) contravenes an order under section 74; or
- (d) obstructs an inspector in the performance of his duties,

is guilty of an offence and is liable on summary conviction to a fine not exceeding \$1,000 and, where the offence is of a continuing nature, each day that the offence continues shall constitute a separate offence.

### **Appeals**

78 (1) A person aggrieved by any decision of the Chief Medical Officer under section 68, 69, 70 or 76 may, within 21 days of being

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notified of the decision, appeal by notice in writing to the Minister and the Minister, after giving the person aggrieved an opportunity to be heard or to make written representations, shall by order decide the matter and give notice of the decision to the Chief Medical Officer and the aggrieved person.

- (2) The decision of the Minister under subsection (1) is final.

### **Regulations**

- 79 (1) The Minister may make regulations—
- (a) prescribing the form, contents and manner of an application for a licence and an application for registration as a day care provider;
  - (b) prescribing the form and contents of a licence and a certificate of registration;
  - (c) prescribing procedures for the suspension, cancellation or refusal to issue or renew a licence or a certificate of registration;
  - (d) prescribing the manner in which a licence is to be displayed;
  - (e) setting out staff requirements and staff/child ratios;
  - (f) setting out programme requirements, including standards and services;
  - (g) establishing standards for discipline, facilities and equipment;
  - (h) imposing requirements respecting food and food preparation;
  - (i) prescribing health and safety requirements and sanitary requirements;
  - (j) providing for administrative matters, including records to be kept, reporting and insurance;
  - (k) providing for monitoring the operation of day care centres and for the enforcement of this Part and the regulations;
  - (l) for such other matters as he considers necessary to give effect to the provisions of this Act.

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(2) Fees may be prescribed under the Government Fees Act 1965 for the issue and renewal of a licence and for a certificate of registration.

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

### **Revocation and transitional**

80 (1) The Public Health (Day Care Nurseries and Nursery Schools) Regulations 1978 are revoked.

(2) Any day nursery or nursery school licensed under the said Regulations immediately before the commencement of this Part shall be deemed to be a day care centre and, on the date of commencement of this Part, shall be deemed to be licensed as a day care centre and subject to this Part.

## **PART X**

### **GENERAL**

#### **Contributions orders**

81 (1) Where an order has been made under Part IV by the court committing a child to the care of the Director, the court may also make an order ("a contribution order") requiring the parent of the child, or any person liable to maintain the child, to contribute to his maintenance for so long as the order is in force.

(2) The Director may apply for a contribution order and the court may make a contribution order to have effect from the date of the care order or any later date, and any sum contributed in obedience to the order shall be paid to such person as the court may direct and shall be applied for or towards the maintenance of the child.

(3) A contribution order shall be enforceable as an affiliation order is enforceable, and any Act relating to the enforcement of affiliation orders shall apply accordingly, subject to any necessary modifications.

(4) A person for the time being under an obligation to make payments in pursuance of a contribution order shall, if he changes his address, give notice of the change of address to the Director and to the recipient of the payments.

(5) Any person who fails to give notice as required by subsection (4) is guilty of an offence and is liable on summary conviction to a fine not exceeding \$1,000.

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### **Order for financial relief for persons over 18 years**

82 (1) If, on application by a person who has been in the care of the Director and has reached the age of 18 years, it appears to the court—

- (a) that the applicant is, will be or (if an order were made under this section) would be receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not while in gainful employment; or
- (b) that there are special circumstances which justify the making of an order under this section,

the court may make one or both orders mentioned in subsection (2).

(2) The orders are—

- (a) an order requiring either or both of the applicant's parents to pay to the applicant such periodical payments, for such term, as may be specified in the order;
- (b) an order requiring either or both of the applicant's parents to pay to the applicant such lump sum as may be so specified.

(3) An order under sub-paragraph (2)(a) may be varied or discharged by a subsequent order made on the application of any person by or to whom payments were required to be made under the previous order.

(4) The powers conferred by this section shall be exercisable at any time.

(5) Where the court makes an order under this section it may, while that order remains in force, make a further such order or vary or discharge the order.

### **Effect and duration of orders**

83 (1) The making of a care order with respect to a child who is the subject of a supervision order discharges the supervision order

(2) Where an emergency protection order is made with respect to a child who is in care, the care order shall have effect subject to the emergency protection order.

(3) Any care order, other than an interim care order, shall continue in force until the child reaches the age of 18 years, unless it is brought to an end earlier.

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(4) Any order made under any other provision of this Act in relation to a child shall, if it would otherwise still be in force, cease to have effect when he reaches the age of 18 years.

(5) On disposing of any application for an order under this Act, the court may (whether or not it makes any other order in response to the application) order that no application for an order under this Act of any specified kind may be made with respect to the child concerned by any person named in the order without leave of the court.

(6) Where an application ("the previous application") has been made for—

- (a) the discharge of a care order;
- (b) the discharge of a supervision order;
- (c) the substitution of a supervision order for a care order;  
or
- (d) a child assessment order,

no further application of a kind mentioned in paragraphs (a) to (d) may be made with respect to the child concerned, without leave of the court, unless the period between the disposal of the previous application and the making of the further application exceeds 6 months.

(7) Subsection (6) does not apply to applications made in relation to interim orders.

(8) Where—

- (a) a person has made an application for an order under section 28;
- (b) the application has been refused; and
- (c) a period of less than 6 months has elapsed since the refusal,

that person may not make a further application for such an order with respect to the same child, unless he has obtained the leave of the court.

### **Removal of child from Bermuda**

84 (1) Where a care order is in force in respect of a child pursuant to Part IV (care and supervision) or a child is placed in foster care pursuant to Part VIII (foster care), no person shall remove the child from Bermuda without an order of the court.

(2) An application for an order under this section shall be lodged with the court in writing and shall set out the approximate date when it is intended to take or send the child out of Bermuda, the place to

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which it is intended to take or send the child, the approximate period during which the child is expected to be absent from Bermuda, and (in sufficient detail) the purpose for which it is intended to take or send the child out of Bermuda.

(3) A copy of any such application and a notice of the time and place at which the court will sit to hear the application shall be served by the applicant on the parent of the child, and may be served on him either personally or by registered post.

(4) On the hearing of the application the court shall allow the parent of the child to be present throughout the proceedings and, if he is present and so wishes, shall allow him to oppose the application.

(5) If the parent cannot be found or is absent from Bermuda or for any other reason is unable to be present at the hearing of the application, or, in the opinion of the court, is incapable of making representations to the court, then the court may allow any relative of the child or other responsible person to take the place of the parent for purposes of subsection (4).

(6) The court shall not grant an application for an order under this section unless the court is satisfied that it is likely to be for the welfare of the child that he should be taken or sent out of Bermuda, and the court shall give due consideration to any representations made by the parent of the child or by such other person as is mentioned in subsection (5), and shall also give due consideration to the wishes of the child, having regard to the age and understanding of the child.

(7) Subject to subsection (8), any person who takes or sends a child out of Bermuda, or who causes or procures the taking or sending of a child out of Bermuda, in contravention of this section, commits an offence and is liable on summary conviction to a fine not exceeding \$3,000 or imprisonment for a term not exceeding 6 months.

(8) It shall be a defence to a charge under subsection (7) for the accused person to prove that it was urgently necessary on medical grounds to remove the child from Bermuda and that there was insufficient time to obtain an order under this section.

### **Prohibition on publication**

85 (1) No person shall publish or make public information that has the effect of identifying a child who is a witness at or a participant in a hearing or the subject of a proceeding pursuant to this Act, or a parent, a foster parent or a relative of the child.

(2) Where the court is satisfied that the publication of a report of a hearing or proceeding, or a part thereof, would cause emotional

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harm to a child who is a participant in or a witness at the hearing or is the subject of the proceeding, the court may make an order prohibiting the publication of a report of the hearing or proceeding, or the part thereof.

(3) Where the court makes an order pursuant to subsection (2), no person shall publish a report contrary to the order.

(4) A person who contravenes subsection (1) or authorizes, permits or concurs in such a contravention by a corporation, is guilty of an offence and on summary conviction is liable to a fine of not more than \$5,000 dollars or to imprisonment for one year.

### **Regulations**

86 (1) The Minister may make such regulations as he considers necessary for the better carrying out of the purposes of this Act and, in particular, prescribing, forms, procedure and records.

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

### **Transitional matters**

87 (1) Where, before the day on which Part IV of this Act comes into operation, any person has been committed to the care of an approved society or a fit person pursuant to section 8 of the Protection of Children Act 1943, that person shall be deemed, on the day Part IV of this Act comes into operation, to have been committed to the care of the Director pursuant to an order made under section 25.

(2) Where, before the day on which Part VIII of this Act comes into operation—

(a) any person has been issued a permit to be a foster parent; or

(b) any foster home has been registered,

pursuant to section 2 of the Foster-Homes Act 1960, that person and that foster home shall be deemed, on the day Part VIII of this Act comes into operation and for a period of one year thereafter, to have been registered as a foster parent or, as the case may be, licensed as a foster home under section 54.

### **Repeals**

88 The following enactments are repealed:

the Foster-Homes Act 1960

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the Protection of Children Act 1943.

### **Consequential amendments**

89 The enactments specified in column 1 of the Third Schedule are amended in the manner set out in column 2 of that Schedule.

### **Commencement**

90 This Act or any provision thereof comes into operation on such day as the Minister may appoint by notice published in the Gazette and different days may be so appointed for the coming into operation of different provisions of this Act.



SUPERVISION ORDERS

GENERAL

*Meaning of "responsible person"*

1 In this Schedule, "the responsible person", in relation to a supervised child, means—

- (a) any person who has parental responsibility for the child; and
- (b) any other person with whom the child is living.

2 (1) A supervision order may require the supervised child to comply with any directions given from time to time by the supervisor which require him to do all or any of the following things—

- (a) to live at a place specified in the directions for a period so specified;
- (b) to present himself to a person specified in the directions at a place and on a day so specified;
- (c) to participate in activities specified in the directions.

(2) It shall be for the supervisor to decide whether, and to what extent, he exercises his power to give directions and to decide the form of any directions which he gives.

(3) Sub-paragraph (1) does not confer on a supervisor power to give directions in respect of any medical or psychiatric examination or treatment (which are matters dealt with in paragraphs 4 and 5).

*Imposition of obligations on responsible person*

3 (1) With the consent of any responsible person, a supervision order may include a requirement—

- (a) that he take all reasonable steps to ensure that the supervised child complies with any direction given by the supervisor under paragraph 2;
- (b) that he take all reasonable steps to ensure that the supervised child complies with any requirement included in the order under paragraph 4 or 5;

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(c) that he comply with any directions given by the supervisor requiring him to attend at a place specified in the directions for the purpose of taking part in activities so specified or undergo such assessment or treatment as may be so specified.

(2) A direction given under sub-paragraph (1)(c) may specify the time at which the responsible person is to attend and whether or not the supervised child is required to attend with him.

(3) A supervision order may require any person who is a responsible person in relation to the supervised child to keep the supervisor informed of his address, if it differs from the child's.

### *Psychiatric and medical examinations*

- 4 (1) A supervision order may require the supervised child—
- (a) to submit to a medical or psychiatric examination; or
  - (b) to submit to any such examination from time to time as directed by the supervisor.
- (2) Any such examination shall be required to be conducted—
- (a) by, or under the direction of, such registered medical practitioner as may be specified in the order;
  - (b) at a place specified in the order and at which the supervised child is to attend as a non-resident patient; or
  - (c) at a hospital at which the supervised child is to attend as a resident patient.
- (3) A requirement of a kind mentioned in sub-paragraph (2)(c) shall not be included unless the court is satisfied, on the evidence of a registered medical practitioner, that—
- (a) the child may be suffering from a physical or mental condition that requires, and may be susceptible to, treatment; and
  - (b) a period as a resident patient is necessary if the examination is to be carried out properly.
- (4) No court shall include a requirement under this paragraph in a supervision order unless it is satisfied that—
- (a) where the child has sufficient understanding to make an informed decision, he consents to its inclusion; and

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- (b) satisfactory arrangements have been, or can be made for the examination.

### *Psychiatric and medical treatment*

5 (1) Where a court which proposes to make or vary a supervision order is satisfied, on the evidence of two registered medical practitioners, one of whom is approved for the purposes of section 12 of the Mental Health Act 1968, that the mental condition of the supervised child—

- (a) is such as requires, and may be susceptible to, treatment; but
- (b) is not such as to warrant his detention in pursuance of a hospital order under Part III of that Act,

the court may include in the order a requirement that the supervised child shall, for a period specified in the order, submit to such treatment as is so specified.

(2) The treatment specified in accordance with sub-paragraph (1) must be—

- (a) by, or under the direction of, such registered medical practitioner as may be specified in the order;
- (b) as a non-resident patient at such a place as may be so specified; or
- (c) as a resident patient in a hospital.

(3) Where a court which proposes to make or vary a supervision order is satisfied, on the evidence of a registered medical practitioner, that the physical condition of the supervised child is such as requires, and may be susceptible to, treatment, the court may include in the order a requirement that the supervised child shall, for a period specified in the order, submit to such treatment as is so specified.

(4) The treatment specified in accordance with sub-paragraph (3) must be—

- (a) by, or under the direction of, such registered medical practitioner as may be specified in the order;
- (b) as a non-resident patient at such place as may be so specified; or
- (c) as a resident patient in a hospital.

(5) No court shall include a requirement under this paragraph in a supervision order unless it is satisfied—

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- (a) where the child has sufficient understanding to make an informed decision, that he consents to its inclusion; and
- (b) that satisfactory arrangements have been, or can be, made for the treatment.

(6) If a medical practitioner by whom or under whose direction a supervised person is being treated in pursuance of a requirement included in a supervision order by virtue of this paragraph is unwilling to continue to treat or direct the treatment of the supervised child or is of the opinion that—

- (a) the treatment should be continued beyond the period specified in the order;
- (b) the supervised child needs different treatment;
- (c) he is not susceptible to treatment; or
- (d) he does not require further treatment,

the practitioner shall make a report in writing to that effect to the supervisor.

(7) On receiving a report under this paragraph the supervisor shall refer it to the court, and on such a reference the court may make an order cancelling or varying the requirement.

### MISCELLANEOUS

#### *Life of supervision order*

6 (1) A supervision order shall cease to have effect at the end of the period of one year beginning with the date on which it was made.

(2) Where the supervisor applies to the court to extend, or further extend, a supervision order the court may extend the order for such period as it may specify.

(3) A supervision order may not be extended so as to run beyond the end of the period of three years beginning with the date on which it was made.

#### *Information to be given to supervisor etc*

- 7 (1) A supervision order may require the supervised child—
- (a) to keep the supervisor informed of any change in his address; and

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(b) to allow the supervisor to visit him at the place where he is living.

(2) Where the supervisor applies to the court to extend, or further extend, a supervision order the court may extend the order for such period as it may specify.

### *Effect of supervision order on earlier orders*

8 The making of a supervision order with respect to any child brings to an end any earlier care or supervision order which—

- (a) was made with respect to that child; and
- (b) would otherwise continue in force.

REGISTERED CHILDREN'S HOMES

*Registration*

1 (1) An application for the registration of a children's home shall be made to the Director and shall contain such particulars relating to the operator of the home, the staff employed in the home and the accommodation, equipment and facilities provided in the home as the Director may require.

(2) The Minister may establish requirements in relation to the staff, facilities and equipment, food and food preparation, health and safety, discipline, sanitation and records and reports.

(3) The Director shall not register a children's home unless he is satisfied that it meets or will, within such time as the Director specifies by notice in writing, meet the requirements established under sub-paragraph (2).

*Conditions*

2 (1) The Director may grant an application for registration subject to such conditions relating to the conduct of the home as he thinks fit and may vary a condition or impose an additional condition at any time.

(2) Any person who fails to comply with a condition imposed or varied under sub-paragraph (1) is guilty of an offence and liable on summary conviction to a fine not exceeding \$2,000.

*Annual review*

3 (1) The Director shall, before the end of the period of twelve months from the date of initial registration and annually thereafter, review the registration.

(2) If the Director is satisfied that the home is being carried on in accordance with the requirements referred to in paragraph 1, the Director shall continue the registration.

*Cancellation*

4 If—

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- (a) on an annual review the Director determines that the home is not being carried on in accordance with the requirements referred to in paragraph 1; or
- (b) the person carrying on the home has been convicted of an offence referred to in section 55(1)(a),

the Director may cancel the registration of the home from such date as may be specified in a notice to the person carrying on the home.

### *Procedure*

- 5 (1) Where—
- (a) a person applies for the registration of a children's home; and
  - (b) the Director proposes to grant his application,

the Director shall give the applicant written notice of his proposal and of the conditions (if any) subject to which the Director proposes to grant his application.

(2) The Director need not give notice if he proposes to grant the application subject only to conditions which—

- (a) the applicant specified in the application; or
- (b) the Director and the applicant have subsequently agreed.

(3) The Director shall give an applicant notice of a proposal to refuse his application.

(4) The Director shall give any person carrying on a registered children's home notice of a proposal—

- (a) to cancel the registration;
- (b) to vary any condition for the time being in force with respect to the home by virtue of Part VI; or
- (c) to impose any additional condition.

(5) A notice under this paragraph shall give the Director's reasons for the proposal.

### *Right to make representations*

- 6 (1) A notice under paragraph 5 shall state that within 14 days of service of the notice any person on whom it is served may in writing

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require the Director to give him an opportunity to make representations to him concerning the matter.

(2) Where a notice has been served under paragraph 5, the Director shall not determine the matter until—

- (a) any person on whom the notice was served has made representations to him concerning the matter;
- (b) the period during which any such person could have required the Director to give him an opportunity to make representations has elapsed without the Director being required to give such an opportunity; or
- (c) the conditions specified in sub-paragraph (3) are satisfied.

(3) The conditions are—

- (a) that a person on whom the notice was served has required the Director to give him an opportunity to make representations to the Director concerning the matter;
- (b) that the Director has allowed him a reasonable period to make his representations;
- (c) that he has failed to make them within that period.

(4) The representations may be made, at the option of the person making them, either in writing or orally.

### *Decision of Director*

7 (1) If the Director decides to adopt a proposal to grant an application, the Director shall serve notice in writing of his decision on any person on whom the Director was required to serve notice.

(2) A notice under this paragraph shall be accompanied by an explanation of the right of appeal conferred by paragraph 8.

(3) A decision of the Director, other than a decision to grant an application for registration subject only to such conditions as are mentioned in paragraph 5(2) or to refuse an application for registration, shall not take effect—

- (a) if no appeal is brought, until the end of the period of 28 days referred to in paragraph 8(2); and
- (b) if an appeal is brought, until it is determined or abandoned.



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### *Appeals*

8 (1) An appeal against a decision of the Director shall be to the Minister by notice in writing.

(2) No appeal shall be brought by a person more than 28 days after service on him of notice of the decision.

(3) On an appeal the Minister may confirm, reverse or vary the decision of the Director or impose any condition the Minister thinks fit.

(4) The decision of the Minister is final.

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**THIRD SCHEDULE**

**Section 89**

CONSEQUENTIAL AMENDMENTS

**COLUMN 1**

Enactment

**COLUMN 2**

Amendment

Adoption Rules 1964  
Section 12(1)(b)

Delete "any approved society or" and substitute "the Director of Child and Family Services or any".

Section 12(1)(b) and  
First Schedule Part II  
Form 6 item 47

Delete "Protection of Children Act 1943" and substitute "Children Act 1998".

Section 29

Delete "**approved society**" in the heading and substitute "**body of persons**".

Delete "an approved society or other" and substitute "a".

Delete "society or".

Criminal Appeal Act 1952  
Section 11(2)(d)(ii)

Delete "an approved society operating a home for children under the control of the Minister responsible for Health and Social Services" and substitute "a residential home operated under the Children Act 1998".

Section 11(3)(b)

Delete "section 6(1) of the Protection of Children Act 1943" and substitute "section 19 of the Children Act 1998".

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Section 11(3)(c)	Delete "Foster Homes Act 1960, an order has been made under section 12 of that Act relating to the removal of the child to a place of safety" and substitute "Children Act 1998, an order has been made under section 63(2) relating to the removal of the child and placing him in the care of the Director".
Sections 7(5), 8(1), 11(2)(d(ii), 13(1) and 15(1)(a)	Delete "Children's Court" and substitute "Family Court".
Criminal Code Act 1907 Section 71	Delete " <b>Children's Courts</b> " in the heading and substitute " <b>Family Courts</b> ".  Delete "Children's Court" and substitute "Family Court".
Domestic Violence (Protection Orders) Act 1977 Section 2	Delete "Protection of Children Act 1943" and substitute "Children Act 1998".
Education Act 1996 Section 46	The section is repealed and the following is substituted—  <b>"Persistent truants</b> 46 (1) Where in any proceedings for an offence under section 44, it appears to a court that the child in respect of whom the proceedings are brought—  (a) is a persistent truant; and  (b) is beyond the control of the parent,

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then, whether the parent is convicted or not, the court may direct that the child be brought before the Family Court and place the child in the care of the Director of Child and Family Services until he can be brought before the Family Court.

(2) Where a child is brought before the Family Court in pursuance of subsection (1), then if it is proved that the child is a persistent truant and is beyond the control of his parent, the child shall be deemed to be suffering significant harm and the court may deal with the child in accordance with the Children Act 1998.

(3) In this section—

(a) "persistent truant" means a child who, having been enrolled as a pupil in a school, frequently and wilfully fails to attend at that school;

(b) "Family Court" means the Family Court referred to in section 13 of the Children Act 1998;

(c) "child" means a child under the age of eighteen years."

Employment of Children  
and Young Persons Act  
1963  
Section 1(1)(a)(ii) and  
Section 2(2)

Delete "Protection of Children Act 1943"  
and substitute "Children Act 1998".

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Evidence Act 1905 Second Schedule Part III	Delete the heading "Protection of Children Act 1943" and the entry thereunder and substitute:  "Children Act 1998 any offence"
Government Authorities (Fees) Act 1971 First Schedule	Delete "Residential Child Care Advisory Board established by section 2 of the Protection of Children Act 1943" and substitute "Child Care Placement Board established by section 12 of the Children Act 1998".
Government Fees Regulations 1976	Delete sub-paragraph (8) under Head 43 Public Health Act 1949.
Land Valuation and Tax Act 1967 Section 3(1)(e)	Delete section 3(1)(e) and substitute the following:  "(e)comprising a day care centre licensed under Part IX of the Children Act 1998;"
Magistrates Act 1948 Section 27(1)(c)	Delete "a Children's Court under section 12 of the Protection of Children Act 1943" and substitute "a Family Court under the Children Act 1998".
Matrimonial Causes Act 1974 Section 1(1)	Delete in the definition of "child of the family" "Foster-Homes Act 1960" and substitute "Children Act 1998".  Delete the definition of "Director of Social Services" and substitute " "the Director" means the Director of Child and Family Services;"
Section 47(1)	Delete "Foster Homes Act 1960" and substitute "Children Act 1998".

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Section 47(2)	Delete "of Social Services".
Matrimonial Proceedings (Magistrates' Courts) Act 1974	Delete in the definition of "child of the family" the words "Foster-Homes Act 1960" and substitute "Children Act 1998".
Section 1	Delete the definition of "Director of Social Services" and substitute " "the Director" means the Director of Child and Family Services".
Sections 3(1)(e), 8(1)(ii), 11(1)(d), 11(1)(e)	Delete "of Social Services" wherever it appears.
Section 4(1)	Delete "Foster-Homes Act 1960" and substitute "Children Act 1998".
Section 4(1) and (2)	Delete "of Social Services".
Mental Health 1968 Section 28	Delete " <b>of approved society</b> " in the heading.  Delete "an approved society or other person by virtue of section 8 of the Protection of Children Act 1943, that society or" and substitute "the Director of Child and Family Services or fit person, the Director or that".
Sections 34(1) and 35(4)	Delete "a Children's Court under section 8 of the Protection of Children Act 1964" and substitute "a Family Court under the Children Act 1998".
Section 34(2)	Delete "under the Protection of Children Act 1943 and substitute "or the Director of Child and Family Services under the Children Act 1998".

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Section 37	Delete "a place of safety and his detention therein" and substitute "the care of the Director of Child and Family Services".
Section 42(2)	Delete "Children's Court" and substitute "Family Court".
Second Schedule	Delete "of approved society" in the entry relating to section 28.
Misuse of Drugs Act 1972 Schedule 4	Delete paragraph 1(a)(i) and (ii) and substitute—  (i) any premises of a school or day care centre as defined by the Education Act 1996 or Part IX of the Children Act 1998;  (ii) any registered children's home or residential home under the Children Act 1998".
Public Health Act 1949 Section 167(1a)	Delete "day nurseries, nursery schools".
Rehabilitation of Offenders Act 1947 Section 5(c)	Delete section 5(c) and substitute—  "(c)in any proceedings under the Children Act 1998;".
Young Offenders Act 1950 Section 2(1)	Delete the definition of "Children's Court" and substitute the following—  "Director" means the Director of Child and Family Services;  "Family Court" has the meaning given in section 8;.

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Sections 8, 9(1) and (2), 10, 11, 12, 13(2), 14, 15(a), 16, 22, 23, 24, 28, 38(a), 77(a) and 78(3)	Delete "Children's Court" wherever it appears and substitute "Family Court".
Section 16(f)	Delete "an approved society (within the meaning of the Protection of Children Act 1943" and substitute "the Director".
Section 27	Delete the section.
Section 37	Delete "an approved society" wherever it appears and substitute "the Director".
Section 41	Delete "an approved society operating a home for children under the control of the Minister responsible for Health and Social Services" and substitute "a residential home operated under the Children Act 1998".
Section 41(c)	Delete "an approved society" and substitute "a residential home operated under the Children Act 1998.".