



BERMUDA

CHILDREN ACT 1998

1998 : 38

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Children In-Care Advisory Council

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:

[Words of enactment omitted]

PART I

INTERPRETATION AND INTRODUCTORY PROVISIONS

Citation

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

Interpretation

- 2 (1) In this Act, unless the context otherwise requires—
 - “Advisory Council Committee” means the Standing Committee of the Advisory Council established under section 12B;
 - “Board”*[Repealed by 2022 : 14 s. 2]*
 - “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 In-Care Advisory Council” and “Advisory Council” means the Council established under section 12A;
 - “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

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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—

- (a) under the inherent jurisdiction of the Supreme Court;
- (b) under Parts II, IV, IVA or IVB of this Act;
- (c) under the following enactments—
 - (i) the Matrimonial Causes Act 1974 [*title 27 item 3*];
 - (ii) the Matrimonial Proceedings (Magistrates Court) Act 1974 [*title 27 item 5*];
 - (iii) the Adoption of Children Act 2006, or any previous enactment relating to the adoption of children;
 - (iv) the Domestic Violence (Protection Orders) Act 1997 [*title 27 item 10*];
 - (v) *Deleted*

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

“Minister”, except in Part IX (Day Care), means the Minister 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 [*title 28 item 8*];

“record” includes a record stored by use of a computer;

“registered children’s home” means a children’s home registered under section 46;

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“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;

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

[Section 2 subsection 1 definition “the Minister” deleted and substituted by BR 137 / 2018 order 2 effective 23 November 2018; Section 2 subsection (1) definition “Board” deleted by 2022 : 14 s. 2 effective 17 May 2022; Section 2 subsection (1) definitions “Children In-Care Advisory Council”, “Advisory Council” and “Advisory Council Committee” inserted by 2022 : 14 s. 2 effective 17 May 2022]

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—

- (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;

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- (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;
- (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.

(2) A person who—

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- (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 the Act are to—

- (a) protect children from harm;
- (b) promote the integrity of the family;
- (c) provide protection for the rights of children amongst persons who have regular contact with children; and
- (d) ensure the welfare of children.

[Section 5 repealed and replaced by 2019 : 36 s. 34 effective 1 November 2019]

Welfare principle

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

Delay

7 (1) 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.

(2) Investigations for sexual offences, and any subsequent prosecution, relating to a child should be progressed and concluded with as little delay as possible.

[Section 7 amended by 2019 : 36 s. 35 effective 1 November 2019]

PART II

ADMINISTRATION

Responsibilities of Minister

8 (1) 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.

(2) With respect to serious personal injury offences as defined under section 329D of the Criminal Code Act 1907 where the victim or offender, or both, is a child, the Minister is responsible for promoting and supporting the coordination between the

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government departments responsible for managing, protecting, preventing and reducing the said offences under the Criminal Code Act 1907.

[Section 8 amended by 2019 : 36 s. 36 effective 1 November 2019]

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;
 - (aa) arrange for the delivery of physical and psychosocial assistance to a child—
 - (i) that may be the victim of a sexual offence as defined under section 329D of the Criminal Code Act 1907;
 - (ii) who, by his conduct, has shown a failure to control his sexual impulses and there is a likelihood of his causing injury, pain or other evil to other persons through failure in the future to control such impulses;
 - (iii) who has committed a serious personal injury offence as defined in section 329D of the Criminal Code Act 1907;
 - (ab) arrange for the investigation of any allegation or report that a child has demonstrated a pattern of repetitive behaviour he has failed to control and there is a likelihood of the child causing injury, pain or other evil to other persons through a failure to control such impulses.
 - (b) when a child is in the care of the Director—
 - (i) provide accommodation for him; and
 - (ii) maintain him,
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

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- (D) a relative, friend or other person connected with him;
- (vi) arrange for the delivery of physical and psychosocial assistance for a child that may be the victim of a serious personal injury offence defined under section 329D of the Criminal Code Act 1907, whether or not the age of that child is required to be determined;
- (c) advise the Minister on matters relating to child welfare;
- (ca) implement a public awareness campaign to boost awareness about the harm and dangers of sexual exploitation and sexual abuse of children;
- (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.

[Section 9 amended by 2019 : 36 s. 37 effective 1 November 2019]

Children's officers

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

Training of professionals involved in child sex abuse proceedings

10A Persons involved in a professional capacity in any respect with proceedings relating to sexual offences committed against children shall participate in such educational and training courses designed to improve their knowledge of issues, and ability to effectively support children who are victims of such offences.

[Section 10A inserted by 2019 : 36 s. 38 effective 1 November 2019]

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
- (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.

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National Child Safeguarding Committee

11A (1) In order to give effect to the Minister's responsibilities under this Act, the Minister shall establish a National Child Safeguarding Committee (the "Committee"), for the purpose of—

- (a) the development of a national plan of action to include making recommendations on effective mechanisms to enable the authorities in Bermuda to coordinate with each other concerning the development of policies and activities with respect to combating sexual exploitation and abuse of children;
- (b) making policy recommendations to the Minister safeguarding and the welfare of children;
- (c) coordinating activities to identify, assess and better understand Bermuda's risks in relation to sexual abuse of children, and taking the necessary steps to ensure that such risk assessments are kept up-to-date,
- (d) educating the public on, and increasing the public awareness of, the need to safeguard and promote the welfare of children;
- (e) providing an annual report on child safeguarding to the Minister, including any information and recommendations requested,
- (f) such other functions as requested by the Minister,

and the Committee shall meet as often as is necessary to carry out its duties.

(2) The members of the National Child Safeguarding Committee shall be—

- (a) the Solicitor General;
- (b) the Director of Child and Family Services;
- (c) the Director of Court Services;
- (d) the Commissioner of Police,
- (e) the Director of Public Prosecutions;
- (f) the Permanent Secretary of the Ministry responsible for Child and Family Services;
- (g) the Commissioner of Prisons;
- (h) the Commissioner of Education;
- (i) the Chief Medical Officer;
- (j) such other persons as the Minister may from time to time appoint.

(3) The Minister may appoint a person to act as alternate to any member of the Committee appointed under subsection (2).

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(4) Any Committee established under this section may regulate its own proceedings.

[Section 11A inserted by 2019 : 36 s. 39 effective 1 November 2019; Section 11A(2) deleted and substituted by BR 140 / 2022 para. 2 effective 22 December 2022]

Child Care Placement Board

12 *[Repealed by 2022 : 14 s. 3]*

[Section 12 repealed by 2022 : 14 s. 3 effective 17 May 2022]

Children In-Care Advisory Council

12A (1) There is established a Children In-Care Advisory Council, constituted in accordance with the Fourth Schedule.

(2) The Advisory Council shall be responsible for—

- (a) advising the Minister on matters relating to the social development and well-being of children in-care;
- (b) enquiring into, and reporting upon, any matter referred to it by the Minister;
- (c) informing the Minister of, and making recommendations on, matters relating to the social development and well-being of children in-care;
- (d) monitoring the progress of, and acting as an advocate for, children in-care;
- (e) promoting and protecting the rights of children in-care;
- (f) considering the effect any legislation, Government policy, programme or standard may have on children in-care and making recommendations to the Minister;
- (g) raising public awareness of, and encouraging community interest in, issues affecting children in-care.

(3) The Advisory Council shall, as soon as practicable and in any case within six months after the end of each year, prepare a report on the state of children in-care and on the carrying out of its responsibilities under this Act during that year, and such report shall be laid by the Minister before both Houses of the Legislature.

(4) Fees shall be paid to members of the Advisory Council in accordance with the Government Authorities (Fees) Act 1971.

(5) In this section and in section 12B—

“children in-care” means children in respect of whom a care order has been made under section 25 or an interim care order has been made under section 32;

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“matters relating to social development and well-being” includes matters relating to education, culture, religion, extra-curricular activities, and safety.

[Section 12A inserted by 2022 : 14 s. 4 effective 17 May 2022]

Advisory Council Committee

12B (1) There is established a Standing Committee of the Children In-Care Advisory Council under the name “Advisory Council Committee” constituted in accordance with subsection (2).

(2) The members of the Committee shall be appointed by the Chairman of the Advisory Council, and shall consist of—

- (a) the Chairman, who shall be a member of the Advisory Council; and
- (b) two other members of the Advisory Council, appointed from time to time as the Chairman considers appropriate.

(3) It shall be the responsibility of the Committee to provide for children in-care who are capable of forming their own views to be heard on matters relating to their social development and well-being, by way of a forum held from time to time as the Committee considers appropriate.

(4) A forum shall consist of not less than two Committee members and not less than two children in-care.

(5) The Committee shall, in the performance of its responsibilities under this section be guided by such policies and procedures that have been adopted by the Advisory Council in respect of the Committee.

(6) The Committee shall submit reports to the Advisory Council on such matters and at such times as may be specified by the Chairman of the Advisory Council.

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

[Section 12B inserted by 2022 : 14 s. 4 effective 17 May 2022]

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 [*title 8 item 15*], 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.

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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 [*title 8 item 87*] as though the order appealed against were an order made on a conviction by a court of summary jurisdiction.

PART IIA

STATUS OF CHILDREN

EQUAL STATUS OF CHILDREN

Abolition of distinction between legitimate and illegitimate children

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

(2) Where an adoption order has been made under the Adoption of Children Act 2006 or any previous enactment relating to the adoption of children or the law of any other jurisdiction, the child is in law the child of the adopting parents as if they were the natural parents.

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

(4) Any distinction between the status of a child born inside marriage and a child born outside marriage is abolished and the relationship of parent and child and kindred relationship flowing from that relationship shall be determined in accordance with this section.

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

[Section 18A inserted by 2002:36 s.3 effective 19 January 2004; subsection (2) amended by 2011 : 17 s. 11(b) effective 4 November 2013]

Rule of construction

18B (1) Subject to subsection (3), for the purpose of construing an instrument or statutory provision, a reference to a person or group or class of persons described in terms of relationship to another person by blood or marriage shall be construed to refer to and include a person who comes within the description by reason of the relationship of parent and child as determined under section 18A.

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

(3) Section 18A shall not apply to a trust instrument made under the Trusts (Special Provisions) Act 1989 in the case where the trust instrument expressly states a contrary intention to section 18A, as provided under section 1A(2) of that Act.

[Section 18B inserted by 2002 : 36 s. 3 effective 19 January 2004; Section 18B subsection (1) amended and subsection (3) inserted by 2020 : 44 s. 3 effective 5 August 2020;]

Application

18C This Part applies to—

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

(b) any instrument made on or after the day this Part comes into operation,

but does not affect—

(c) any instrument made before this Part comes into operation; and

(d) a disposition of property made before this Part comes into operation.

[Section 18C inserted by 2002:36 s.3 effective 19 January 2004]

Purpose

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

[Section 18D inserted by 2002:36 s.3 effective 19 January 2004]

ESTABLISHMENT OF PARENTAGE

Declaration of parentage

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

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

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

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

[Section 18E inserted by 2002:36 s.3 effective 19 January 2004]

Declaration of paternity where no presumption

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

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

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

[Section 18F inserted by 2002:36 s.3 effective 19 January 2004]

Reopening issue on new evidence

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

[Section 18G inserted by 2002:36 s.3 effective 19 January 2004]

Admissibility in evidence of acknowledgment against interest

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

[Section 18H inserted by 2002:36 s.3 effective 19 January 2004]

Presumption of paternity

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

- (a) the person is married to the mother of the child at the time of the birth of the child;

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

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

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

[Section 18I inserted by 2002:36 s.3 effective 19 January 2004]

Blood tests

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

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

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

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

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

- (a) where the person is a minor of the age of sixteen years or more, if the minor consents;

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

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

[Section 18J inserted by 2002:36 s.3 effective 19 January 2004]

Regulations for blood tests

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

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

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

[Section 18K inserted by 2002:36 s.3 effective 19 January 2004]

Filing of court decisions respecting parentage

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

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

[Section 18L inserted by 2002:36 s.3 effective 19 January 2004]

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Amendment of register

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

[Section 18M inserted by 2002:36 s.3 effective 19 January 2004]

RECOGNITION OF OVERSEAS DETERMINATION OF PARENTAGE

Interpretation

18N In sections 18O to 18S—

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

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

[Section 18N inserted by 2002:36 s.3 effective 19 January 2004]

Recognition of orders made outside Bermuda

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

- (a) at the time the proceeding was commenced or the order was made, either parent was domiciled—
 - (i) in the territorial jurisdiction of the court making the order, or
 - (ii) in a territorial jurisdiction in which the order is recognized;
- (b) the court that made the order would have had jurisdiction to do so under the rules that are applicable in Bermuda;
- (c) the child was habitually resident in the territorial jurisdiction of the court making the order at the time the proceeding was commenced or the order was made; or
- (d) the child or either parent had a real and substantial connection with the territorial jurisdiction in which the order was made at the time the proceeding was commenced or the order was made.

[Section 18O inserted by 2002:36 s.3 effective 19 January 2004]

Exceptions

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

- (a) new evidence that was not available at the hearing becomes available; or

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- (b) the court is satisfied that the overseas declaratory order was obtained by fraud or duress.

[Section 18P inserted by 2002:36 s.3 effective 19 January 2004]

Filing with Registrar-General

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

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

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

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

[Section 18Q inserted by 2002:36 s.3 effective 19 January 2004]

Findings of parentage outside Bermuda

18R An overseas finding of parentage that is made outside Bermuda by a court that has jurisdiction to determine the matter in which the finding was made as determined by the conflict of laws rules of Bermuda shall be recognized and have the same effect as if made in Bermuda under the same circumstances.

[Section 18R inserted by 2002:36 s.3 effective 19 January 2004]

Application

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

[Section 18S inserted by 2002:36 s.3 effective 19 January 2004]

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

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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
- (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.

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Investigations or prosecution of sexual offences where the victim or complainant withdraws statement

20A Investigations or prosecution of sexual offences where the victim or complainant is a child, shall not be dependent upon the report or accusation made by the victim or complainant, and that the investigations or proceedings that have been commenced may continue even if the victim at any time after the commencement thereof, decides to withdraw his statement or complaint.

[Section 20A inserted by 2019 : 36 s. 40 effective 1 November 2019]

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
- (b) that person is convicted of a serious personal injury offence against a child as defined in section 329D of the Criminal Code Act 1907.

[Section 21 subsection (2)(b) repealed and replaced by 2019 : 36 s. 41 effective 1 November 2019]

Persons disqualified from working with children

21A (1) A person whose name appears in the Register shall not seek employment as, or be employed in one of the professions listed under section 20(2).

(2) A person whose name appears in the Register shall not carry on, or be otherwise concerned in the management of, or have any financial interest in, an institution that cares for children.

(3) A person who engages in a profession listed under section 20(2) shall not knowingly employ a person whose name appears in the Register.

(4) A person who contravenes subsection (1), (2) or (3), is guilty of an offence and on summary conviction is liable to a fine not exceeding \$10,000, or to imprisonment for a term not exceeding three years, or to both such fine and imprisonment.

[Section 21A inserted by 2019 : 36 s. 42 effective 1 November 2019]

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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,
- (c) an employer who is considering employing a person in one of the professions listed under section 20(2),

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 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.

[Section 23 subsection (4)(c) inserted by 2019 : 36 s. 43 effective 1 November 2019]

**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
- (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

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(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;
- (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—

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- (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;
- (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—

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- (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.

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

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(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
 - (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;

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- (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—

- (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.

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(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.

(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

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- (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,

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;

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- (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;
 - (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;
 - (ff) under Part IVA (custody jurisdiction and access);
 - (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.

[Section 35 subsection (6)(ff) added by 2002:36 s.4 effective 19 January 2004]

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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.

(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 IVA

CUSTODY JURISDICTION AND ACCESS

INTERPRETATION

Definitions

36A In this Part—

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

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

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

[Section 36A inserted by 2002:36 s.5 effective 19 January 2004]

Purposes

36B The purposes of this Part are—

- (a) to ensure that applications to the court in respect of custody of, incidents of custody of and access to, children will be determined on the basis of the welfare of the children;
- (b) to recognize that the concurrent exercise of jurisdiction by judicial tribunals of more than one state or territory in respect of the custody of the same child ought to be avoided, and to make provision so that the courts of Bermuda will, unless there are exceptional circumstances, refrain from exercising or decline jurisdiction in cases where it is more appropriate for the matter to be determined by a tribunal having

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jurisdiction in another place with which the child has a closer connection; and

- (c) to provide for the more effective enforcement of custody and access orders and for the recognition and enforcement of custody and access orders made outside Bermuda.

[Section 36B inserted by 2002:36 s.5 effective 19 January 2004]

CUSTODY AND ACCESS

Persons entitled to custody

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

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

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

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

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

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

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

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

[Section 36C inserted by 2002:36 s.5 effective 19 January 2004]

Application for order

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

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

[Section 36D inserted by 2002:36 s.5 effective 19 January 2004]

Assessment

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

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

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

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

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

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

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

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

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

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

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

(12) The appointment of a person under subsection (1) does not prevent the parties or counsel representing the child from submitting other expert evidence as to the

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needs of the child and the ability and willingness of the parties or any of them to satisfy the needs of the child.

[Section 36E inserted by 2002:36 s.5 effective 19 January 2004]

Powers of court

- 36F (1) The court to which an application is made under section 36D—
- (a) by order may grant the custody of or access to the child to one or more persons;
 - (b) by order may determine any aspect of the incidents of the right to custody or access; and
 - (c) may make such additional order as the court considers necessary and proper in the circumstances.
- (2) Where the court is satisfied that a parent has failed to comply with an order granting access to the other parent, the court may—
- (a) impose conditions on the order to ensure that access is enjoyed;
 - (b) require the parents to submit to mediation of the matters in dispute by a children's officer or other person appointed by the court; or
 - (c) require that rights of access conferred by the order be monitored or supervised by a children's officer.
- (3) The court may vary an order where there has been a material change in circumstances that affects or is likely to affect the welfare of the child or where the court is satisfied that a parent has abused a right of custody or access conferred by an order.

[Section 36F inserted by 2002:36 s.5 effective 19 January 2004]

Effect of divorce proceedings

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

[Section 36G inserted by 2002:36 s.5 effective 19 January 2004; Section 36G amended by 2022 : 4 s. 35 effective 13 March 2023]

PARENTING

Co-Parenting Mediation Council

- 36GA (1) There is established the Co-Parenting Mediation Council to provide regulatory oversight for co-parenting mediation for the purpose of facilitating in disputes over custody of or access to a child.
- (2) The Co-Parenting Mediation Council shall comprise seven members, of which at least two members shall be male and at least two shall be female, as appointed by the Minister as follows—

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- (a) two members who are public officers, one of whom shall be a mediation coordinator with the Department of Child and Family Services;
 - (b) four members representing mediators in the private sector; and
 - (c) one member representing the Bar Council.
- (3) The Minister shall—
- (a) appoint the Chairman of the Co-Parenting Mediation Council from amongst the members appointed under subsection (2); and
 - (b) appoint the Chairman and members of the Co-Parenting Mediation Council for such period as the Minister may specify in the instrument of appointment.
- (4) Without prejudice to the generality of subsection (1), the functions of the Co-Parenting Mediation Council are to—
- (a) develop and maintain common standards and regulations for co-parenting mediation;
 - (b) establish and maintain a Co-Parenting Mediation Code of Practice;
 - (c) ensure mediators adhere to the Co-Parenting Mediation Code of Practice;
 - (d) receive and review applications by, and interview, mediators who seek to become approved co-parenting mediators;
 - (e) establish and maintain a register of approved co-parenting mediators;
 - (f) register approved co-parenting mediators and issue annual practising certificates to approved co-parenting mediators;
 - (g) provide guidance and direction to persons who wish to qualify as co-parenting mediators;
 - (h) arrange, with the consent of the parents undergoing mediation, for a qualified mediator to observe the mediation sessions for quality control purposes by means of video recording, observation areas or other methods approved by the Council;
 - (i) undertake reviews and client surveys of co-parenting mediation practice in Bermuda;
 - (j) establish and maintain a complaint procedure and disciplinary procedure with respect to co-parenting mediators who are not in compliance with the standards of the Co-Parenting Mediation Council when offering mediation services;
 - (k) review comments and issues that arise on the practice of co-parenting mediation presented by the mediation coordinator, and decide on the required action;

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- (l) prepare and present an annual report to the Minister on co-parenting mediation in Bermuda.
- (5) The mediation coordinator shall, for the purposes of the Co-Parenting Mediation Council, have the following responsibilities—
 - (a) to provide information on co-parenting mediation and the applicable process to parents who are considering the option to mediate;
 - (b) to keep statistics on how many parents select mediation as an option when it is offered by the court, and the outcome of the mediation sessions undertaken;
 - (c) to keep statistics on how many parents apply for legal aid and the outcome of such applications as well as that of the mediation sessions undertaken;
 - (d) to receive written complaints from parents against registered co-parenting mediators and present them to the Council for review in accordance with the disciplinary procedure set in the Regulations made under section 36GB(3); and
 - (e) if requested by the Council, to monitor selected mediation sessions to observe the conduct of the mediator for the purpose of maintaining the quality and operational standards set by the Council.
- (6) The provisions of the Fourth Schedule shall have effect with respect to the Council.

[Section 36GA inserted by 2014 : 30 s. 7 effective 27 July 2015; subsection (2) repealed and substituted by 2015 : 47 s. 2 effective 23 December 2015]

PROCEDURE

Application

- 36H (1) An application under this Part may be made in the same proceeding and in the same manner as a complaint under the Matrimonial Proceedings (Magistrates' Courts) Act 1974 or in another proceeding.
- (2) An application under this Part may be an original application or for the variation of an order previously given or to supersede an order of an overseas tribunal.
- (3) The parties to an application under this Part in respect of a child shall include—
 - (a) the mother and the father of the child;
 - (b) a person who has demonstrated a settled intention to treat the child as a child of his or her family;
 - (c) a person who had the actual care and upbringing of the child immediately before the application; and

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(d) any other person whose presence as a party is necessary to determine the matters in issue.

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

[Section 36H inserted by 2002:36 s.5 effective 19 January 2004]

Evidence of child

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

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

[Section 36I inserted by 2002:36 s.5 effective 19 January 2004]

Closed hearings

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

[Section 36J inserted by 2002:36 s.5 effective 19 January 2004]

Consent orders

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

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

[Section 36K inserted by 2002:36 s.5 effective 19 January 2004]

JURISDICTION

Jurisdiction

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

- (a) the child is habitually resident in Bermuda at the commencement of the application for the order; or
- (b) although the child is not habitually resident in Bermuda, the court is satisfied—

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- (i) that the child is physically present in Bermuda at the commencement of the application for the order,
 - (ii) that substantial evidence concerning the welfare of the child is available in Bermuda,
 - (iii) that no application for custody of or access to the child is pending before an overseas tribunal in another place where the child is habitually resident,
 - (iv) that no overseas order in respect of custody of or access to the child has been recognized by a court in Bermuda,
 - (v) that the child has a real and substantial connection with Bermuda, and
 - (vi) that, on the balance of convenience, it is appropriate for jurisdiction to be exercised in Bermuda.
- (2) A child is habitually resident in the place where he resided—
- (a) with both parents;
 - (b) where the parents are living separate and apart, with one parent under a separation agreement or with the consent or implied consent of the other or under a court order; or
 - (c) with a person other than a parent on a permanent basis for a significant period of time,

whichever last occurred.

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

[Section 36L inserted by 2002:36 s.5 effective 19 January 2004]

Serious harm to child

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

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

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(iii) the child is removed from Bermuda.

[Section 36M inserted by 2002:36 s.5 effective 19 January 2004]

Declining jurisdiction

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

[Section 36N inserted by 2002:36 s.5 effective 19 January 2004]

OVERSEAS ORDERS

Interim powers of court

36O Upon application, a court—

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

may do any one or more of the following—

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

[Section 36O inserted by 2002:36 s.5 effective 19 January 2004]

Enforcement of overseas orders

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

- (a) the respondent was not given reasonable notice of the commencement of the proceeding in which the order was made;
- (b) the respondent was not given an opportunity to be heard by the overseas tribunal before the order was made;

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- (c) the law of the place in which the order was made did not require the tribunal to have regard to the welfare or best interests of the child;
- (d) the order of the overseas tribunal is contrary to public policy in Bermuda; or
- (e) in accordance with section 36L, the overseas tribunal would not have jurisdiction if it were a court in Bermuda.

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

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

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

[Section 36P inserted by 2002:36 s.5 effective 19 January 2004]

Superseding order, material change in circumstances

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

- (a) the child is habitually resident in Bermuda at the commencement of the application for the order; or
- (b) although the child is not habitually resident in Bermuda, the court is satisfied that—
 - (i) the child is physically present in Bermuda at the commencement of the application for the order,
 - (ii) the child no longer has a real and substantial connection with the place where the overseas order was made,
 - (iii) substantial evidence concerning the welfare of the child is available in Bermuda,
 - (iv) the child has a real and substantial connection with Bermuda, and
 - (v) on the balance of convenience, it is appropriate for jurisdiction to be exercised in Bermuda.

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

[Section 36Q inserted by 2002:36 s.5 effective 19 January 2004]

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Superseding order, serious harm

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

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

[Section 36R inserted by 2002:36 s.5 effective 19 January 2004]

ENFORCEMENT

Order restraining harassment

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

[Section 36S inserted by 2002:36 s.5 effective 19 January 2004]

Order where child unlawfully withheld

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

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

- (a) any person is unlawfully withholding a child from a person entitled to custody of or access to the child;
- (b) a person who is prohibited by court order or separation agreement from removing a child from Bermuda proposes to remove the child or have the child removed from Bermuda; or
- (c) a person who is entitled to access to a child proposes to remove the child or to have the child removed from Bermuda and that the child is not likely to return,

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

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

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

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

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

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

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

[Section 36T inserted by 2002:36 s.5 effective 19 January 2004]

Application to prevent unlawful removal of child

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

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

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

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

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

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

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

[Section 36U inserted by 2002:36 s.5 effective 19 January 2004]

Further evidence

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

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

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

[Section 36V inserted by 2002:36 s.5 effective 19 January 2004]

Referral to court

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

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

[Section 36W inserted by 2002:36 s.5 effective 19 January 2004]

Information as to address

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

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- (a) bringing an application in respect of custody or access; or
- (b) the enforcement of an order for custody or access,

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

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

[Section 36X inserted by 2002:36 s.5 effective 19 January 2004]

Court may take notice of foreign law

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

[Section 36Y inserted by 2002:36 s.5 effective 19 January 2004]

APPLICATION TO CHILDREN IN CARE OF DIRECTOR

Application

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

[Section 36Z inserted by 2002:36 s.5 effective 19 January 2004]

PART IVB

SUPPORT OBLIGATIONS

Definitions

36.1A In this Part—

“clerk” means the clerk of the court;

“court” means the Family Court;

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

[Section 36.1A inserted by 2002:36 s.5 effective 19 January 2004]

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Obligation of parent to support child

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

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

[Section 36.1B inserted by 2002:36 s.5 effective 19 January 2004]

Order for support

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

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

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

- (a) recognize that the parents have a joint financial responsibility to maintain the child; and
- (b) apportion that obligation between the parents according to their relative abilities to contribute to the performance of their obligations.

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

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

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

[Section 36.1C inserted by 2002:36 s.5 effective 19 January 2004]

Powers of court

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

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

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

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

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

[Section 36.1D inserted by 2002:36 s.5 effective 19 January 2004]

Variation of order

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

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

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

[Section 36.1E inserted by 2002:36 s.5 effective 19 January 2004]

Financial statement

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

[Section 36.1F inserted by 2002:36 s.5 effective 19 January 2004]

Parental agreement for support

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

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

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

[Section 36.1G inserted by 2002:36 s.5 effective 19 January 2004]

Order for return by employer

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

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

[Section 36.1H inserted by 2002:36 s.5 effective 19 January 2004]

Order restraining harassment

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

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

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

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

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

[Section 36.1I inserted by 2002:36 s.5 effective 19 January 2004]

Application for custody

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

[Section 36.1J inserted by 2002:36 s.5 effective 19 January 2004]

Administration of payments

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

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

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

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

[Section 36.1K inserted by 2002:36 s.5 effective 19 January 2004]

Enforcement

36.1L (1) Where any person who has been ordered to make a payment under the Part fails without reasonable cause to comply with the order, the court may, after giving the person an opportunity to be heard, do one or more of the following—

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

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

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

[Section 36.1L inserted by 2002:36 s.5 effective 19 January 2004]

Saving of other Acts relating to support and maintenance

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

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

[Section 36.1M inserted by 2002:36 s.5 effective 19 January 2004]

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—

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- (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—
- (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.

(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—

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- (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—
- (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

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- (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.

(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.

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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.

(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.

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(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.

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.

(3A) For the avoidance of doubt, access to the child under subsection (3) includes access to the child at a place required to conduct the enquiry, including—

- (a) any school, tutorial site, or other educational facility referred to in the Education Act 1996;
- (b) any place providing extracurricular, social or community activities.

(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) Notwithstanding subsection (8), 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 may 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).

(8) Where the Director or a person authorized by him to act on his behalf makes an enquiry under this section and imposes a requirement on any person to—

- (a) grant access to the child;

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- (b) assist him with the enquiries (in particular by providing relevant information and advice);
- (c) provide facilities to conduct the enquiry;
- (d) not be present during the enquiry;
- (e) refrain, in any way, from obstructing the enquiry, including refraining from informing any person that an enquiry will be, is being, or has been conducted,

it shall be the duty of that person to comply with the requirement.

[Section 42 amended by 2019 : 55 s. 2 effective 30 December 2019]

Offence

42A Any person who fails, without reasonable excuse, to comply with a requirement imposed by the Director under section 42(8) shall be guilty of an offence and liable on summary conviction to a fine not exceeding \$3,000.

[Section 42A inserted by 2019 : 55 s. 3 effective 30 December 2019]

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.

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(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.

(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—

- (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.

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(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.

(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—

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- (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.

(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

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(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

(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.

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(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 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.

(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.

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(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 [*title 10 item 33*]; 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 [*title 10 item 33*]) 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;

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“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
- (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.

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(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—

- (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;

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- (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 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).

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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—

- (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 [*title 17 item 50*] 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;
- (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;

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- (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—
- (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.

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(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 Environmental Health Officer” *[Deleted by CRLA 1989 s. 11(h) correction to 2018 : 66 Schedule paragraph 4(a)]*;

“Chief Medical Officer” *[Deleted by 2018 : 66 s. 2]*;

“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,

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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 to not more than three children for reward at such premises, including the place of residence of such person, as may be approved by the Director of the Department of Health;

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

“licence” means a licence issued by the Director of the Department of Health authorizing the holder of a licence to operate a day care centre;

“Minister” means the Minister responsible for health;

“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.

[Section 65 definition “Minister” inserted by BR 137 / 2018 order 2 effective 23 November 2018; Section 65 definition “Chief Medical Officer” deleted by 2018 : 66 s. 2 effective 10 January 2019; Section 65 definitions “day care provider” and “licence” amended by 2018 : 66 s. 2 effective 10 January 2019 and further corrected by CRLA 1989 s. 11(h) to change “Chief Environmental Health Officer” to “Director of the Department of Health”]

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 [*title 12 item 1*];
- (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 Director of the Department of Health shall administer this Part and shall ensure that—

- (a) the operator and staff of day care centres are properly qualified;

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- (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;
- (c) the premises used by the day care provider are safe, and that any equipment is of good quality and appropriate to the needs of the children.

[Section 67 paragraph (c) inserted by 2010 : 59 s. 3 effective 22 December 2010; Section 67 amended by 2018 : 66 s. 2 effective 10 January 2019]

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 to operate a day care centre.

(3) The Director of the Department of Health may issue 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 Director of the Department of Health 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 Director of the Department of Health may specify in the licence.

(6) The Director of the Department of Health 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 Director of the Department of Health 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 terms and conditions or restrictions 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.

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(8) A licence is not transferable.

[Section 68 amended by 2010 : 59 s. 4 effective 22 December 2010; Section 68 amended by 2018 : 66 s. 2 effective 10 January 2019]

Renewal of licence

69 (1) A person seeking renewal of a licence shall apply to the Director of the Department of Health in the prescribed form at least 30 days before the date of the expiration of the licence, setting out any alteration in the information given in the original application.

(2) The Director of the Department of Health, if satisfied that—

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

shall renew the licence.

[Section 69 amended by 2010 : 59 s. 5 effective 22 December 2010; Section 69 amended by 2018 : 66 s. 2 effective 10 January 2019]

Cancellation, suspension or refusal of licence

70 (1) The Director of the Department of Health, 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.

(2) The Director of the Department of Health, 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 Director of the Department of Health to the Minister under section 78.

[Section 70 amended by 2018 : 66 s. 2 effective 10 January 2019]

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 Director of the Department of Health plans of the alteration or addition and receiving the approval of the Director of the Department of Health.

[Section 71 amended by 2018 : 66 s. 2 effective 10 January 2019]

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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; and the Minister may, where fire safety is concerned, request a Fire Inspector appointed by the Chief Fire Officer under section 28(1) of the Fire Safety Act 2014 to act as an inspector for the purposes of this Part.

(2) Inspectors shall inspect day care facilities in respect of which an application for a licence is made, and shall make periodic inspections of 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.

[Section 73 subsection (2) repealed and replaced by 2010 : 59 s. 6 effective 22 December 2010; Section 73 amended by 2014 : 33 s. 55 effective 1 January 2018]

Order for closure or to comply with decision of the Director of the Department of Health

74 (1) The Minister may issue an order to an operator of a day care centre directing him to cease to operate the day care centre, or to otherwise comply with a decision of the Director of the Department of Health, within such time as may be specified in the order.

(2) Where an order under subsection (1) has been issued directing a day care operator to cease to operate a day care centre, the Minister shall give the reasons for his decision and, if he deems necessary, cause any inspection, enquiries, or investigations to be undertaken and reported on, and to give such directions as he considers appropriate.

(3) The Minister may inform the public of an order issued under subsection (1) in such manner as he considers appropriate.

(4) An operator of a day care centre who is aggrieved by an order issued 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.

[Section 74 repealed and replaced by 2010 : 59 s. 7 effective 22 December 2010; Section 74 amended by 2018 : 66 s. 2 effective 10 January 2019]

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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 Director of the Department of Health such records, returns and reports as the Director of the Department of Health requests in such form and manner and within such time as the Director of the Department of Health may require.

[Section 75 amended by 2018 : 66 s. 2 effective 10 January 2019]

Day care providers

76 (1) The Director of the Department of Health 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 Director of the Department of Health in the prescribed form and manner.

(4) The Director of the Department of Health 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 Director of the Department of Health 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 one year from the date of registration or at such other time as the Director of the Department of Health may specify in the certificate.

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(6A) The Director of the Department of Health may issue a provisional certificate for a period not exceeding six months and shall, during the provisional period, monitor the day care provided by the day care provider.

(6B) Section 68(7) applies, with the necessary changes, to a certificate issued to a day care provider.

(6C) Section 69 applies to a person seeking renewal of registration, except that the Director of the Department of Health shall renew the registration if he is satisfied that the requirements of subsection (4) of this section are met.

(7) The Director of the Department of Health, after giving the applicant or a person who is registered an opportunity to be heard, may cancel, suspend, refuse to register or refuse to renew a registration where he is satisfied that the applicant or the registered person has violated any provision of this Act or the regulations or has not complied with any term, condition or restriction attached to the registration or is not a fit and proper person to be registered.

(8) Section 70(2) applies, with the necessary changes, to a cancellation, suspension, refusal to register or refusal to renew a registration.

[Section 76 amended by 2010 : 59 s. 8 effective 22 December 2010; Section 76 amended by 2018 : 66 s. 2 effective 10 January 2019]

Inspection and power of entry

76A Section 73 applies, with the necessary changes, to the inspection and power of entry of the premises used by a day care provider.

[Section 76A inserted by 2010 : 59 s. 9 effective 22 December 2010]

Order to cease providing day care

76B (1) The Minister may issue an order to a day care provider directing him to cease providing day care or to otherwise comply with a decision of the Director of the Department of Health within such time as may be specified in the order.

(2) Section 74(2), (3) and (4) apply, with the necessary changes, to an order issued by the Minister under subsection (1) of this section.

[Section 76B inserted by 2010 : 59 s. 9 effective 22 December 2010; Section 76B amended by 2018 : 66 s. 2 effective 10 January 2019]

Records, returns and reports

76C Section 75 applies, with the necessary changes, to the maintaining and furnishing of records, reports and returns by a day care provider.

[Section 76C inserted by 2010 : 59 s. 9 effective 22 December 2010]

Offences

77 Any person who—

- (a) fails to comply with any provision of this Part or the regulations;

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- (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 76B; 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.

[Section 77 amended by 2010 : 59 s. 10 effective 22 December 2010]

Appeals

78 (1) A person aggrieved by any decision of the Director of the Department of Health under section 68, 69, 70 or 76 may, within 21 days of being 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 Director of the Department of Health and the aggrieved person.

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

[Section 78 subsection (2) repealed and replaced by 2010 : 59 s. 11 effective 22 December 2010; Section 78 amended by 2018 : 66 s. 2 effective 10 January 2019]

Regulations

- 79 (1) For the purposes of this Part, 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 registration;
 - (d) prescribing the manner in which a licence or a certificate of registration 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;

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- (j) providing for administrative matters, including records to be kept, reporting and insurance;
- (k) providing for monitoring the operation of day care centres, the day care provided by day care providers, 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 Part.

(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.

[Section 79 subsection (1) amended by 2010 : 59 s. 12 effective 22 December 2010]

Revocation and transitional

80 *[Omitted]*

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.

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—

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- (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 or 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.

(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

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(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 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

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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 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 *[Omitted]*

Repeals

88 *[Omitted]*

Consequential amendments

89 *[Omitted]*

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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.

FIRST SCHEDULE SECTION 29
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;
- (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.

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(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
 - (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,

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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—

- (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.

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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
- (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.

SECOND SCHEDULE SECTION 46

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—

(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 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—

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- (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.

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.

THIRD SCHEDULE SECTION 89
CONSEQUENTIAL AMENDMENTS

[Omitted]

FOURTH SCHEDULE

(section 12A(1))

CHILDREN IN-CARE ADVISORY COUNCIL

1. The Minister shall appoint, in writing, members to the Advisory Council as follows—

- (a) a Chairman and a Deputy Chairman;
- (b) a person who is a registered pediatrician or a registered family physician;
- (c) a person who is a registered psychologist or a registered psychiatrist;
- (d) a person who is a former child in-care;
- (e) a person qualified by training and experience in the field of education;
- (f) a person whom the Minister considers to be qualified by training or experience, or both, to assist the Advisory Council in matters of a legal or ethical nature; and
- (g) at least one and not more than two other persons as the Minister considers appropriate.

2. The Director of Child and Family Services and up to three other public officers of the Department of Child and Family Services, designated by the Director, shall be ex-officio members of the Advisory Council but shall not be entitled to vote.

3. When making appointments to the Advisory Council, the Minister shall ensure that the members include at least two men and at least two women.

4. Every member of the Advisory Council 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 Advisory Council, the appointments shall be staggered to establish a rotation.

5. The Advisory Council may act notwithstanding any vacancy in its membership, and no act or decision of the Advisory Council shall be deemed to be invalid only by reason of a defect in the appointment of a member thereof.

6. The quorum of the Advisory Council shall be not less than one-half of the total number of members of the Council.

7. The Minister may declare the office of a member of the Advisory Council vacant if he is satisfied that the member—

- (a) is unable through mental or physical incapacity or absence from Bermuda to perform the functions of his office;

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- (b) has failed, without adequate cause, to attend three successive meetings of the Council;
- (c) has been convicted of a criminal offence.

8. A member of the Advisory Council whose term has expired may be re-appointed.

9. A member of the Advisory Council may resign his membership by notice in writing to the Minister.

10. Subject to this Schedule, the Advisory Council may regulate its own procedure.

[Fourth Schedule inserted by 2022 : 14 s. 5 effective 17 May 2022]

[Assent Date: 17 July 1998]

[Amended by:

2002 : 36
2010 : 59
2011 : 17
2014 : 30
2015 : 47
2014 : 33
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2018 : 66
2019 : 36
2019 : 55
2020 : 44
2022 : 14
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2022 : 4]