

CAYMAN ISLANDS



Supplement No. 2 published with Extraordinary Gazette No.
20 dated Tuesday, 19th December, 1995.

M

THE CHILDREN LAW, 1995
(LAW 9 OF 1995)

CAYMAN ISLANDS

**THE CHILDREN LAW, 1995
ARRANGEMENT OF CLAUSES**

PART I

INTRODUCTORY

1. Short title and commencement.
2. Interpretation.
3. Welfare of the child.
4. Parental responsibility for children.
5. Meaning of parental responsibility.
6. Guardians.
7. Welfare reports.

PART II

**ORDERS WITH RESPECT TO CHILDREN IN FAMILY
PROCEEDINGS**

General

8. Residence, contact and other orders with respect to children.
9. Restrictions on making section 8 orders.
10. Power of court to make section 8 orders.
11. General principles and supplementary provisions.
12. Residence orders and parental responsibility.
13. Change of child's name or removal from jurisdiction.
14. Enforcement of residence orders.

Financial relief

15. Orders for financial relief with respect to children.

Family assistance orders

16. Family assistance orders.

PART III

SOCIAL SERVICES SUPPORT FOR CHILDREN AND FAMILIES

Provision of services for children and their families

17. Provision of services for children in need, their families and others.
18. Day care for pre-school and other children.
19. Review of provision for day care.

Provision of accommodation for children

20. Provision of accommodation for children: general.
21. Provision of accommodation for children on remand etc.

Duties of social services in relation to children they look after

22. General duty of social services in relation to children they look after.
23. Provision of accommodation and maintenance by social services for children whom they are looking after.

Advice and assistance for certain children

24. Advice and assistance for certain children.

Secure accommodation

25. Use of accommodation for restricting liberty.

Supplemental

26. Review of cases.
27. inquiries into representations.
28. Co-operation and consultation.
29. Recoupment of cost of providing services etc.
30. Miscellaneous.

PART IV

CARE AND SUPERVISION

General

31. Care and supervision orders.
32. Period within which application for order under this Part must be disposed of.

Care orders

33. Effect of care order.
34. Parental contact etc. with children in care.

Supervision orders

35. Supervision orders.
36. Education supervision orders.

Powers of court

37. Powers of court in certain family proceedings.
38. Interim orders.
39. Discharge and variation etc. of care orders and supervision orders.
40. Orders pending appeals in cases about care or supervision orders.

Guardians ad litem

41. Representation of child and of his interests in certain proceedings.
42. Right of guardian ad litem to have access to social services records.

PART V

PROTECTION OF CHILDREN

43. Orders for emergency protection of children.
44. Directions of the court in relation to emergency protection orders.
45. Duration of emergency protection orders.
46. Provisions supplemental to emergency protection orders.
47. Duty of social services to investigate.
48. Powers to assist in discovery of children who may be in need of emergency protection.
49. Abduction of children in care etc.
50. Recovery of abducted children.
51. Refuges for children at risk.

PART VI

CHILDREN'S HOMES AND VOLUNTARY ORGANISATIONS

58. Regulations.

PART VII

CHILD MINDING AND DAY CARE FOR YOUNG CHILDREN

59. Registration.
60. Requirements to be complied with by child minders.
61. Requirements to be complied with by persons providing day care for young children.
62. Cancellation of registration.
63. Protection of children in an emergency.
64. Inspection.
65. Appeals.

66. Offences.

PART VIII

MISCELLANEOUS AND GENERAL

Research and returns of information

67. Research.

68. Returns of information.

Effect and duration of orders etc.

69. Effect and duration of orders etc.

Procedure etc.

- 70. Attendance of child at hearing under Part IV or V.
- 71. Evidence given by, or with respect to, children.
- 72. Privacy for children involved in certain proceedings.
- 73. Self-Incrimination.
- 74. Restrictions on use of wardship jurisdiction.

Search warrants

75. Power of constable to assist in exercise of certain powers to search for children or inspect premises.

General

- 76. Offences by bodies corporate.
- 77. Regulations and orders.
- 78. Financial provisions.
- 79. Notices.
- 80. Amendments, transitional provisions, savings and repeals.

SCHEDULES

- Schedule 1 - Financial provision for children.
- Schedule 2 - Social Services support for children and families.
- Schedule 3 - Supervision orders.
- Schedule 4 - Registered children's homes.
- Schedule 5 - Child minding and day care for young children.
- Schedule 6 - Amendments, transitional provisions, savings and repeals.

James M Ryan
Acting Governor

13th October, 1995

**A LAW TO REFORM THE LAW RELATING TO
CHILDREN; TO PROVIDE FOR SERVICES BY THE
DEPARTMENT OF SOCIAL SERVICES FOR CHILDREN IN
NEED AND OTHERS; TO MAKE PROVISION FOR
CHILDREN'S HOMES AND VOLUNTARY ORGANISATIONS;
TO MAKE PROVISION WITH RESPECT TO CHILD
MINDING AND DAY CARE FOR YOUNG CHILDREN;
AND FOR CONNECTED PURPOSES.**

ENACTED by the Legislature of the Cayman Islands.

PART I

INTRODUCTORY

Short title and
commencement.

1. (1) This Law may be cited as the Children Law, 1995.
- (2) This Law shall come into force on such date as may be appointed by order made by the Governor, and different dates may be appointed for different provisions of this Law and in relation to different cases.

Interpretation.

2. (1) In this Law -

[The Children Law, 1995 -7]

"care order" has the meaning given by section 31(7) and also includes any order which by or under any enactment has the effect of, or is deemed to be, a care order for the purpose of this Law; and any reference to a child who is in the care of the Department is a reference to a child who is in their care by virtue of a care order;

"child" means, subject to paragraph 11(1) of Schedule 1, a person under the age of 18;

"child minder" has the meaning given by section 59;

"child of the family" in relation to the parties to a marriage means-

- (a) a child of both of those parties;
- (b) any other child who has been treated by both of those parties as a child of their family;

"children's home" has the same meaning as in section 52;

"contact order" has the meaning given by section 8(1);

"court" means the Grand Court;

"day care" has the same meaning as in section 18;

"Department" means the Department of Social Services;

"disabled", in relation to a child, has the same meaning as in section 17 (6);

"domestic premises" means any premises which are wholly or mainly used as a private dwelling;

"education supervision order" has the meaning given in section 36;

"emergency protection order" means an order under section 43;

"family assistance order" has the meaning given in section 16(2);

"family proceedings" has the meaning given by section 8(3);

"functions" includes powers and duties;

"Governor" means the Governor in Council;

"harm" has the same meaning as in section 31 (5), and the question of whether harm is significant shall be determined in accordance with section 31 (6);

"health practitioner" means a person duly registered as a health practitioner under the Health Practitioner's Law, 1974 or who, under the provisions of any legislation that repeals, reenacts or replaces that

[The Children Law, 1995 -8]

Law, is lawfully entitled to carry on business, or be employed, as a doctor, dentist, nurse or as a professional in a profession supplementary to medicine;

"ill-treatment" has the same meaning as in section 31 (5);

"nanny" has the same meaning as in section 59;

"parental responsibility" has the meaning given in section 5;

"prescribed" means prescribed by regulations made under this Law;

"private school" has the same meaning as in the Education Law, 1983;

"prohibited steps order" has the meaning given by section 8(1);

"public holiday" means a Public General Holiday under the Public Holiday Law (Revised);

"pupil" has the same meaning as in the Education Law, 1983;

"registered children's home" has the same meaning as in section 52;

"rehabilitation order" has the same meaning as in the Youth Justice Law, 1995;

"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) or step-parent;

"residence order" has the meaning given by section 8(1);

"responsible person", in relation to a child who is the subject of a supervision order, has the meaning given in paragraph 1 of Schedule 3;

"school" has the same meaning as in the Education Law, 1983;

"service" in relation to any provision made under Part III, includes any facility;

"specific issue order" has the meaning given by section 8(1);

"supervision order" has the meaning given by section 31 (7);

"supervised child" and "supervisor", in relation to a supervision order or an education supervision order, mean respectively the child who is (or is to be) under supervision and the person under whose supervision he is (or is to be) by virtue of the order;

"upbringing", in relation to any child, includes the care of the child but not his maintenance;

"voluntary organisation" means a body (other than a public board or authority) whose activities are not carried on for profit;

(2) References in this Law to -

- (a) a person with whom a child lives, or is to live, as the result of a residence order; or
- (b) a person in whose favour a residence order is in force,

shall be construed as references to the person named in the order as the person with whom the child is to live.

(3) Any reference in this Law to a child who is looked after by the Department is a reference to a child who is in the Department's care.

(4) References in this Law to children who are in need shall be construed in accordance with section 17.

Welfare of the child.

3. (1) When a court determines any question with respect to -

- (a) the upbringing of a child; or
- (b) the administration of a child's property or the application of any income from it, the child's welfare shall be the court's paramount consideration.

(2) In any proceedings in which any question with respect to the upbringing of a child arises, the court shall have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child.

(3) In the circumstances mentioned in subsection (4), a 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, educational and emotional needs;
- (c) the likely effect on him of any change in his circumstances;
- (d) his age, religious persuasion, background and any characteristic 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 range of powers available to the court under this Law in the proceedings in question.

- (4) The circumstances are that -
- (a) the court is considering whether to make, vary or discharge a section 8 order, and the making, variation or discharge of the order is opposed by any party to the proceedings; or
 - (b) the court is considering whether to make, vary or discharge an order under Part IV.

(5) Where a court is considering whether or not to make one or more orders under this Law with respect to a child, it shall not make the order or any of the orders unless it considers that doing so would be better for the child than making no order at all.

Parental
responsibility for
children.

4. (1) Where a child's father and mother were married to each other at the time of his birth, they shall each have parental responsibility for the child.

(2) Where a child's father and mother were not married to each other at the time of his birth -

- (a) the mother shall have parental responsibility for the child;
- (b) the father shall not have parental responsibility for the child, unless he acquires it in accordance with the provisions of this Law.

(3) The rule of law that a father is the natural guardian of his legitimate child is abolished.

(4) More than one person may have parental responsibility for the same child at the same time; and a person who has parental responsibility for a child at any time shall not cease to have that responsibility solely because some other person subsequently acquires parental responsibility for that child.

(5) Where a child's father and mother were not married to each other at the time of his birth the court may, on the application of the father, order that he shall have parental responsibility for the child.

(6) Subject to section 12(4), an order under subsection (5) may only be brought to an end by an order of the court made on the application of any person who has parental responsibility for the child, or, where the court is satisfied the child has sufficient understanding to make the proposed application and the court grants leave, by the child himself.

(7) Where more than one person has parental responsibility for a child, each of them may act alone and without the other (or others) in meeting that responsibility, but nothing in this Part of this Law shall be taken to affect the operation of any enactment which requires the consent of more than one person in a matter affecting the child.

(8) The fact that a person has parental responsibility for a child shall

not entitle him to act in any way which would be incompatible with any order made with respect to the child under this Law.

(9) A person who has parental responsibility for a child may not surrender or transfer any part of that responsibility to another but may arrange for some or all of it to be met by one or more persons acting on his behalf; and the person with whom any such arrangement is made may himself be a person who already has parental responsibility for the child concerned.

(10) The making of any such arrangement shall not affect any liability of the person making it which may arise from any failure to meet any part of his parental responsibility for the child concerned.

Meaning of parental responsibility.

5. (1) In this Law "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) It also includes the rights, powers and duties which a guardian of the child's estate (appointed, before the commencement of section 6, to act generally) would have had in relation to the child and his property.

(3) The rights referred to in subsection (2) include, in particular, the right of the guardian to receive or recover in his own name, for the benefit of the child, property of whatever description and wherever situated which the child is entitled to receive or recover.

(4) The fact that a person has, or does not have, parental responsibility for a child shall not affect -

- (a) any obligation which he may have in relation to the child (such as a statutory duty to maintain the child); or
- (b) any rights which, in the event of the child's death, he (or any other person) may have in relation to the child's property.

(5) A person who -

- (a) does not have parental responsibility for a particular child, but
- (b) has care of the child, may (subject to the provisions of this Law) do what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child's welfare.

Guardians.

6. (1) Where an application with respect to a child is made to the court by any individual, the court may by order appoint that individual to be the child's guardian if -

- (a) the child has no parent with parental responsibility for him; or

- (b) a residence order has been made with respect to the child in favour of a parent or guardian of his who has died while the order was in force.

(2) The power conferred by subsection (1) may also be exercised in any family proceedings if the court considers that the order should be made even though no application has been made for it.

(3) A parent who has parental responsibility for his child may appoint another individual to be the child's guardian in the event of his death; and any guardian of a child may appoint another individual to take his place as the child's guardian in the event of his death.

(4) An appointment under subsection (3) shall not have effect unless it is made in writing, is dated and is signed by the person making the appointment, or -

- (a) in the case of an appointment made by a will which is not signed by the testator, is signed at the direction of the testator in accordance with the requirements of section 6 of the Wills Law (Revised); or
- (b) in any other case, is signed at the direction of the person making the appointment, in his presence and in the presence of two witnesses who each attest the signature.

(5) A person appointed as a child's guardian under this section shall have parental responsibility for the child concerned.

(6) Where -

- (a) on the death of any person making an appointment under subsection (3), the child concerned has no parent with parental responsibility for him; or
- (b) immediately before the death of any person making such an appointment, a residence order in his favour was in force with respect to the child, the appointment shall take effect on the death of that person.

(7) Where, on the death of any person making an appointment under subsection (3) -

- (a) the child concerned has a parent with parental responsibility for him; and
- (b) subsection (6)(b) does not apply, the appointment shall take effect when the child no longer has a parent who has parental responsibility for him.

(8) Subsections (1) and (6) do not apply if the residence order referred to in paragraph (b) of those subsections was also made in favour of a surviving parent of the child.

(9) Nothing in this section shall be taken to prevent an appointment under subsection (3) being made by two or more persons acting jointly.

(10) A guardian of a child may only be appointed in accordance with the provisions of this section.

(11) An appointment under subsection (3) -

- (a) revokes an earlier such appointment (including one made in an unrevoked will or codicil) made by the same person in respect of the same child, unless it is clear (whether as the result of an express provision in the later appointment or by any necessary implication) that the purpose of the later appointment is to appoint an additional guardian;
- (b) (including one made in an unrevoked will or codicil) is revoked if the person who made the appointment revokes it by a written and dated instrument which is signed by him, or signed at his direction in his presence and in the presence of two witnesses who each attest the signature;
- (c) (other than one made in a will or codicil) is revoked if, with the intention of revoking the appointment, the person who made it destroys the instrument by which it was made or has some other person destroy that instrument in his presence; and
- (d) (made in a will or codicil) is revoked if the will or codicil is revoked.

(12) A person who is appointed as a guardian under subsection (3) may disclaim his appointment by an instrument in writing signed by him and made within a reasonable time of his first knowing that the appointment has taken effect; provided that no such disclaimer shall have effect unless it is recorded at the court.

(13) Any appointment of a guardian under this section may be brought to an end at any time by order of the court -

- (a) on the application of any person who has parental responsibility for the child;
- (b) on the application of the child concerned, with leave of the court; or
- (c) in any family proceedings, if the court considers that it should be brought to an end even though no application has been made.

Welfare reports.

7. (1) A court considering any question with respect to a child under this Law may ask the Department to arrange for a social worker, or other person as the Department considers appropriate, to report to the court on such matters relating to the welfare of that child as are required to be dealt

with in the report.

(2) The report may be made in writing, or orally, as the court requires.

(3) Regardless of any enactment or rule of law which would otherwise prevent it from doing so, the court may take account of -

(a) any statement referred to in the report; and

(b) any evidence given in respect of the matters referred to in the report, in so far as the statement or evidence is, in the opinion of the court, relevant to the question which it is considering.

(4) It shall be the duty of the Department to comply with any requests for a report under this section.

PART II

ORDERS WITH RESPECT TO CHILDREN IN FAMILY PROCEEDINGS

General

Residence, contact and other orders with respect to children.

8. (1) In this Law -

"a contact order" means an order requiring the person with whom a child lives, or is to live, to allow the child to visit or stay with the person named in the order, or for that person and the child otherwise to have contact with each other;

"a prohibited steps order" means an order that no step which could be taken by a parent in meeting his parental responsibility for a child, and which is of a kind specified in the order, shall be taken by any person without the consent of the court;

"a residence order" means an order settling the arrangements to be made as to the person with whom a child is to live; and

"a specific issue order" means an order giving directions for the purpose of determining a specific question which has arisen, or which may arise, in connection with any aspect of parental responsibility for a child.

(2) In this Law "a section 8 order" means any of the orders mentioned in subsection (1) and any order varying or discharging such an order.

(3) For the purposes of this Law "family proceedings" means any proceedings -

(a) under the inherent jurisdiction of the Grand Court in relation

to children; and

(b) under the enactments mentioned in subsection (4), but does not include proceedings on an application for leave under section 77(2).

(4) The enactments are -

- (a) Parts I, II and IV of this Law;
- (b) the Matrimonial Causes Law;
- (c) the Adoption of Children Law (Revised);
- (d) the Affiliation Law, 1973;
- (e) section 5 of the Age of Majority Law, 1977.

Restrictions on making section 8 orders.

9. (1) No court shall make any section 8 order, other than a residence order, with respect to a child who is in the care of the Department.

(2) No application may be made by the Department for a residence order or contact order and no court shall make such an order in favour of the Department.

(3) No court shall exercise its powers to make a specific issue order or prohibited steps order with a view to achieving a result which could be achieved by making a residence or contact order.

(4) No court shall make any section 8 order which is to have effect for a period which will end after the child has reached the age of 16 unless it is satisfied the circumstances of the case are exceptional.

(5) No court shall make any section 8 order, other than one varying or discharging such an order, with respect to a child who has reached the age of 16 unless it is satisfied that the circumstances of the case are exceptional.

Power of court to make section 8 orders.

10. (1) In any family proceedings in which a question arises with respect to the welfare of any child, the court may make a section 8 order with respect to the child if -

- (a) an application for the order has been made by a person who
 - (i) is entitled to apply for a section 8 order with respect to the child; or
 - (ii) has obtained the leave of the court to make the application; or
- (b) the court considers that the order should be made even though no such application has been made.

[The Children Law, 1995 -16]

(2) The court may also make a section 8 order with respect to any child on the application of a person who -

- (a) is entitled to apply for a section 8 order with respect to the child; or
- (b) has obtained the leave of the court to make the application.

(3) This section is subject to the restrictions imposed by section 9.

(4) The following persons are entitled to apply to the court for any section 8 order with respect to a child -

- (a) any parent or guardian of the child;
- (b) any person in whose favour a residence order is in force with respect to the child.

(5) The following persons are entitled to apply for a residence or contact order with respect to a child -

- (a) any party to a marriage (whether or not subsisting) in relation to whom the child is a child of the family;
- (b) any person with whom the child has lived for a period of at least three years;
- (c) any person who -
 - (i) in any case where a residence order is in force with respect to the child, has the consent of each of the persons in whose favour the order was made;
 - (ii) in any case where the child is in the care of the Department, has the Department's consent; or
 - (iii) in any other case, has the consent of those (if any) who have parental responsibility for the child.

(6) A person who would not otherwise be entitled (under the previous provisions of this section) to apply for the variation or discharge of a section 8 order shall be entitled to do so if -

- (a) the order was made on his application; or
- (b) in the case of a contact order, he is named in the order.

(7) Where the person applying for leave to make an application for a section 8 order is the child concerned, the court may only grant leave if it is satisfied that he has sufficient understanding to make the proposed application for the section 8 order.

(8) Where the person applying for leave to make an application for a

section 8 order is not the child concerned, the court shall, in deciding whether or not to grant leave, have particular regard to -

- (a) the nature of the proposed application for the section 8 order;
- (b) the applicant's connection with the child;
- (c) any risk there might be of that proposed application disrupting the child's life to such an extent that he would be harmed by it; and
- (d) where the child is being looked after by the Department -
 - (i) the Department's plans for the child's future; and
 - (ii) the wishes and feelings of the child's parents.

(9) The period of three years mentioned in subsection (5)(b) need not be continuous but must not have begun more than five years before, or ended more than three months before, the making of the application.

General principles and supplementary provisions.

11. (1) In proceedings in which any question of making a section 8 order, or any question with respect to such an order, arises, the court shall -

- (a) draw up a timetable with a view to determining the question without delay; and
- (b) give such directions as it considers appropriate for the purpose of ensuring, so far as is reasonably practicable, that the timetable is adhered to.

(2) Where a court has power to make a section 8 order, it may do so at any time during the course of the proceedings in question even though it is not in a position to dispose finally of those proceedings.

(3) Where a residence order is made in favour of two or more persons who do not themselves all live together, the order may specify the periods during which the child is to live in the different households concerned.

(4) Where -

- (a) a residence order has been made with respect to a child; and
- (b) as a result of the order the child lives, or is to live, with one of two parents who each have parental responsibility for him, the residence order shall cease to have effect if the parents live together for a continuous period of more than six months.

(5) A contact order which required the parent with whom a child lives

to allow the child to visit, or otherwise have contact with, his other parent shall cease to have effect if the parents live together for a continuous period of more than six months.

- (6) A section 8 order may -
- (a) contain directions about how it is to be carried into effect;
 - (b) impose conditions which must be complied with by any person -
 - (i) in whose favour the order is made;
 - (ii) who is a parent of the child concerned;
 - (iii) who is not a parent of his but who has parental responsibility for him; or
 - (iv) with whom the child is living, and to whom the conditions are expressed to apply;
 - (c) be made to have effect for a specified period, or contain provisions which are to have effect for a specified period; and
 - (d) make such incidental, supplemental or consequential provision as the court thinks fit.

Residence orders
and parental
responsibility.

12. (1) Where the court makes a residence order in favour of the father of a child it shall, if the father would not otherwise have parental responsibility for the child, also make an order under section 4(5) giving him that responsibility.

(2) Where the court makes a residence order in favour of any person who is not the parent or guardian of the child concerned that person shall have parental responsibility for the child while the residence order remains in force.

(3) Where a person has parental responsibility for a child as a result of subsection (2), he shall not have the right -

- (a) to consent, or refuse to consent, to the making of an application with respect to the child under the Adoption Law (Revised);
- (b) to agree, or refuse to agree, to the making of an adoption order with respect to the child; or
- (c) to appoint a guardian for the child.

(4) Where subsection (1) requires the court to make an order under section 4(5) in respect of the father of a child, the court shall not bring that order to an end at any time while the residence order concerned remains in

force.

Change of child's name or removal from jurisdiction.

13. Where a residence order is in force with respect to a child, no person may cause the child to be known by a new surname, or remove him from the Islands, without either the written consent of every person who has parental responsibility for the child or the leave of the court.

Enforcement of residence orders.

14. (1) Where -

- (a) a residence order is in force with respect to a child in favour of any person; and
- (b) any other person (including one in whose favour the order is also in force) is in breach of the arrangements settled by the order, the person mentioned in paragraph (a) may, as soon as the requirement in subsection (2) is complied with, enforce the order.

(2) The requirement is that a copy of the residence order has been served on the other person.

(3) Subsection (1) is without prejudice to any other remedy open to the person in whose favour the residence order is in force.

Financial relief

Orders for financial relief with respect to children.

15. Schedule 1 makes provision in relation to financial relief for children.

Family assistance orders

Family assistance orders.

16. (1) Where, in any family proceedings, the court has power to make an order under this Part with respect to any child, it may (whether or not it makes such an order) make an order requiring -

- (a) a probation officer to be made available; or
- (b) the Department to make a social worker or other officer of the Department available,

to advise, assist and (where appropriate) befriend any person named in the order.

(2) The persons who may be named in an order under this section ("a family assistance order") are -

- (a) any parent or guardian of the child;
- (b) any person with whom the child is living or in whose favour a contact order is in force with respect to the child;

- (c) the child himself.
- (3) No court shall make a family assistance order unless -
 - (a) it is satisfied the circumstances of the case are exceptional; and
 - (b) it has obtained the consent of every person to be named in the order other than the child.
- (4) A family assistance order may direct -
 - (a) the person named in the order; or
 - (b) such of the persons named in the order as may be specified in the order, to take such steps as may be so specified with a view to enabling the officer concerned to be kept informed of the address of any person named in the order and to be allowed to visit any such person.
- (5) Unless it specifies a shorter period, a family assistance order shall have effect for a period of six months beginning with the day on which it is made.
- (6) Where -
 - (a) a family assistance order is in force with respect to a child; and
 - (b) a section 8 order is also in force with respect to the child, the officer concerned may refer to the court the question whether the section 8 order should be varied or discharged.

PART III

SOCIAL SERVICES SUPPORT FOR CHILDREN AND FAMILIES

Provision of services for children and their families

Provision of services for children in need, their families and others.

17. (1) It shall be the duty of the Department (in addition to the other duties imposed on the Department by this Part) -
- (a) to safeguard and promote the welfare of children who are in need; and
 - (b) so far as is consistent with that duty, to promote the unbringing of such children by their families, by providing a range and level of services appropriate to those children's needs.

(2) For the purpose principally of facilitating the discharge of their general duty under this section, the Department shall have the specific duties and powers set out in Part I of Schedule 2.

(3) Any service provided by the Department in the exercise of functions conferred on it by this section may be provided for the family of a particular child in need or for any member of his family, if it is provided with a view to safeguarding or promoting the child's welfare.

(4) The Governor may by order amend any provision of Part I of Schedule 2 or add any further duty or power to those for the time being mentioned there.

(5) For the purposes of this Part a child shall be taken to be in need if -

- (a) he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him of services by the Department under this Part; or
- (b) his health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services; or
- (c) he is disabled, and "family", in relation to such a child, includes any person who has parental responsibility for the child and any other person with whom he has been living.

(6) For the purposes of this Part, a child is disabled if he is blind, deaf or dumb or suffers from any mental disorder of any kind or is substantially and permanently handicapped by illness, injury or congenital deformity or such other disability as may be prescribed; and in this Part -

"development" means physical, intellectual, emotional, social or behavioural development; and

"health" means physical or mental health.

Day care for
pre-school and
other children.

18. (1) The Department shall provide such day care for children in need who are aged 8 or under, and are not yet attending school, as is appropriate.

(2) The Department may provide facilities (including training, advice, guidance and counselling) for those -

- (a) caring for children in day care; or
- (b) who at any time accompany such children while they are in day care.

(3) In this section "day care" means any form of care or supervised

activity provided for children during the day (whether or not it is provided on a regular basis).

(4) The Department shall provide for children in need who are attending any school such care or supervised activities as is appropriate -

- (a) outside school hours; or
- (b) during school holidays.

Review of provision for day care.

19. (1) The Department shall, together with the Department of Education, review -

- (a) the provision which it makes under section 18, and
- (b) the provision for day care made for children under the age of 8 by persons, other than the Department, required to register under section 59.

(2) A review under subsection (1) shall be conducted during the period of one year beginning with the commencement of this section and at least once in every subsequent period of three years beginning with an anniversary of that commencement.

(3) In conducting any such review the departments shall have regard to -

- (a) the provision made with respect to children under the age of 8 in hospitals, schools and registered children's homes; and
- (b) any representations made to any one of the departments which they consider to be relevant.

(4) Where the departments have conducted a review under this section they shall publish the result of the review as soon as is reasonably practicable together with any proposals they may have with respect to the matters reviewed.

Provision of accommodation for children

Provision of accommodation for children: general.

20. (1) The Department shall provide accommodation for any child in need who appears to the Department to require accommodation as a result of -

- (a) there being no person who has parental responsibility for him;
- (b) his being lost or abandoned; or
- (c) the person who has been caring for him being prevented

(whether or not permanently, and for whatever reason) from providing him with suitable accommodation or care.

(2) Before providing accommodation under this section, the Department shall, so far as is reasonably practicable and consistent with the child's welfare -

- (a) ascertain the child's wishes regarding the accommodation; and
- (b) give due consideration (having regard to his age and understanding) to such wishes of the child as they have been able to ascertain.

(3) The Department may not provide accommodation under this section for any child if any person who -

- (a) has parental responsibility for him; and
- (b) is willing and able to -
 - (i) provide accommodation for him; or
 - (ii) arrange for accommodation to be provided for him, objects.

(4) Any person who has parental responsibility for a child may at any time remove the child from accommodation provided by or on behalf of the Department under this section.

(5) Subsections (3) and (4) do not apply while any person -

- (a) in whose favour a residence order is in force with respect to the child; or
- (b) who has care of the child by virtue of an order made in the exercise of the Grand Court's inherent jurisdiction with respect to children, agrees to the child being looked after in accommodation provided by or on behalf of the Department.

(6) Where there is more than one such person as is mentioned in subsection (5), all of them must agree.

Provision of accommodation for children on remand, etc.

21. (1) The Department shall make provision for the reception and accommodation of children who are removed or kept away from home under Part V.

(2) The Department shall receive and make provision for the accommodation of children -

- (a) who are on remand under sections 14 or 15 of the Youth

Justice Law, 1995 at a place other than a prison or police station lock-up;

- (b) who are the subject of a rehabilitation order imposing a detention requirement under section 27 of the Youth Justice Law.

Duties of social services in relation to children they look after.

General duty of social services in relation to children they look after.

22. (1) It shall be the duty of the Department looking after any child -

- (a) to safeguard and promote his welfare; and
- (b) to make such use of services available for children cared for by their own parents as appears to the Department reasonable in his case.

(2) Before making any decision with respect to a child whom they are looking after, or proposing to look after, the Department shall, so far as is reasonably practicable, ascertain the wishes and feelings of -

- (a) the child;
- (b) his parents;
- (c) any person who is not a parent of his but who has parental responsibility for him; and
- (d) any other person whose wishes and feelings the authority consider to be relevant, regarding the matter to be decided.

(3) In making any such decision the Department shall give due consideration -

- (a) having regard to his age and understanding, to such wishes and feelings of the child as it has been able to ascertain;
- (b) to such wishes and feelings of any person mentioned in subsection (2)(b) to (d) as it has been able to ascertain; and
- (c) to the child's -
 - (i) religious persuasion; and
 - (ii) background.

(4) If it appears to the Department that it is necessary, for the purpose of protecting members of the public from serious injury, to exercise their powers with respect to a child whom they are looking after in a manner which may not be consistent with its duties under this section, it

may do so.

Provision of accommodation and maintenance by social services for children whom they are looking after.

23. (1) It shall be the duty of the Department looking after a child -

- (a) when he is in the Department's care, to provide accommodation for him; and
- (b) to maintain him in other respects apart from providing accommodation for him.

(2) The Department shall provide accommodation and maintenance for any child whom it is looking after by -

- (a) placing him with a family, a relative of his or any other suitable person, on such terms as the Department may determine;
- (b) maintaining him in a children's home; or
- (c) making such other arrangements as seem appropriate to the Department and which comply with any regulations made by the Governor.

(3) Where The Department is looking after a child, it shall make arrangements to enable him to live with -

- (a) a parent of the child;
- (b) a person who is not a parent of the child but who has parental responsibility for him;
- (c) where the child is in care and there was a residence order in force with respect to him immediately before the care order was made, a person in whose favour the residence order was made; or
- (d) a relative, friend or other person connected with the child,

unless that would not be reasonably practicable or consistent with his welfare.

(4) Where the Department provides accommodation for a child it is looking after, it shall, subject to the provisions of this Part and so far as is reasonably practicable and consistent with his welfare, secure that -

- (a) the accommodation is near his home; and
- (b) where the Department is also providing accommodation for a sibling of his, they are accommodated together.

(5) Where the Department provides accommodation for a child it is looking after and who is disabled, it shall, so far as is reasonably practicable, secure that the accommodation is not unsuitable to his

particular needs.

(6) Part II of Schedule 2 shall have effect for the purposes of making further provision as to children looked after by the Department and as to the regulations that may be made under subsection (2)(c).

Advice and assistance for certain children

Advice and assistance for certain children.

24. (1) Where a child is being looked after by the Department, it shall be the duty of the Department to advise, assist and befriend him with a view to promoting his welfare when he ceases to be looked after by the Department.

(2) In this Part "a person qualifying for advice and assistance" means a person who is under the age of 21 and who was, at any time after reaching the age of 16 but while still a child, looked after by the Department but who is no longer so looked after or accommodated.

(3) Where -

- (a) the Department knows that there is a person qualifying for advice and assistance;
- (b) the Department is satisfied that the person concerned is in need of advice and being befriended; and
- (c) that person has asked the Department for help of a kind it can give under this section, it shall advise and befriend him.

(4) The Department may give assistance to any person who qualifies for advice and assistance by virtue of subsection (2)(a) by -

- (a) contributing to his living expenses during the period he is employed, or seeking employment, or receiving education or training;
- (b) making a grant to enable him to meet expenses connected with his education or training; or
- (c) providing counselling about independent living.

Secure accommodation

Use of accommodation for restricting liberty.

25. (1) Subject to the following provisions of this section, a child who is being looked after by the Department may not be placed, and, if placed, may not be kept, in accommodation provided for the purpose of restricting liberty ("secure accommodation") unless -

- (a) it appears that he has a history of absconding, is likely to

abscond from any other description of accommodation, and, if he absconds, he is likely to suffer significant harm;

- (b) if he is kept in any other description of accommodation he is likely to injure himself or other persons;
- (c) he is in breach of a rehabilitation order.
- (d) he is charged with, or convicted of an offence of violence; or
- (e) he has been remanded and committed to the care of the Department under sections 14 or 15 of the Youth Justice Law.

(2) The maximum period beyond which a child may not be kept in secure accommodation without the authority of the court is 72 hours, whether consecutively or 72 hours in aggregate in any period of 28 consecutive days.

(3) An application to the court under this section shall be made only by the Department.

(4) It shall be the duty of a court hearing an application under this section to determine whether any relevant criteria for keeping a child in secure accommodation are satisfied in his case.

(5) If a court determines that any such criteria are satisfied, it shall make an order authorising the child to be kept in secure accommodation and specifying the maximum period for which he may be so kept.

(6) On any adjournment of the hearing for an application under this section, a court may make an interim order permitting the child to be kept during the period of the adjournment in secure accommodation.

(7) Where authority of the court to keep a child in secure accommodation has been given, any period during which the child has been kept in secure accommodation before the giving of that authority shall be disregarded for the purposes of any further placement in such accommodation after the period authorised by the court has expired.

(8) Where -

- (a) a child was placed in secure accommodation at any time between 12 midday on the day before and 12 midday on the day after a public holiday or a Sunday; and
- (b) during that period the maximum period specified in subsection (2) expires, the maximum period shall be treated as if it did not expire until 12 midday on the first day after the public holiday or Sunday which is not such a day.

(9) The maximum period for which a court may authorise a child to be kept in secure accommodation is three months or, if the child has been

remanded as mentioned in subsection (1)(e), the period of that remand.

Supplemental

Review of cases.

26. (1) Where a child is being looked after by the Department, it shall review his case in accordance with the provisions of regulations made by the Governor under this Law.

(2) In the period after this section comes into force and before any regulations made under it are in force the Department shall -

- (a) before conducting any review, seek the views of -
 - (i) the child whose case is to be reviewed;
 - (ii) his parents;
 - (iii) any person who is not a parent of his but who has parental responsibility for him; and
 - (iv) any other person whose views the Department considers to be relevant; and
- (b) conduct any review in accordance with its general duty under section 17.

(3) Regulations made under this section may, in particular, make provision -

- (a) as to the manner in which each case is to be reviewed;
- (b) as to the considerations to which the Department are to have regard in reviewing each case;
- (c) as to the time when each case is first to be reviewed and the frequency of subsequent reviews;
- (d) requiring the Department, before conducting the review, to seek the views of all or any one of the persons mentioned in subsection (2)(a);
- (e) requiring the Department to consider, in the case of a child who is in its care, whether an application should be made to discharge the case order;
- (f) requiring the Department to make arrangements, including arrangements with such other bodies providing services as it considers appropriate, to implement any decision which they propose to make in the course, or as a result, of the review;
- (g) requiring the Department to notify details of the results of the

review, and of any decision taken by the Department in consequence of the review, to -

- (i) the child;
- (ii) his parent;
- (iii) any person who is not a parent of his but who has responsibility for him; and
- (iv) any other person whom they consider ought to be notified.

Inquiries into representations.

27. (1) The Department shall establish a procedure for considering any representations (including any complaint) made to the Department by -

- (a) any child who is being looked after by the Department or who is not being looked after by the Department but is in need;
- (b) a parent of his;
- (c) any parent who is not a parent of his but who has parental responsibility for him;
- (d) any person exercising a profession in connection with the child; and
- (e) such other person as the Department consider has a sufficient interest in the child's welfare to warrant his representations being considered by the Department, about the discharge by the Department of any of their functions under this Part in relation to the child.

(2) The procedure shall ensure that at least one person (such as a justice of the peace or a person exercising a profession) who is not an officer of the Department takes part in -

- (a) the consideration; and
- (b) any discussions which are held by the Department about the action (if any) to be taken in relation to the child in the light of the consideration.

(3) Where any representation has been considered under the procedure established by the Department under this section, the Department shall -

- (a) have due regard to the findings of those considering the representation; and
- (b) take such steps as are reasonably practicable to notify (in writing) -

- (i) the person making the representation;
- (ii) the child (if the Department considers that he has sufficient understanding); and
- (iii) such other persons (if any) as appear to the Department to be likely to be affected, of the Department's decision in the matter and their reasons for taking that decision and of any action which they have taken, or propose to take.

(4) The Department shall, by notice in the Gazette, disclose the principles of the procedure for considering representations under this section.

Co-operation and consultation.

28. (1) Where it appears to the Department that any government department, statutory authority or other person could, by taking any specified action, help in the exercise of any of the Department's functions under this Part, the Department may request the help of that other department, authority or person, specifying the action in question.

(2) A government department or statutory authority whose help is so requested shall comply with the request if it is compatible with their own statutory or other duties and obligations and does not unduly prejudice the discharge of any of their functions.

(3) Where a child is being looked after by the Department, it shall consult the Education Department before making any decision with respect to the child's education.

(4) Where a child is being looked after by the Department, it shall, except in an emergency, consult the Ministry of Health, Drug Abuse, Prevention and Rehabilitation before making any decision, either generally or in a specific case, with respect to any medical or psychiatric examination or assessment of the child.

Recoupment of cost of providing services etc.

29. (1) Where the Department provides any service under section 17 or 18, other than advice, guidance or counselling, it may recover from a person specified in subsection (3) such charge for the service as it considers reasonable.

(2) Where the Department is satisfied that the person's means are insufficient for it to be reasonably practicable for him to pay the charge, the Department shall not require him to pay more than he can reasonably be expected to pay.

(3) The persons are -

- (a) where the service is provided for a child under the age of 16, each of his parents;
- (b) where it is provided for a child who has reached the age of 16, the child himself; and

(c) where it is provided for a member of the child's family, that member.

(4) Any charge under subsection (1) may, without prejudice to any other method of recovery, be recovered summarily as a civil debt.

(5) Part III of Schedule 2 makes provision in connection with contributions towards the maintenance of children who are being looked after by the Department.

Miscellaneous.

30. (1) Nothing in this Part shall affect any duty imposed on the Department by or under any other enactment.

(2) Where the functions conferred on the Department by this Part and the functions of any other department of Government or statutory authority are concurrent, the Governor may by order provide, either generally or in relation to cases of a particular description, by which such department or authority the functions are to be exercised.

PART IV

CARE AND SUPERVISION

General

Care and supervision orders.

31. (1) On the application of the Department, the court may make an order -

- (a) placing the child with respect to whom the application is made in the care of the Department, or
- (b) putting him under the supervision of the Department or of a probation officer.

(2) A 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 to him; or
 - (ii) the child's being beyond parental control; or
 - (iii) the child's being beyond the control of his school or the Education Department.

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

(4) 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.

(5) In this section -

"harm" means ill-treatment or the impairment of health or development;

"development" means physical, intellectual, emotional, social or behavioural development;

"health" means physical or mental health; and

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

(6) Where the question of whether harm suffered by a child is significant turns on the child's health or development, his health or development shall be compared with that which could reasonably be expected of a similar child.

(7) In this Law -

"a care order" means (subject to section 2(1)) an order under subsection (1)(a) and (except where express provision to the contrary is made) includes an interim care order made under section 38; and

"a supervision order" means an order under subsection (1)(b) and (except where express provision to the contrary is made) includes an interim supervision order made under section 38.

Period within which application for order under this Part must be disposed of.

32. A court hearing an application for an order under this Part shall (in the light of any rules of court) draw up a timetable with a view to disposing of the application without delay and give such directions as it considers appropriate for the purposes of ensuring, so far as is reasonably practicable, that the timetable is adhered to.

Care orders

Effect of care order.

33. (1) Where a care order is made with respect to a child it shall be the duty of the Department to receive the child into its care and to keep him in its care while the order remains in force.

(2) While a care order is in force with respect to a child, the

Department 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 or guardian of the child may meet his parental responsibility for him.

(3) The Department may not exercise the power in subsection (2)(b) unless it 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 or guardian 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 Department shall not -

- (a) 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 consent or refuse to consent to the making of an application with respect to a child under the Adoption of Children Law (Revised);
 - (ii) to agree or refuse to agree to the making of an adoption order with respect to the child; or
 - (iii) to appoint a guardian for the child.

(6) While a care order is in force with respect to a child, no person may -

- (a) cause the child to be known by a new surname; or
- (b) remove him from the Islands,

without either the written consent of every person who has parental responsibility for the child or the leave of the court.

(7) The power in subsection (2)(b) is subject (in addition to being subject to the provisions of this section) to any right, duty, power, responsibility or authority which a parent or guardian of the child has in relation to the child and his property by virtue of any other enactment.

Parental contact
etc. with children in

34. (1) Where a child is in the care of the Department, it shall (subject to the provisions of this section) allow the child reasonable contact with -

care.

- (a) his parents;
- (b) any guardian of his;
- (c) where there was a residence order in force with respect to the child immediately before the care order was made, the person in whose favour the order was made; and
- (d) 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 Grand Court's inherent jurisdiction with respect to children, that person.

(2) On an application made by the Department 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 paragraph (a) to (d) 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 Department or the child, the court may make an order authorising the Department to refuse to allow contact between the child and any person who is mentioned in paragraph (a) to (d) 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 Department, 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 Department may refuse to allow the contact that would otherwise be required by subsection (1) or an order under this section if -

- (a) they are 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) does not last for more than 7 days.

(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 Department, 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 or later.

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

- (a) consider the arrangements which the Department 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 proposal to comment on those arrangements.

Supervision orders

Supervision orders.

35. (1) While a supervision order is in force it shall be the duty of the supervisor -

- (a) to advise, assist and befriend the supervised child;
- (b) to take such steps as are reasonably necessary to give effect to the order; and
- (c) Where -
 - (i) the order is not wholly complied with; or
 - (ii) the supervisor considers that the order may no longer be necessary, to consider whether or not to apply to the court for its variation or discharge.

(2) Parts I and II of Schedule 3 make further provision with respect to supervision orders.

Education supervision orders.

36. (1) On the application of the Education Department, the court may make an order putting the child with respect to whom the application is made under the supervision of the Education Department.

(2) In this Law "an education supervision order" means an order under subsection (1).

(3) A court may only make an education supervision order if it is satisfied that the child concerned is of school age and is not being properly educated.

(4) For the purposes of this section, a child is being properly educated only if he is receiving efficient full-time education suitable to his

age, ability and aptitude and any special needs he may have.

(5) Where a child has failed to attend more than 5 days of a school term for a reason other than a reason referred to in section 14(1)(b) of the Education Law, 1983, then, unless it is proved that he is being properly educated, it shall be assumed that he is not.

(6) An education supervision order may not be made with respect to a child who is in the care of the Department.

(7) Where the Education Department proposes to make an application for an education supervision order it shall, before making the application, consult the Department.

(8) Part III of Schedule 3 makes further provisions with respect to education supervision orders.

Powers of court

Powers of court in certain family proceedings.

37. (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 or supervision order to be made with respect to him, the court may direct the Department to undertake an investigation of the child's circumstances.

(2) Where the court gives a direction under this section the Department shall, when undertaking the investigation, consider whether it should -

- (a) apply for a care order or a supervision order with respect to the child;
- (b) provide services or assistance to the child or his family; or
- (c) take any other action with respect to the child.

(3) Where the Department undertakes an investigation under this section and decides not to apply for a care order or supervision order with respect to the child concerned, it shall inform the court of -

- (a) its reasons for so deciding;
- (b) any service or assistance which it has provided, or intends to provide, for the child and his family; and
- (c) any other action which it 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 8 weeks beginning with the date of the direction, unless the court otherwise directs.

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

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

Interim orders.

38. (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 37(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 as are mentioned in section 31(2).

(3) Where, in any proceedings on an application for a care order or supervision order, a court makes a residence 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) if the order is the first such order made with respect to the same child in the same proceedings the expiry of the period of 8 weeks beginning with the date on which the order is made;
- (b) if the order is the second or subsequent such order made with respect to the same child in the same proceedings, the expiry of the period of four weeks beginning with the date on which the order is made;
- (c) in a case which falls within subsection (1)(a), the disposal of the application;
- (d) in the case which falls within subsection (1)(b), on the disposal of an application for a care order or supervision order made by the Department with respect to the child;
- (e) in a case which falls within subsection (1)(b) and in which -

- (i) the court has given a direction under section 37(1), but
- (ii) no application for a care order or supervision order has been made with respect to the child, the expiry of the period fixed by that direction.

(5) Where the court makes an interim care order, or interim supervision order, it may give such directions (if any) as it considers appropriate with regard to the medical or psychiatric examination or other assessment of the child, but if the child is of sufficient understanding to make an informed decision he may refuse to submit to the examination or other assessment.

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

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

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

- (a) given when the interim order is made or at any time while it is in force; and
- (b) varied at any time on the application of the Department.

(8) Paragraphs 4 and 5 of Schedule 3 shall not apply in relation to an interim supervision order.

(9) Where a court makes an order under or by virtue of this section it shall, in determining the period for which the order is to be in force, consider whether any party who was, or might have been, opposed to the making of the order was in a position to argue his case against the order in full.

Discharge and variation etc. of care orders and supervision orders.

39. (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 Department.

(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 supervisor.

(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 Law which would otherwise require section 31(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.

40. (1) Where -

- (a) a court dismisses an application for a care order; and
- (b) at the time when the court dismisses the application, the child concerned is the subject of an interim care order, the court may make a care order with respect to the child to have effect subject to such directions (if any) as the court may see fit to include in the order.

(2) Where -

- (a) a court dismisses an application for a care order, or an application for a supervision order; and
- (b) at the time when the court dismisses the application, the child concerned is the subject of an interim supervision order, the court may make a supervision order with respect to the child to have effect subject to such directions (if any) as the court may see fit to include in the order.

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

- (a) its decision is not to have effect; or
- (b) the care order, or supervision order, is to continue to have effect but subject to such directions as the court sees fit to include in the order.

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

(5) Where -

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

- (b) any application is made to the appellate court in connection with a proposed appeal against that decision, the appellate 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.

Guardians ad litem

Representation of child and of his interests in certain proceedings.

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

- (2) The guardian ad litem shall -
 - (a) be appointed in accordance with rules of court; and
 - (b) be under a duty to safeguard the interests of the child in the manner prescribed by such rules.
- (3) Where -
 - (a) the child concerned is not represented by an attorney; and
 - (b) any of the conditions mentioned in subsection (4) are satisfied,

the court may appoint an attorney to represent him.

- (4) The conditions are that -
 - (a) no guardian ad litem has been appointed for the child;
 - (b) the child has sufficient understanding to instruct an attorney and wishes to do so;
 - (c) it appears to the court that it would be in the child's best interest for him to be represented by an attorney.
- (5) Any attorney 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 37(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 on the variation or discharge of a supervision order;
- (d) on an application under section 39(4);
- (e) in which the court is considering whether to make a residence order with respect to a child who is the subject of a care order;
- (f) with respect to contact between a child who is the subject of a care order and any other person;
- (g) under Part V;
- (h) on an appeal against -
 - (i) the making of, or refusal to make, a care order, supervision order or any order under section 34;
 - (ii) the making of, or refusal to make, a residence order with respect to a child who is the subject of a care order; or
 - (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 39 (4);
 - (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 Governor may by regulations provide for the establishment of a panel of persons from whom guardians ad litem appointed under this section must be selected, and these regulations may, in particular, make provision -

- (a) as to the constitution, administration and procedure of the panel;
- (b) for the defrayment by the Department of expenses incurred by members of the panel;
- (c) for the payment by the Department of fees and allowances

for members of the panel;

- (d) as to the qualifications for membership of the panel;
- (e) as to the training to be given to members of the panel; and
- (f) for monitoring the work of guardians ad litem.

(8) Rules of court may make provision as to -

- (a) the assistance which any guardian ad litem may be required to give to it;
- (b) the consideration to be given by any guardian ad litem, where an order of a specified kind has been made in the proceedings in question, as to whether to apply for the variation or discharge of the order;
- (c) the participation of guardians ad litem in reviews, of a kind specified in the rules, which are conducted by the court.

(9) Regardless of any enactment or rule of law which would otherwise prevent it from doing so, the court may take account of -

- (a) any statement contained in a report made by a guardian ad litem who is appointed under this section for the purpose of the proceedings in question; and
- (b) any evidence given in respect of the matters referred to in the report, in so far as the statement or evidence is, in the opinion of the court, relevant to the question which the court is considering.

Right of guardian ad litem to have access to social services records.

42. (1) Where a person has been appointed as a guardian ad litem under this Law he shall have the right at all reasonable times to examine and take copies of -

- (a) any records of, or held by, the Department or the Education Department which were compiled in connection with the making, or proposed making, by any person of any application under this Law with respect to the child concerned; or
- (b) any other records of, or held by, the Department or the Education Department which were compiled in connection with the discharge of any of their functions under this or any other Law.

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

- (a) report which he makes to the court in the proceedings in

question; or

(b) evidence which he gives in those proceedings.

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

PART V

PROTECTION OF CHILDREN

Orders for
emergency
protection of
children.

43. (1) Where the Department applies to the court 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) 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 Department; 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 47(1)(a); and those enquiries are being frustrated by access to the child being unreasonably refused to an officer of the Department; and the Department has reasonable cause to believe that access to the child is required as a matter of urgency.

(2) Any officer of the Department -

(a) seeking access to a child in connection with enquiries being made under section 47(1)(a); and

(b) purporting to be an officer authorised to do so, shall, on being asked to do so, produce some duly authenticated document as evidence that he is that person.

(3) 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 applicant;

(b) authorises -

(i) the removal of the child at any time to accommodation

[The Children Law, 1995 -44]

provided by or on behalf of the Department 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 Department parental responsibility for the child.

(4) Where an emergency protection order is in force with respect to a child, the Department -

(a) shall only exercise the power given by virtue of subsection (3)(b) in order to safeguard the welfare of the child;

(b) shall take, and shall only take, such action in meeting its 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); and

(c) shall comply with the requirements of any regulations made by the Governor for the purposes of this subsection.

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

(a) the Department has exercised the power given by subsection (3)(b)(i) but it appears to the Department that it is safe for the child to be returned; or

(b) the Department has exercised the power given by subsection (3)(b)(ii) but it appears to the Department that it is safe for the child to be allowed to be removed from the place in question, it shall return the child or (as the case may be) allow him to be removed.

(6) Where it is required by subsection (5) to return the child the Department shall -

(a) return him to the care of the person from whose care he was removed; or

(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 has parental responsibility for him; or

(iii) such other person as the Department (with the agreement of the court) considers appropriate.

(7) Where the Department has been required by subsection (5) to return the child, or to allow him to be removed, it may again exercise its powers with respect to the child (at any time while the emergency protection order remains in force) if it appears to the Department that a change in the circumstances of the case makes it necessary for it to do so.

(8) Whenever 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.

(9) A person shall be guilty of an offence if he intentionally obstructs any person exercising the power under subsection (3)(b) to remove, or prevent the removal of, a child.

(10) A person guilty of an offence under subsection (9) shall be liable on summary conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding six months or to both.

Directions of the court in relation to emergency protection orders.

44. (1) 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.

(2) A direction under subsection (1)(a) may impose conditions, and one under subsection (1)(b) 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.

(3) A direction under subsection (1) 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 any person falling within any class of person prescribed by rules of court for the purposes of this subsection.

(4) Where an emergency protection order has been made with respect to a child, the Department shall, subject to any direction given under subsection (1), allow the child reasonable contact with -

- (a) his parents;
- (b) any person who is not a parent of his but 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 contact order is in force with respect to him; and
- (e) any person who is allowed to have contact with the child by virtue of an order under section 34.

Duration of
emergency
protection orders.

45. (1) An emergency protection order shall have effect for such period, not exceeding 8 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 8 days as the period for which the order is to have effect; but

(b) the last of those 8 days is a public holiday or a Sunday,

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

(3) Any person who -

(a) has parental responsibility for a child as a result of an emergency protection order; and

(b) is entitled to apply for a care order with respect to the child, 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 7 days, as it thinks fit, but may do so only if it has reasonable cause to believe that the child concerned is likely to suffer significant harm if the order is not extended.

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

Provisions
supplemental to
emergency
protection orders.

46. (1) 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.

(2) 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.

(3) No application for the discharge of an emergency protection order shall be granted by the court before the expiry of 72 hours beginning with the making of the order.

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

(5) Subsection (2) does not apply -

- (a) where the person who would otherwise be entitled to apply for the emergency protection order to be discharged -
 - (i) was given notice of the hearing at which the order was made; and
 - (ii) was present at that hearing; or
- (b) to any emergency protection order the effective period of which has been extended under section 45(4).

(6) A court making an emergency protection order may direct that an officer of the Department may, (if he so chooses) in exercising any powers which the Department has by virtue of the order, be accompanied by a health practitioner.

Duty of social services to investigate.

47. (1) Where the Department -

- (a) has reasonable cause to believe that a child who lives, or is found, in the Islands is suffering, or is likely to suffer, significant harm; or
- (b) has obtained an emergency protection order with respect to a child, it shall make, or cause to be made, such enquiries as it considers necessary to enable it to decide what action it should take to safeguard or promote the child's welfare.

(2) The enquiries shall, in particular, be directed towards establishing -

- (a) whether the Department should make any application to the court, or exercise any of their powers under this Law, with respect to the child; and

- (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 Department, it would be in the child's best interests (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 a child, the Department shall (with a view to enabling it to determine what action, if any, to take with respect to him) take such steps as are reasonably practicable -

- (a) to obtain access to him; or
- (b) to ensure that access to him is obtained, on their behalf, by a person authorised by them for the purpose, unless the Department is satisfied that it already has sufficient information with respect to him.

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

(5) Where, in the course of enquiries made under this section any officer of the Department or any person authorised by the Department to act on its behalf in connection with those enquiries -

- (a) is refused access to the child concerned; or
- (b) is denied information as to his whereabouts, the Department shall apply for an emergency protection order, a care order or a supervision order with respect to the child unless it is satisfied that his welfare can be satisfactorily safeguarded without the Department doing so.

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

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

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

(8) Where the Department is conducting enquiries under this section, it shall be the duty of every other Department of Government, statutory authority and health practitioner to assist the Department with enquiries (in particular by providing relevant information and advice) if called upon by the Department to do so.

(9) Subsection (8) does not oblige any person to assist the Department where doing so would be unreasonable in all the circumstances of the case.

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

48. (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 Department; but
- (b) 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 Department, any information that he may have as to the child's whereabouts.

(2) No person shall be excused from complying with such a requirement on the ground that complying might incriminate him or his spouse of an offence; but a statement or admission made in complying shall not be admissible in evidence against either of them in proceedings for any offence other than perjury.

(3) An emergency protection order may authorise an officer of the Department and any other person named in the order to enter premises specified by the order and search for the child with respect to whom the order is made.

(4) 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 authorising the Department to search for that other child on those premises.

(5) Where -

- (a) an order has been made under subsection (4);
- (b) the child concerned has been found on the premises; and
- (c) the Department is satisfied that the grounds for making an emergency protection order exists with respect to him, the order shall have effect as if it were an emergency protection order.

(6) Where an order has been made under subsection (4), the Department shall notify the court of its effect.

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

or (4).

(8) A person guilty of an offence under subsection (7) shall be liable on summary conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding six months or to both.

(9) Where, on an application made by the Department for a warrant under this section, it appears to the court -

- (a) that a person 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 any such person is likely to be so prevented from exercising any such powers, it may issue a warrant authorising any constable to assist the person mentioned in paragraph (a) or (b) in the exercise of those powers, using reasonable force if necessary.

(10) Every warrant issued under this section shall be addressed to, and executed by, a constable who shall be accompanied by the officer of the Department applying for the warrant if -

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

(11) A court granting an application for a warrant under this section may direct that the constable concerned may, in executing the warrant, be accompanied by a health practitioner.

(12) Wherever it is reasonably practicable to do so, an order under subsection (4), 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.

49. (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, 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 or the emergency protection order, as the case may be.

(3) A person guilty of an offence under this section shall be liable on summary conviction to imprisonment for a term not exceeding 12 months, or to a fine not exceeding \$5,000 or to both.

Recovery of
abducted children.

50. (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 49 applies and in this section "the responsible person" has the same meaning as in section 49.

(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 authorised person;
- (b) authorises the removal of the child by any authorised 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 constable or an officer of the Department;
- (d) authorises a constable 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 any person who has parental responsibility for the child by virtue of a care order or emergency protection order.

(5) A recovery order shall name the child and any person who has parental responsibility for the child by virtue of a care order or emergency protection order.

(6) Premises may only be specified under subsection (3)(d) if it appears to the court that there are reasonable grounds for believing the child to be on them.

- (7) In this section "an authorised person" means -
- (a) any person specified by the court;
 - (b) any constable; and
 - (c) any person who is authorised -
 - (i) after the recovery order is made; and
 - (ii) by a person who has parental responsibility for the child by virtue of a care order or an emergency protection order, to exercise any power under a recovery order.
- (8) Where a person is authorised as mentioned in subsection (7)(c) -
- (a) the authorisation shall identify the recovery order; and
 - (b) any person claiming to be so authorised shall, if asked to do so, produce some duly authenticated document showing that he is so authorised.

(9) A person shall be guilty of an offence if he intentionally obstructs an authorised person exercising the power under subsection (3)(b) to remove a child.

(10) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding six months or to both.

(11) No person shall be excused from complying any request made under subsection (3)(c) on the ground that complying with it might incriminate him or his spouse of an offence; but a statement or admission made in complying shall not be admissible in evidence against either of them in proceedings for an offence other than perjury.

Refuges for children at risk.

51. (1) Where it is proposed to use a home registered as a children's home under Part VI to provide a refuge for children who appear to be at risk of harm, the Governor may issue a certificate under this section with respect to that home.

- (2) The Governor may by regulations -
- (a) make provision as to the manner in which certificates may be issued;
 - (b) impose requirements which must be complied with while any certificate is in force; and
 - (c) provide for the withdrawal of certificates in prescribed circumstances.
- (3) Where a certificate is in force with respect to a home, none of the

provisions mentioned in subsection (4) shall apply in relation to any person providing a refuge for any child in that home.

- (4) The provisions are -
 - (a) section 49; and
 - (b) section 27 and Schedule 2 to the Youth Justice Law.

PART VI

CHILDREN'S HOMES AND VOLUNTARY ORGANISATIONS

Children not to be cared for and accommodated in unregistered children's homes.

52. (1) No child shall be cared for and provided with accommodation in a children's home unless the home is registered under this Part.

(2) The register may be kept by means of a computer.

(3) In this Law "a children's home" -

- (a) means a home which provides (or usually provides or is intended to provide) care and accommodation for more than three children at any one time; but
- (b) does not include a home which is exempted by or under any of the following provisions of this section or by order made for the purposes of this subsection by the Governor.

(4) A child is not cared for and accommodated in a children's home when he is cared for and accommodated by -

- (a) a parent;
- (b) a person who is not a parent of his but who has parental responsibility for him; or
- (c) any relation of his.

(5) A home is not a children's home for the purposes of this Part if it is -

- (a) a hospital;
- (b) a school;
- (c) a home provided by the Department; or
- (d) subject to such exceptions as may be specified in an order made by the Governor, a rehabilitation school under the Youth Justice Law.

(6) A child shall not be treated as cared for and accommodated in a children's home when -

- (a) any person mentioned in subsection (4)(a) or (b) is living at the home; or
- (b) the person caring for him is doing so in his personal capacity and not in the course of carrying out his duties in relation to the home.

(7) In this Law "a registered children's home" means a children's home registered under this Part.

(8) In this section "home" includes any institution.

(9) Where any child is at any time cared for and accommodated in a children's home which is not a registered children's home, the person carrying on the home shall be -

- (a) guilty of an offence; and
- (b) liable to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 6 months or to both, unless he has a reasonable excuse.

(10) Schedule 4 shall have effect with respect to children's homes.

Provision of children's homes.

53. (1) The Department shall make such arrangements as it considers appropriate for securing that children's homes are available -

- (a) for the care and accommodation of children looked after by them; and
- (b) for purposes connected with the welfare of children (whether or not looked after by them).

(2) In making such arrangements, the Department shall have regard to the need for ensuring the availability of accommodation of different descriptions, and which is suitable for different purposes and the requirements of different descriptions of children.

(3) A children's home may be a children's home -

- (a) provided by a voluntary organisation; or
- (b) the Department.

Provision of accommodation by voluntary organisations.

54. (1) Where a voluntary organisation provides accommodation for a child, it shall do so by -

- (a) placing him with a family, a relative of his or any other suitable person;

- (b) maintaining him in a children's home; or
- (c) making such other arrangements (subject to subsection (3)) as seen appropriate to the organisation.

(2) The Governor may make regulations as to the arrangements which may be made under subsection (1)(c) and the regulations may in particular make provision which (with any necessary modifications) is similar to the provision that may be made under section 23(2)(c).

(3) The Governor may make regulations requiring any person who is providing accommodation for a child in a children's home -

- (a) to review his case; and
- (b) to consider any representations (including any complaint) made to the organisation by any person falling within a prescribed class of person, in accordance with the provisions of the regulations.

(4) Regulations under subsection (3) may, in particular make provision which (with any necessary modifications) is similar to the provision that may be made under section 26.

(5) Regulations under this section may provide that any person who, without reasonable excuse, contravenes or fails to comply with a regulation shall be guilty of an offence and liable on summary conviction to a fine not exceeding \$2,000 or to a term of imprisonment not exceeding 6 months or to both.

Welfare of children
in children's homes.

55. (1) Where a child is accommodated in a children's home, it shall be the duty of the person carrying on the home to -

- (a) safeguard and promote the child's welfare;
- (b) make such use of the services and facilities available for children cared for by their own parents as appears to the organisation reasonable in his case; and
- (c) to advise, assist and befriend him with a view to promoting his welfare when he ceases to be so accommodated.

(2) Before making any decision with respect to any such child the person carrying on the home shall, so far as is reasonably practicable, ascertain the wishes and feelings of -

- (a) the child;
- (b) his parents;
- (c) any person who is not a parent of his but who has parental responsibility for him; and

- (d) any person whose wishes and feelings the person carrying on the home considers to be relevant, regarding the matter to be decided.

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

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

Duties of social services.

56. (1) The Department shall satisfy itself that any person providing accommodation in a children's home for a child is satisfactorily safeguarding and promoting the welfare of that child.

(2) The Department shall arrange for children who are accommodated in a children's home to be visited from time to time by appointment, in the interest of the children's welfare.

(3) Where the Department is satisfied that the welfare of any child, who is accommodated in a children's home, is not being satisfactorily safeguarded or promoted it shall -

- (a) unless the Department considers that it would not be in the best interests of the child, take such steps as are reasonably practicable to secure that the care and accommodation of the child is undertaken by -
 - (i) a parent of his;
 - (ii) any person who is not a parent of his but who has parental responsibility for him; or
 - (iii) a relative of his; and
- (b) consider the extent to which (if at all) the Department should exercise any of their functions with respect to the child.

(4) Any officer of the Department may, for the purpose of enabling the Department to discharge its duties under this section -

- (a) enter, at any reasonable time, and inspect, any children's home;
- (b) inspect any children there;

(c) require any person to furnish him with such records of a kind required to be kept by regulations made under section 58(2)(f) (in whatever form they are held), or allow him to inspect such records, as he may at any time direct.

(5) Any person exercising the power conferred by subsection (4) shall, if asked to do so, produce some duly authenticated document showing his authority to do so.

(6) Any person authorised to exercise the power to inspect records conferred by subsection (4) -

(a) shall be entitled at any reasonable time to have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records in question; and

(b) may require -

(i) the person by whom or on whose behalf the computer is or has been so used; or

(ii) any person having charge of, or otherwise concerned with the operation of the computer, apparatus or material, to afford him such assistance as he may reasonably require.

(7) Any person who intentionally obstructs another in the exercise of any power conferred by subsection (4) or (6) shall be guilty of an offence and liable on summary conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding six months or to both.

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

57. (1) A person who is disqualified by regulations made by the Governor for the purposes of this section 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 Department the fact that he is so disqualified; and

(b) obtained the Department's written consent.

(2) The regulations may, in particular, provide for a person to be so disqualified where -

(a) an order of a kind specified in the regulations has been made at any time with respect to him;

(b) an order of a kind so specified has been made at any time with respect to any child who has been in his care;

(c) a requirement of a kind so specified has been imposed at any time with respect to any such child, under or by virtue of

any enactment; or

- (d) he has been convicted of any offence of a kind so specified, or has been placed on probation or discharged absolutely or conditionally for any such offence.

(3) No person shall employ in a children's home a person who is disqualified by regulations made for the purposes of this section unless he has -

- (a) disclosed to the Department the fact that, the person is so disqualified; and
- (b) obtained the Department's written consent.

(4) Any person who contravenes subsection (1) or (3) shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding twelve months or to a fine not exceeding \$5,000 or to both.

(5) Where a person contravenes subsection (3) 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 this section.

Regulations.

58. (1) The Governor may make regulations -

- (a) as to the placing of children in registered children's homes;
- (b) as to the conduct of such homes; and
- (c) for securing the welfare of children in such homes.

(2) The regulations may in particular -

- (a) prescribe standards to which the premises used for such homes are to conform;
- (b) impose requirements as to the accommodation, staff and equipment to be provided in such homes;
- (c) impose requirements as to the arrangements to be made for protecting the health of children in such homes;
- (d) provide for the control and discipline of children in such homes;
- (e) require the furnishing to the Department of information as to the facilities provided for -
 - (i) the parents of children in such homes;
 - (ii) persons who are not parents of such children but who have parental responsibility for them; and

- (iii) other persons connected with such children, to visit and communicate with such children;
- (f) impose requirements as to the keeping of records and giving of notices with respect to children in such homes;
- (g) impose requirements as to the facilities which are to be provided for giving religious instruction to children in such homes;
- (h) make provision as to the carrying out by the Department of annual reviews of the registration of such homes;
- (i) authorise the Department to limit the number of children who may be accommodated in any particular registered home;
- (j) require the approval of the Governor for the provision and use of accommodation for the purpose of restricting the liberty of children in such homes and impose other requirements (in addition to those imposed by section 25) as to the placing of a child in accommodation provided for that purpose;
- (k) require notices to be given to the Department of any change of the person carrying on or in charge of a registered home or of the premises used by such a home.

(3) The regulations may provide that a contravention of or failure to comply with any specified provision of the regulations, without reasonable excuse, shall be an offence against the regulations.

(4) Any person guilty of such an offence shall be liable on summary conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 6 months or to both.

PART VII

CHILD MINDING AND DAY CARE FOR YOUNG CHILDREN

Registration.

59. (1) A register shall be kept -
- (a) by the Department of Social Services, of persons who act as child minders on domestic premises; and
 - (b) by the Education Department, of persons who provide day care for children under the age of 8 on premises other than domestic premises.
- (2) For the purposes of this Part -
- (a) a person acts as a child minder if he looks after one or more

children under the age of 8 for reward;

- (b) a person does not provide day care for children unless the period, or the total of the periods, during which children are looked after exceeds 2 hours through one period of 24 hours.

(3) Where a person provides day care for children under the age of 8 on different premises, that person shall be separately registered with respect to each of those premises.

(4) A person who -

- (a) is the parent, or a relative, of a child, or
- (b) has parental responsibility for a child, does not act as a child minder for the purposes of this Part when looking after that child.

(5) Where a person is employed as a nanny for a child, she does not act as a child minder when looking after that child wholly or mainly in the home of the person employing her.

(6) The Department may refuse to register an applicant for registration under subsection (1)(a) if it is satisfied that -

- (a) the applicant; or
- (b) any person looking after, or likely to be looking after, any children on any premises on which the applicant is, or is likely to be, child minding, is not fit, by virtue of his criminal record, to look after children under the age of 8.

(7) The Education Department may refuse to register an applicant for registration under subsection (1)(b) if it is satisfied that any person looking after, or likely to be looking after, any children on the premises to which the application relates is not fit by virtue of his criminal record, to look after children under the age of 8.

(8) The Education Department may refuse to register an applicant for registration under subsection (1)(b) if it is satisfied that -

- (a) any person living, or likely to be living, at the premises to which the application relates; or
- (b) any person employed, or likely to be employed, on those premises, is not fit, by virtue of his criminal record, to be in the proximity of children under the age of 8.

(9) An application for registration under this section may be refused if -

- (a) in the case of an application under subsection (1)(a), the

Department is satisfied that any premises on which the applicant is, or is likely to be, child minding; or

- (b) in the case of an application under subsection (1)(b), the Education Department is satisfied that the premises to which the application relates, are not fit to be used for looking after children under the age of 8, whether because of their condition or the condition of any equipment used on the premises or for any reason connected with their situation, construction or size.

(10) The Education Department shall not refuse to register an application for registration under subsection (1)(b) by reason only that -

- (a) any person looking after, or likely to be looking after, any children on the premises to which the application relates; or
- (b) any person employed, or likely to be employed, on those premises, is not a qualified teacher.

(11) For the purposes of this Part a person is employed as a nanny for a child if she possesses -

- (a) a qualification as a nanny granted by -
 - (i) the Mico Teacher Training College in Jamaica;
 - (ii) the Shortwood Teacher College in Jamaica;
 - (iii) the Erdiston Teacher Training College in Barbados;
 - (iv) the Nursery Nurses Examination Board in the United Kingdom;
 - (v) the Norland College in the United Kingdom; or
- (b) such other qualifications as may be prescribed.

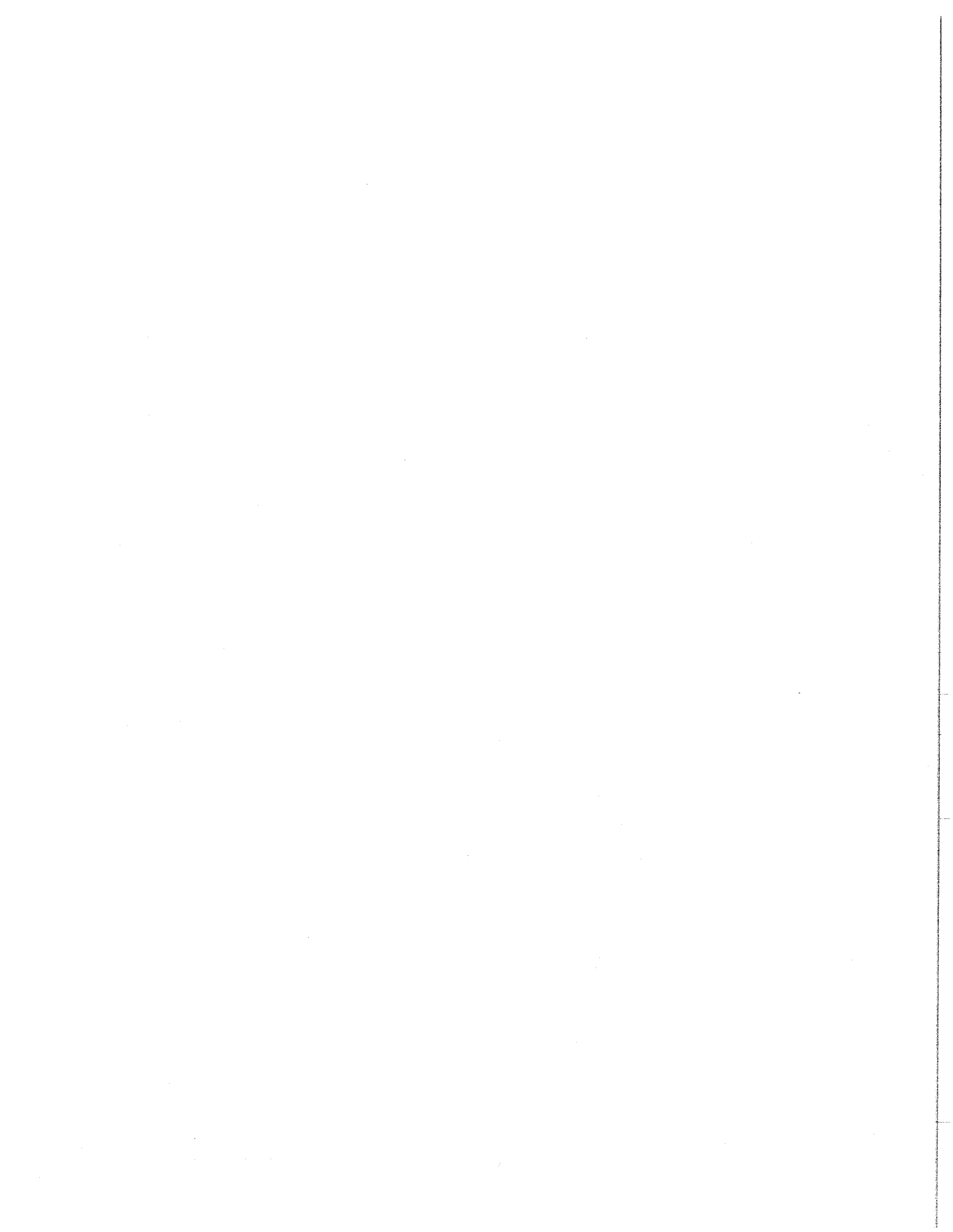
(12) Any register kept under this section -

- (a) shall be open to inspection at all reasonable times; and
- (b) may be kept by means of a computer.

(13) Schedule 5 shall have effect for the purposes of making further provision with respect to registration under this section, including, in particular, further provision for exemption from the requirement to be registered and provision for disqualification.

Requirements to be
complied with by
child minders.

60. (1) Where the Department register a person under section 59(1)(a), it shall impose such reasonable requirements on him and his employer as it considers appropriate in his case.



- (2) In imposing such requirements, the Department shall -
- (a) specify the maximum number of children, or the maximum number of children within specified age groups, whom he may look after when acting as child minder;
 - (b) require him (or, where appropriate, his employer) to secure that any premises on which he so looks after any child, and the equipment used in those premises, are adequately maintained and kept safe;
 - (c) require him (or, where appropriate, his employer) to keep a record of the names and addresses of -
 - (i) any child so looked after by him on any premises;
 - (ii) any person who assists in looking after any such child; and
 - (iii) any person living, or likely to be living, at those premises;
 - (d) require him to notify the Department in writing of any change in the persons mentioned in paragraph (c)(ii) and (iii).

(3) The Governor may by regulations make provision as to -

- (a) requirements which must be imposed by the Department under this section in prescribed circumstances;
- (b) requirements of such descriptions as may be prescribed which must not be imposed by the Department under this section.

(4) In determining the maximum number of children to be specified under subsection (2)(a), the Department shall take account of the number of other children who may at any time be on the premises on which the person concerned acts, or is likely to act, as a child minder.

(5) Where, in addition to the requirements mentioned in subsection (2), the Department impose other requirements, those other requirements must not be incompatible with any of the subsection (2) requirements.

(6) The Department may, at any time and in accordance with section 65(1)(d), vary any requirement imposed under this section, impose any additional requirement or remove any requirement.

Requirements to be complied with by persons providing day care for young children.

61. (1) Where the Education Department register a person under section 59(1)(b), it shall impose such reasonable requirements on him as it considers appropriate in his case.

(2) Where a person is registered under section 59(1)(b) with respect

to different premises, this section applies separately in relation to each registration.

(3) In imposing requirements on a person registered under section 59(1)(b), the Education Department shall -

- (a) specify the maximum number of children, or the maximum number of children within specified age groups, who may be looked after on the premises;
- (b) require him to secure that the premises, and the equipment used in them, are adequately maintained and kept safe;
- (c) require him to notify the Education Department in writing of any change in facilities which he provides or in the period during which he provides them.
- (d) specify the number of persons required to assist in looking after children on the premises;
- (e) require him to keep a record of the name and address of -
 - (i) any child looked after on the register premises;
 - (ii) any person who assists in looking after any such child; and
 - (iii) any person who lives, or is likely at any time to be living at those premises;
- (f) require him to notify the Education Department in writing of any change in the persons mentioned in paragraph (e)(ii) and (iii).

(4) The Governor may by regulations make provision as to -

- (a) requirements which must be imposed by the Education Department under this section in prescribed circumstances;
- (b) requirements of such description as may be prescribed which must not be imposed by the Education Department under this section.

(5) In subsection (3), references to children looked after are to children looked after in accordance with the provision of day care made by the registered person.

(6) In determining the maximum number of children to be specified under subsection (3)(a), the Education Department shall take account of the number of other children who may at any time be on the premises.

(7) Where, in addition to the requirements mentioned in subsection (3), the Education Department imposes other requirements, those other

requirements must not be incompatible with any of the subsection (3) requirements.

(8) The Education Department may, at any time and in accordance with section 65(1), vary any requirement imposed under this section, impose any additional requirement or remove any requirement.

Cancellation of registration.

62. (1) The Department may, at any time and in accordance with section 65(1), cancel the registration of any person under section 59(1)(a) if -

- (a) it appears to the Department that the circumstances of the case are such that it would be justified in refusing to register that person as a child minder;
- (b) the care provided by that person when looking after any child as a child minder is, in the opinion of the Department, inadequate having regard to the needs of that child; or
- (c) that person has -
 - (i) continued, or failed to comply with, any requirement imposed on him under section 60; or
 - (ii) failed to pay any annual fee under paragraph 6 of Schedule 5 within the prescribed time.

(2) The Education Department may, at any time and in accordance with section 65(1), cancel the registration of any person under section 59(1)(b) if -

- (a) it appears to the Education Department that the circumstances of the case are such that it would be justified in refusing to register that person with respect to those premises.
- (b) the day care provided by that person on those premises is, in the opinion of the Education Department, inadequate having regard to the needs of the children concerned; or
- (c) that person has -
 - (i) contravened, or failed to comply with, any requirement imposed on him under section 61; or
 - (ii) failed to pay any annual fee under paragraph 6 of Schedule 5 within the prescribed time.

(3) The Education Department may, at any time and in accordance with section 65(1), cancel all registrations of any person under section 59(1)(b) if it appears to the Education Department that the circumstances of the case are such that it would be justified in refusing to register that person with respect to any premises.

(4) Where a requirement to carry out repairs or make alterations or additions has been imposed on a registered person under section 60 or 61, his registration shall not be cancelled on the ground that the premises are not fit to be used for looking after children if -

- (a) the time set for complying with the requirements has not expired, and
- (b) it is shown that the condition of the premises is due to the repairs not having been carried out or the alterations or additions not having been made.

(5) In considering the needs of any child for the purposes of subsection (1)(b) or (2)(b), the department concerned shall, in particular, have regard to the child's religious persuasion and background.

Protection of
children in an
emergency.

63. (1) If -

- (a) the Department of Social Services or Education Department applies to the court for an order -
 - (i) cancelling a registered person's registration;
 - (ii) varying any requirement imposed on a registered person under section 60 or 61 respectively; or
 - (iii) removing a requirement or imposing an additional requirement on such a person; and
- (b) it appears to the court that a child who is being, or may be looked after by that person, or (as the case may be) in accordance with the provision for day care made by that person, is suffering, or is likely to suffer, significant harm, the court may make the order.

(2) Any such cancellation, variation, removal or imposition shall have effect from the date on which the order is made.

(3) An application under subsection (1) may be made ex parte and shall be supported by a written statement of the department's reasons for making it.

(4) Where an order is made under this section, the department concerned shall serve on the registered person, as soon as is reasonably practicable after the making of the order -

- (a) notice of the order and of its terms; and
- (b) a copy of the department's reasons which supported its application for the order.

(5) Where the court imposes or varies any requirement under subsection (1), the requirement, or the requirement as varied, shall be

treated for all purposes, other than those of section 65, as if it had been imposed by the Department under section 60 or (as the case may be) by the Education Department under section 61.

Inspection.

64. (1) Any authorised officer -

- (a) of the Department of Social Services may, at any reasonable time, enter any domestic premises on which child minding is at any time carried on; or
- (b) of the Education Department may, at any reasonable time, enter any premises on which day care for children under the age of 8 is at any time provided.

(2) Where the Department of Social Services or Education Department has reasonable cause to believe that a child is being looked after on any premises in contravention of this Part, any authorised officer of that department may enter those premises at any reasonable time.

(3) Any authorised officer entering premises under this section may inspect -

- (a) the premises;
- (b) any children being looked after on the premises;
- (c) the arrangements made for their welfare; and
- (d) any records relating to them which are kept as a result of this Part.

(4) The Social Services Department and the Education Department shall exercise the power to inspect the premises mentioned in subsections (1) (a) and (b) respectively at least once in every year.

(5) Any authorised officer inspecting records under this section -

- (a) shall be entitled at any reasonable time to have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is, or has been, in use in connection with the records in question; and
- (b) may require -
 - (i) the person by whom or on whose behalf the computer is or has been so used; or
 - (ii) any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material, to afford him such reasonable assistance as he may require.

(6) Any authorised officer exercising any power conferred by this

section shall, if so required, produce some duly authenticated document showing his authority to do so.

(7) Any person who intentionally obstructs an authorised officer in the exercise of any power conferred by this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding six months or to both.

Appeals.

65. (1) Not less than 14 days before -

- (a) refusing an application under section 59;
- (b) cancelling any such registration;
- (c) refusing consent under paragraph 2 of Schedule 5;
- (d) imposing, removing or varying any requirement under section 60 or 61; or
- (e) refusing to grant any application for the variation or removal of any such requirement, the department concerned shall send to the applicant, or (as the case may be) the registered person, notice in writing of its intention to take the step in question ("the step").

(2) Every such notice shall -

- (a) give the department's reason for preparing to take the step; and
- (b) inform the person concerned of his rights under this section.

(3) Where the recipient of such a notice informs the department concerned in writing of his desire to object to the step being taken, the department shall afford him an opportunity to do so.

(4) Any objection made under subsection (3) may be made in person or by a representative.

(5) If the department, after giving the person concerned an opportunity to object to the step being taken, decides nevertheless to take it the department shall send him written notice of its decision.

(6) A person aggrieved by the taking of any step mentioned in subsection (1) may appeal against it to the court.

(7) Where the court imposes or varies any requirement under subsection (8) or (9) the requirement, or the requirement as varied, shall be treated for all purposes (other than this section) as if it had been imposed by the Social Services Department, or, as the case may be, the Education Department.

(8) Where the court allows an appeal against the refusal or

cancellation of any registration under section 59 it may impose requirements under section 60 or (as the case may be) 61.

(9) Where the court allows an appeal against such a requirement it may, instead of cancelling the requirement, vary it.

(10) A step of a kind mentioned in subsection (1)(b) or (1)(d) shall not take effect until the expiry of the time within which an appeal may be brought under this section or, where such an appeal is brought, before its determination.

Offences.

66. (1) No person shall provide day care for children under the age of 8 on any premises unless he is registered by the Education Department under section 59(1)(b) with respect to those premises.

(2) If any person contravenes subsection (1) without reasonable excuse, he shall be guilty of an offence.

(3) No person shall act as a child minder on domestic premises unless he is registered by the Department under section 59(1)(a).

(4) Where it appears to the Department that a person has contravened subsection (3), it may serve a notice ("an enforcement notice") on him.

(5) An enforcement notice shall have effect for a period of one year beginning with the date on which it is served.

(6) If a person with respect to whom an enforcement notice is in force contravenes subsection (3) without reasonable excuses, he shall be guilty of an offence.

(7) Any person who without reasonable excuse contravenes, or otherwise fails to comply with, any requirement imposed on him under section 60 or 61 shall be guilty of an offence.

(8) If any person -

(a) acts as a child minder on domestic premises at any time when he is disqualified by regulations made under paragraph 2 of Schedule 5; or

(b) contravenes any of sub-paragraph (3) to (5) of that paragraph, he shall be guilty of an offence.

(9) Where a person contravenes sub-paragraph (3) of paragraph 2 of Schedule 5 he shall not be guilty of an offence under this section if he proves that he did not know, and had no reasonable grounds for believing, that the person in question was living or employed in the household.

(10) Where a person contravenes sub-paragraph (5) of paragraph 2 of Schedule 5 he shall not be guilty of an offence under this section if he proves that he did not know, and had no reasonable grounds for believing,

that the person he was employing was disqualified.

(11) A person guilty of an offence under this section shall be liable on summary conviction -

- (a) in the case of an offence under subsection (7), to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding six months or to both;
- (b) in the case of an offence under subsection (8), to imprisonment for a term not exceeding twelve months or to a fine not exceeding \$5,000 or to both; and
- (c) in the case of any other offence, to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding six months or to both.

PART VIII

MISCELLANEOUS AND GENERAL

Research and returns of information

Research.

67. (1) The Department and the Education Department, acting jointly, may conduct or assist other persons in conducting research into any matter connected with the functions of -

- (a) either or both of those departments under this Law;
- (b) the Education Department under the Education Law, 1983; or
- (c) the Department under the Youth Justice Law, 1995.

(2) The Department or the Education Department may institute research designed to provide information on which requests for information under section 69 may be based.

(3) The Department and the Education Department, acting jointly, shall keep under review the adequacy of the provision of child care training, and for this purpose shall receive and consider any information from or representations made by such persons or organisations as appear to them to be appropriate concerning the provision of such training.

Returns of information.

68. (1) Every -

- (a) voluntary organisation; and
- (b) other body concerned in the provisions of a children's home, shall, at such times and in such form as the Department may direct, send to the Department such particulars as it may

require with respect to children accommodated by them or on their behalf.

(2) The Department shall in each year lay before the Legislative Assembly a consolidated and classified abstract of the information received by the Department under subsection (1).

Effect and duration of orders etc.

Effect and duration of orders etc.

69. (1) The making of a residence order with respect to a child who is the subject of a care order discharges the care order.

(2) The making of a care order with respect to a child who is the subject of any section 8 order discharges that order.

(3) The making of a care order with respect to a child who is the subject of a supervision order discharges that other order.

(4) The making of a care order with respect to a child who is a ward of court brings that wardship to an end.

(5) Where -

(a) the parent of a child has been notified as mentioned in section 17 of the Education Law, 1983; and

(b) the child of that parent, in respect of whom the notification was given is the subject of a care order, the chief Education Officer shall take no further action with respect to that notification.

(6) 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.

(7) An order under Schedule 1 has effect as specified in that Schedule.

(8) A section 8 order shall, if it would otherwise still be in force, cease to have effect when the child reaches the age of 18.

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

(10) Any order made under any other provision of this Law 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.

(11) On disposing of any application for an order under this Law, 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 Law of a specified kind may be made with respect to the child concerned by any person named in the order without leave of the court.

(12) 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 discharge of an education supervision order; or
- (d) the substitution of a supervision order for a care order, no further application of a kind mentioned in paragraph (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.

(13) Subsection (12) does not apply to applications made in relation to interim orders.

(14) Where -

- (a) a person has made an application for an order under section 34;
- (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.

Procedure etc.

Attendance of child
at hearing under
Part IV or V.

70. (1) In any proceedings in which a court is hearing an application for an order under Part IV or V, or is considering whether to make such an order, the court may order the child concerned to attend such stage or stages of the proceedings as may be specified in the order.

(2) The power conferred by subsection (1) shall be exercised in accordance with any rules of court.

(3) Subsections (4) to (6) apply where -

- (a) an order under subsection (1) has not been complied with; or
- (b) the court has reasonable cause to believe that it will not be complied with.

- (4) The court may make an order authorising a constable -
- (a) to take charge of the child and to bring him to court; and
 - (b) to enter and search any premises specified in the order if he has reasonable cause to believe that the child may be found on the premises.

(5) The court may order any person who is in a position to do so to bring the child to court.

(6) Where the court has reason to believe that a person has information about the whereabouts of the child it may order him to disclose that information to the court.

Evidence given by, or with respect to, children.

71. (1) Subsection (2) applies where a child who is called as a witness in any civil proceedings does not, in the opinion of the court, understand the nature of an oath.

- (2) The child's evidence may be heard by the court if, in its opinion -
- (a) he understands that it is his duty to speak the truth; and
 - (b) he has sufficient understanding to justify his evidence being heard.

(3) Where -

- (a) in any civil proceedings before the court evidence is given in connection with the upbringing, maintenance or welfare of a child; or
- (b) in any civil proceedings before the court -
 - (i) a statement is made by a child;
 - (ii) a statement is made by a person concerned with or having control of a child that he has assaulted, neglected or ill-treated the child; or
 - (iii) a statement is included in any report made by a guardian ad litem appointed under this Law, that evidence or statement shall be admissible in those proceedings notwithstanding any rule of law relating to hearsay.

Privacy for children involved in certain proceedings.

72. (1) A court may decide to sit in private for the whole or part of any proceedings in which any power under this Law may be exercised by that court with respect to any child.

(2) No person shall publish any material which is intended, or is likely, to identify -

- (a) any child as being involved in any proceedings before a court in which any power under this Law may be exercised by the court with respect to that or any other child; or
- (b) an address or school as being that of a child involved in any such proceedings.

(3) In any proceedings for an offence under this section it shall be a defence for the accused to prove that he did not know, and had no reason to suspect, that the published material was intended, or was likely, to identify the child.

(4) The court may, if satisfied that the welfare of the child requires it, by order dispense with the requirements of subsection (2) to such extent as may be specified in the order.

(5) For the purposes of this section -

"publish" includes -

- (a) broadcast by radio, television or cable or satellite television; or
- (b) cause to be published; and "material" includes any picture or representation.

(6) Any person who contravenes this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding twelve months or to both.

Self-incrimination.

73. (1) In any proceedings in which a court is hearing an application for an order under Part IV or V, no person shall be excused from -

- (a) giving evidence on any matter; or
- (b) answering any question put to him in the course of his giving evidence, on the ground that doing so might incriminate him or his spouse of an offence.

(2) A statement or admission made in such proceedings shall not be admissible in evidence against the person making it or his spouse in proceedings for an offence other than perjury.

Restrictions on use of wardship jurisdiction.

74. (1) No application for any exercise of the Grand Court's inherent jurisdiction with respect to children may be made by the Department unless the Department have obtained the leave of the Grand Court.

(2) The Grand Court may only grant leave if it is satisfied that -

- (a) the result which the Department wishes to achieve could not be achieved through the making of any order made otherwise than in the exercise of the Grand Court's inherent jurisdiction for which the Department is entitled to apply; and

- (b) there is reasonable cause to believe that if the Grand Court's inherent jurisdiction is not exercised with respect to the child he is likely to suffer significant harm.

Search warrants

Power of constable to assist in exercise of certain powers to search for children or inspect premises.

75. (1) Where, on an application made by any person for a warrant under this section, it appears to the court -

- (a) that a person attempting to exercise powers under section 56 or 64 has been prevented from doing so by being refused entry to the premises concerned; or
- (b) that any such person is likely to be so prevented from exercising any such powers, it may issue a warrant authorising any constable to assist that person in the exercise of these powers using reasonable force if necessary.

(2) Every warrant issued under this section shall be addressed to, and executed by, a constable who shall be accompanied by the person applying for the warrant if -

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

(3) A court granting an application for a warrant under this section may direct that the constable concerned may, in executing the warrant, be accompanied by a health practitioner if he so chooses.

(4) An application for a warrant under this section shall, be made -

- (a) in the manner and form prescribed by rules of court; and
- (b) before such rules are made, in such manner and form as the court directs.

(5) Where -

- (a) an application for a warrant under this section relates to a particular child; and
- (b) it is reasonably practicable to do so, the application and any warrant granted on the application shall name the child; and where it does not name him it shall describe him as clearly as possible.

General

- Offences by bodies corporate.
76. (1) This section applies where any offence under this Law is committed by a body corporate.
- (2) If the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he (as well as the body corporate) shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.
- Regulations and orders.
77. (1) An order under section 17(4) shall not be made unless a draft of it has been laid before, and approved by a resolution of, the Legislative Assembly.
- (2) Any order or regulations made under this Law may -
- (a) make different provision for different cases;
 - (b) provide for exemptions from any of its provisions; and
 - (c) contain such incidental, supplemental and transitional provisions as the Governor considers expedient.
- Financial provisions.
78. (1) Any expenses incurred by the Department or the Education Department under this Law shall be payable out of money provided by the Legislative Assembly.
- (2) Any sums received by the Department under Part III of Schedule 2, paragraph 3 of Schedule 4 or paragraph 6 of Schedule 5 shall be paid to the general revenues of the Islands.
- Notices.
79. (1) Any notice or document required under this Law to be served on any person may be served on him by being delivered personally to him, or being sent by post to him at his proper address.
- (2) Any such notice or other document required to be served on a body corporate or firm shall be duly served if it is served on the secretary of that body or a partner in that firm.
- (3) For the purpose of this section and section 52 of the Interpretation Law in its application to this section, the proper address of a person -
- (a) in the case of a secretary of a body corporate, shall be that of the registered office of that body;
 - (b) in the case of a partner of a firm, shall be that of the principal office of the firm; and
 - (c) in any other case, shall be the last known address of the

person to be served.

Amendments,
transitional
provisions, savings
and repeals.

80. (1) The minor and consequential amendments set out in Part I of Schedule 6 shall have effect.

(2) The transitional provisions and savings set out in Part II Schedule 6 shall have effect.

(3) The repeals set out in Part III of Schedule 6 shall have effect.

(4) An order under section 2 may make such transitional provisions or savings as appear to the Governor to be necessary or expedient in connection with the provisions brought into force by the order, including -

(a) provisions adding to or modifying the provisions of Schedule 6; and

(b) such adaptations -

(i) of the provisions brought into force by the order; and

(ii) of any provisions of this Law then in force, as appear to him to be necessary or expedient in consequence of the partial operation of this Law.

SCHEDULES

SCHEDULE 1

Section 15.

FINANCIAL PROVISION FOR CHILDREN

Order for financial relief against parents

1. (1) On an application made by a parent or guardian of a child, or by any person in whose favour a residence order is in force with respect to a child, the court may make one or more of the orders mentioned in sub-paragraph (2).

(2) The orders referred to in sub-paragraph (1) are -

(a) an order requiring either or both parents of a child -

(i) to make to the applicant for the benefit of the child; or

(ii) to make to the child himself, such periodical payments, for such term, as may be specified in the order;

(b) an order requiring either or both parents of a child -

- (i) to secure to the applicant for the benefit of the child; or
 - (ii) to secure to the child himself, such periodical payments, for such term, as may be so specified;
- (c) an order requiring either one or both parents of a child -
- (i) to pay to the applicant for the benefit of the child; or
 - (ii) to pay to the child himself, such lump sum as may be so specified;
- (d) an order requiring either or both parents of a child -
- (i) to transfer to the applicant, for the benefit of this child; or
 - (ii) to transfer to the child himself, such property to which the parent is, or the parents are, entitled (either in possession or reversion) as may be specified in the order.
- (3) The powers conferred by this paragraph may be exercised at any time.
- (4) An order under sub-paragraph (2)(a) or (b) 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.
- (5) Where a court makes an order under this paragraph -
- (a) it may at any time make a further such order under sub-paragraph (2)(a), (b) or (c) with respect to the child concerned if he has not reached the age of 18;
 - (b) it may not make more than one order under sub-paragraph (2)(d) against the same person in respect of the same child.
- (6) On making, varying or discharging a residence order the court may exercise any of its powers under this Schedule even though no application has been made to it under this Schedule.

Duration of orders for financial relief

2. (1) The term to be specified in an order for periodical payments made under paragraph 1 (2) (a) or (b) in favour of a child may begin with the date of the making of an application for the order in question or any later date but -
- (a) shall not in the first instance extend beyond the child's seventeenth birthday unless the court thinks it right in the

circumstances of the case to specify a later date; and

(b) shall not in any event extend beyond the child's eighteenth birthday.

(2) Paragraph (b) sub-paragraph (1) shall not apply in the case of a child if it appears to the court that -

(a) the child is, or will be or (if an order were made without complying with that paragraph) 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) there are special circumstances which justify the making of an order without complying with that paragraph.

(3) An order for periodical payments made under paragraph 1(2)(a) shall, notwithstanding anything in the order, cease to have effect on the death of the person liable to make payments under the order.

(4) Where an order is made under paragraph 1(2)(a) or (b) requiring periodical payments to be made or secured to the parent of a child, the order shall cease to have effect if -

(a) any parent making or securing the payments, and

(b) any parent to whom the payments are made or secured, live together for a period of more than 6 months.

Matters to which the court is to have regard in making orders for financial relief

3. (1) In deciding whether to exercise its powers under paragraph 1, and if so in what manner, the court shall have regard to all the circumstances including -

(a) the income, earning capacity, property and other financial resources which each person mentioned in sub-paragraph (2) has or is likely to have in the foreseeable future;

(b) the financial needs, obligations and responsibilities which each person mentioned in sub-paragraph (4) has or is likely to have in the foreseeable future;

(c) the financial needs of the child;

(d) the income, earning capacity (if any), property and other financial resources of the child;

(e) any physical or mental disability of the child;

- (f) the manner in which the child was being, or was expected to be, educated or trained.

(2) In deciding whether to exercise its powers under paragraph 1 against a person who is not the mother or father of the child, and if so in what manner, the court shall in addition have regard to -

- (a) whether that person has assumed responsibility for the maintenance of the child and, if so, the extent to which and basis on which he assumed that responsibility and the length of the period during which he met that responsibility;
- (b) whether he did so knowing that the child was not his child;
- (c) the liability of any other person to maintain the child.

(3) Where the court makes an order under paragraph 1 against a person who is not the father of the child, it shall record in the order that the order is made on the basis that the person against whom the order is made is not the child's father.

(4) The persons mentioned in sub-paragraph (1) are -

- (a) in relation to a decision whether to exercise its powers under paragraph 1, any parent of the child;
- (b) the applicant for the order;
- (c) any other person in whose favour the court proposes to make the order.

Provisions relating to lump sums

4. (1) Without prejudice to the generality of paragraph 1, an order under that paragraph for the payment of a lump sum may be made for the purposes of enabling any liabilities or expenses -

- (a) incurred in connection with the birth of the child or in maintaining the child; and
- (b) reasonably incurred before the making of the order, to be met.

(2) The power of the court under paragraph 1 to vary or discharge an order for the making or securing of periodical payments by a parent shall include power to make an order under that provision for the payment of a lump sum by that parent.

(3) An order made under paragraph 1 for the payment of a lump sum may provide for the payment of that sum by instalments.

(4) Where the court provides for the payment of a lump sum by

instalments the court, on an application made either by the person liable to pay or the person entitled to receive that sum, shall have power to vary that order by varying -

- (a) the number of instalments payable;
- (b) the amount of any instalments payable;
- (c) the date on which any instalment becomes payable.

Variation etc. of orders for periodical payments

5. (1) In exercising its powers under paragraph 1 or 2 to vary or discharge an order for the making or securing of periodical payments the court shall have regard to all the circumstances of the case, including any change in any of the matters to which the court was required to have regard when making the order.

(2) The power of the court under paragraph 1 to vary an order for the making or securing of periodical payments shall include power to suspend any provision of the order temporarily, and to review any provision so suspended.

(3) Where on an application under paragraph 1 for the variation or discharge of an order for the making or securing of periodical payments the court varies the payments required to be made under that order, the court may provide that the payments as so varied shall be made from such date as the court may specify, not being earlier than the date of the making of the application.

(4) An application for the variation of an order made under paragraph 1 for the making or securing of periodical payments to or for the benefit of a child may, if the child has reached the age of 16, be made by the child himself.

(5) Where an order for the making or securing of periodical payments made under paragraph 1 ceases to have effect on the date on which the child reached the age of 16, or at any time after that date but before the date on which he reaches the age of 18, the child may apply to the court which made the order for an order for its revival.

(6) If on such an application it appears to the court that -

- (a) the child is, or will be or (if an order were made under this sub-paragraph) 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) there are special circumstances which justify the making of an order under this paragraph, the court shall have power by order to review the order from such date as the court may

specify, not being earlier than the date of the making of the application.

(7) Any order which is reviewed by an order under sub-paragraph (5) may be varied or discharged under that provision, on the application of any person by whom or to whom payments are required to be made under the reviewed order.

(8) An order for the making or securing of periodical payments made under paragraph 1 may be varied or discharged, after the death of either parent, on the application of a guardian of the child concerned.

**Variation of orders for secured periodical payments
after death of parent**

6. (1) Where the parent liable to make payments under a secured periodical payments order has died, the persons who may apply for the variation or discharge of the order shall include the personal representatives of the deceased parent.

(2) No application for the variation of the order shall, except with the permission of the court, be made after the end of the period of 6 months from the date on which representation in regard to the estate of that parent is first taken out.

(3) The personal representatives of a deceased person against whom a secured periodical payments order was made shall not be liable for having distributed any part of the estate of the deceased after the end of the period of 6 months referred to in sub-paragraph (2) on the ground that they ought to have taken into account the possibility that the court might permit an application for variation to be made after that period by the person entitled to payments under the order.

(4) Sub-paragraph (3) shall not prejudice any power to recover any part of the estate so distributed arising by virtue of the variation of an order in accordance with this paragraph.

(5) Where an application to vary a secured periodical payments order is made after the death of the parent liable to make payments under the order, the circumstances to which the court is required to have regard under paragraph 6(1) shall include the changed circumstances resulting from the death of the parent.

(6) In this paragraph "secured periodical payments order" means an order for secured periodical payments under paragraph 1(2)(b) of this Schedule.

Financial relief under other enactments

7. (1) This paragraph applies where a residence order is made with respect to a child at a time when there is in force an order ("the financial

relief order") made under any enactment other than this Law requiring a person to contribute to the child's maintenance.

(2) Where this paragraph applies, the court may, on the application of -

- (a) any person required by the financial relief order to contribute to the child's maintenance; or
- (b) any person in whose favour a residence order with respect to the child is in force, make an order revoking the financial relief order, or varying it by altering the amount of any sum payable under that order or by substituting the applicant for the person to whom any such sum is otherwise payable under that order.

Interim orders

8. (1) Where an application is made under paragraph 1 the court may, at any time before it disposes of the application, make an interim order -

- (a) requiring either or both parents to make such periodical payments, at such times and for such term as the court thinks fit; and
- (b) giving any direction which the court thinks fit.

(2) An interim order under this paragraph may provide for payments to be made from such date as the court may specify, not being earlier than the date of the making of the application under paragraph 1.

(3) An interim order made under this paragraph shall cease to have effect when the application is disposed of or, if earlier, on the date specified for the purposes of this paragraph in the interim order.

(4) An interim order in which a date has been specified for the purposes of sub-paragraph (3) may be varied by substituting a later date.

Enforcement of orders for maintenance

9. (1) Any person for the time being under an obligation to make payments in pursuance of any order for the payment of money made by a court under this Law shall give notice of any change of address to such person (if any) as may be specified in the order.

(2) Any person failing without reasonable excuse to give such notice shall be guilty of an offence and liable on summary conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding six months or to both.

(3) Where the court makes an order under this Law for the making of

periodical payments, the court may order that the payments shall be made to the Chief Clerk of the Summary Courts for payment to the person in whose favour the order is made.

(4) Where -

- (a) periodical payments under such an order are required to be paid to or through the Chief Clerk of the Summary Courts; and
- (b) any sum payable under the order is in arrears, the Chief Clerk shall, if the person for whose benefit the payment should have been made so requests in writing, proceed in his own name for the recovery of that sum.

(5) The Chief Clerk shall not proceed for the recovery of any payment mentioned in this paragraph where it appears to him that it is unreasonable in the circumstances to do so; and where he does so proceed, the person for whose benefit the proceedings for recovery are taken shall have the same liability for all the costs properly incurred in or about the proceedings as if he (and not the Chief Clerk) had taken the proceedings.

Financial provision for child not resident in the Islands

10. (1) Where one parent of a child lives in the Islands and the child lives outside the Islands with -

- (a) another parent of his;
- (b) a guardian of his; or
- (c) a person in whose favour a residence order is in force with respect to the child, the court shall have power, on an application made by any of the persons mentioned in paragraphs (a) to (c), to make one or both of the orders mentioned in paragraph 1(2)(a) and (b) against the parent living in the Islands.

(2) Any reference in this Law to the powers of the court under paragraph 1(2) or to an order made under paragraph 1(2) shall include a reference to the powers which the court has by virtue of sub-paragraph (1) or (as the case may be) to an order made by virtue of sub-paragraph (1).

Interpretation

11. (1) In this Schedule "child" includes, in any case where an application is made under paragraph 5 in relation to a person who has reached the age of 18, that person.

(2) In this Schedule "parent" includes any party to a marriage

[The Children Law, 1995 -84]

(whether or not subsisting) in relation to whom the child concerned is a child of the family, and for this purpose any reference to either parent or both parents shall be construed as references to any parent of his and to all of his parents.

SCHEDULE 2

Sections 17, 23 and 29

**SOCIAL SERVICES SUPPORT FOR CHILDREN
AND FAMILIES**

PART I

PROVISION OF SERVICES FOR FAMILIES

**Identification of children in need and
provision of information**

1. (1) The Department shall take reasonable steps to identify the extent to which there are children in need in the Islands.
- (2) The Department shall -
 - (a) publish information -
 - (i) about services the Department provides under sections 17, 18, 21 and 24; and
 - (ii) where the Department considers it appropriate, about the provision by others (including, in particular, voluntary organisations) of services which the Department has power to provide under those sections; and
 - (b) take such steps as are reasonably practicable to ensure that those who might benefit from the services receive the information relevant to them.

Maintenance of a register of disabled children

2. (1) The Department shall open and maintain a register of disabled children in the Islands.
- (2) The register may be kept by means of a computer.

Prevention of neglect and abuse

3. The Department shall take all reasonable steps, through the provision of services under Part III of this Law, to prevent children in the Islands suffering ill-treatment or neglect.

Provision for disabled children

4. The Department shall provide services designed to minimise the effect on disabled children of their disabilities, and to give disabled children the opportunity to lead lives which are as normal as possible.

Provision to reduce need for care proceedings etc.

5. (1) The Department shall take reasonable steps designed to reduce the need to bring -

- (a) proceedings for care or supervision orders with respect to children;
- (b) criminal proceedings against children;
- (c) any family or other proceedings with respect to children which might lead them to be placed in the Department's care; or
- (d) proceedings under the inherent jurisdiction of the Grand Court with respect to children.

(2) The Department shall take reasonable steps designed -

- (a) to encourage children not to commit criminal offences; and
- (b) to avoid the need for children to be placed in secure accommodation.

Provision for children living with families

6. The Department shall make such provision as it considers appropriate for the following services to be available with respect to children in need (and their families) while the children in need are living with their families -

- (a) advice, guidance and counselling;
- (b) occupational, social, cultural or recreational activities; and
- (c) facilities for, or assistance with, travelling within the Islands to and from home for the purpose of taking advantage of any service provided under this Law or of any similar service.

Maintenance of the family home

7. The Department shall take such steps as are reasonably practicable, when any child who is in need and whom it is not looking after is living apart from his family -

- (a) to enable him to live with his family; or
- (b) to promote contact with him and his family, if, in the Department's opinion, it is necessary to do so in order to safeguard or promote his welfare.

PART II

CHILDREN LOOKED AFTER BY SOCIAL SERVICES

Regulations as to arrangements under section 23(2)(c)

8. Regulations under section 23(2)(c) may, in particular, make provision as to -

- (a) the person to be notified of any proposed arrangements;
- (b) the opportunity such persons are to have to make representations in relation to the arrangements proposed;
- (c) the persons to be notified of any changes in arrangements;
- (d) the records to be kept by the Department; and
- (e) the supervision by the Department of any arrangements made.

**Promotion and maintenance of contact between
child and family**

9. (1) Where a child is being looked after by the Department, it shall, unless it is not reasonably practicable or consistent with his welfare, endeavour to promote contact between the child and -

- (a) his parents;
- (b) any person who is not a parent of his but who has parental responsibility for him; and
- (c) any relative, friend or other person connected with him.

(2) Where a child is being looked after by the Department -

- (a) the Department shall take such steps as are reasonably practicable to secure that -

- (i) his parents; and
 - (ii) any person who is not a parent of his but who has parental responsibility for him, are kept informed of where he is being accommodated; and
- (b) every such person shall ensure that the Department is kept informed of his or her address.
- (3) Nothing in this paragraph requires the Department to inform any person of the whereabouts of a child if -
- (a) the child is in the care of the Department; and
 - (b) the Department has reasonable cause to believe that informing the person would prejudice the child's welfare.
- (4) Any person who fails without reasonable excuse to comply with sub-paragraph (2)(b) shall be guilty of an offence and liable on summary conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding six months or to both.
- (5) It shall be a defence in any proceedings under sub-paragraph (4) to prove that the defendant was residing at the same address as another person who was the child's parent or had parental responsibility for the child, and had reasonable cause to believe that the other person had informed the Department that both of them were residing at that address.

PART III

CONTRIBUTIONS TOWARDS MAINTENANCE OF CHILDREN LOOKED AFTER BY SOCIAL SERVICES

Liability to contribute

10. (1) Where the Department is looking after a child under this Law (other than under section 21) it shall consider whether it should recover contributions towards the child's maintenance from any person liable to contribute ("a contributor").
- (2) The Department may only recover contributions from a contributor if it considers it reasonable to do so.
- (3) The persons liable to contribute are -
- (a) where the child is under the age of 16, each of his parents;
 - (b) where the child has reached the age of 16, the child himself.
- (4) A contributor is not obliged to make any contribution towards a child's maintenance except as agreed or determined in accordance with

this Part of this Schedule.

Agreed contributions

11. (1) Contributions towards a child's maintenance may only be recovered if the Department has served a notice ("a contribution notice") on the contributor specifying -

(a) the weekly sum which the Department considers that he should contribute; and

(b) arrangements for payment.

(2) The contribution notice must be in writing and must be dated.

(3) Arrangements for payment shall, in particular include -

(a) the date on which liability to contribute begins (which must not be earlier than the date of the notice);

(b) the date on which liability under the notice will end (if the child has not ceased before that date to be looked after by the Department); and

(c) the date on which the first payment is to be made.

(4) The Department may specify in a contribution notice a weekly sum which is a standard contribution determined by the Department for all children it looks after.

(5) The Department may not specify in a contribution notice a weekly sum greater than that which the Department considers it is reasonably practicable for the contributor to pay (having regard to his means).

(6) The Department may at any time withdraw a contribution notice (without prejudice to its power to serve another).

(7) Where the Department and the contributor agree -

(a) the sum which the contributor is to contribute; and

(b) arrangements for payment, (whether as specified in the contribution notice or otherwise) and the contributor notifies the Department in writing that he so agrees, the Department may recover summarily as a civil debt any contribution which is overdue and unpaid.

(8) A contributor may, by serving a notice in writing on the Department, withdraw his agreement in relation to any period of liability falling after the date of service of the notice.

(9) Sub-paragraph (7) is without prejudice to any other method of

recovery.

Contribution orders

12. (1) Where a contributor has been served with a contribution notice and has -

- (a) failed to reach any agreement with the Department as mentioned in paragraph 11(7) within the period of one month beginning with the day on which the contribution notice was served; or
- (b) served a notice under paragraph 11(8) withdrawing his agreement, the Department may apply to the court for an order under this paragraph.

(2) On such an application the court may make an order ("a contribution order") requiring the contributor to contribute a weekly sum towards the child's maintenance in accordance with arrangements for payment specified by the court.

(3) A contribution order -

- (a) shall not specify a weekly sum greater than that in the contribution notice; and
- (b) shall be made with due regard to the contributor's means.

(4) A contribution order shall not -

- (a) take effect before the date specified in the contribution notice; or
- (b) remain in force after the child has ceased to be looked after by the Department.

(5) The Department may not apply to the court under sub-paragraph (1) in relation to a contribution notice which it has withdrawn.

(6) Where -

- (a) a contribution order is in force;
- (b) the Department serves another contribution notice; and
- (c) the contributor and the Department reach an agreement under paragraph 11(7) in respect of that other contribution notice, the effect of the agreement shall be to discharge the order from the date on which it is agreed that the agreement shall take effect.

(7) Where an agreement is reached under sub-paragraph (6) the

Department shall notify the court -

- (a) of the agreement; and
- (b) of the date on which it took effect.

(8) A contribution order may be varied or revoked on the application of the contributor or the authority.

(9) In proceedings for the variation of a contribution order, the Department shall specify -

- (a) the weekly sum which, having regard to paragraph 11, it proposes that the contributor should contribute under the order as varied; and
- (b) the proposed arrangements for payment.

(10) Where a contribution order is varied, the order -

- (a) shall not specify a weekly sum greater than that specified by the Department in the proceedings for a variation; and
- (b) shall be made with due regard to the contributor's means.

(11) An appeal shall be in accordance with rules of court from any order made under this paragraph.

Regulations

13. The Governor may make regulations -

- (a) as to the considerations which the Department must take into account in deciding -
 - (i) whether it is reasonable to recover contributions; and
 - (ii) what the arrangements for payment should be; and
- (b) as to the procedures the Department must follow in reaching agreements with contributors.

SCHEDULE 3

Sections 35 and 36

SUPERVISION ORDERS

PART I

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.

Power of supervisor to give directions to supervised child

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 the child to do all or any of the following things -

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

(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 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 paragraphs 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.

(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 to attend with him.

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

Psychiatric and medical examinations

4. (1) A supervision order may require the supervised child -
- (a) to submit to a medical or psychiatric examination; or
 - (b) to submit to any such examination from time to time as directed by the supervisor.
- (2) Any such examination shall be required to be conducted -
- (a) by, or under the direction of, such health practitioner as may be specified in the order; or
 - (b) at a place specified in the order and at which the supervised child is to attend as a non-resident patient.
- (3) 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 a health practitioner, that the physical or mental 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.

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

- (a) by, or under the direction of, such health 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 at a hospital.

(3) 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.

(4) If a health practitioner by whom or under whose direction a supervised child 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.

(5) 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.

PART II

MISCELLANEOUS

Life of supervision order

6. (1) Subject to section 69, a supervision order shall cease to have effect at the end of the period of 1 year beginning with the date on which it

was made.

(2) Where a 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.

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) The responsible person in relation to any child with respect to whom a supervision order is made shall -
- (a) if asked by the supervisor, inform him of the child's address (if it is known to him); and
 - (b) if he is living with the child, allow the supervisor reasonable contact with the child.

8. A court shall not designate any person other than an officer of the Department as the supervisor under a supervision order unless it is satisfied that the Department has agreed to the designation of that person.

Effect of supervision order on earlier orders

9. The making of a supervision order with respect to any child brings to an end any earlier care or supervision order which was made with respect to that child and would otherwise continue in force.

Social services functions and expenditure

10. (1) The Governor may make regulations with respect to the exercise by the Department of its functions where a child has been placed under the supervision of an officer of the Department by a supervision order.

(2) Where a supervision order requires compliance with directions given by virtue of this part of this Schedule, any expenditure incurred by the supervisor for the purposes of the directions shall be defrayed by the Department.

PART III

EDUCATION SUPERVISION ORDERS

Effect of orders

11. (1) Where an education supervision order is in force with respect to a child, it shall be the duty of the supervisor -

- (a) to advise, assist and befriend, and give directions to -
 - (i) the supervised child; and
 - (ii) his parent; in such a way as will in the opinion of the supervisor, secure that he is properly educated;
- (b) where any such directions given to -
 - (i) the supervised child; or
 - (ii) a parent of his, have not been complied with, to consider what further steps to take in the exercise of the supervisor's powers under this Law.

(2) Before giving any directions under sub-paragraph (1) the supervisor shall, so far as is reasonably practicable, ascertain the wishes and feelings of -

- (a) the child; and
- (b) his parents; including, in particular, their wishes as to the school at which the child should be educated.

(3) When settling the terms of any such directions, the supervisor shall give due consideration -

- (a) having regard to the child's age and understanding, to such wishes and feelings of his as the supervisor has been able to ascertain; and
- (b) to such wishes and feelings of the child's parents as he has been able to ascertain.

(4) Directions may be given under this paragraph at any time while the education supervision order is in force.

12. (1) Where an education supervision order is in force with respect to a child, the duties of the child's parents under section 14 of the Education Law, 1983, (duty to cause child of school age to attend at a suitable school and to attend that school regularly) shall be superseded by their duty to comply with any directions in force under the education supervision order.

(2) Where an education supervision order is made with respect to a

child -

- (a) any notification under section 17 of the Education Law, 1983, -
 - (i) made by the Chief Education Officer to the parent of that child; and
 - (ii) in respect of which the fine prescribed by section 18 of that Law was due immediately before the making of the education supervision order, shall cease to have effect; and
- (b) while the education supervision order remains in force, section 14, 17, 18 and 22 (8) of the Education Law, 1983, shall not apply with respect to the child.

Effect where child also subject to supervision order

13. (1) This paragraph applies where an education supervision order and a supervision order are in force at the same time with respect to the same child.

(2) Any failure to comply with a direction given by the supervisor under the education supervision order shall be disregarded if it would not have been reasonably practicable to comply with it without failing to comply with a direction given under the other order.

Duration of orders

14. (1) An education supervision order shall have effect for a period of 1 year, beginning with the date on which it is made.

(2) An education supervision order shall not expire if, before it would otherwise have expired, the court has (on the application of the Education Department) extended the period during which it is in force.

(3) Such an application may not be made earlier than 4 months before the date which the order would otherwise expire.

(4) The period during which an education supervision order is in force may be extended under sub-paragraph (2) on more than one occasion.

(5) No one extension may be for a period of more than 6 months.

(6) An education supervision order shall cease to have effect on -

- (a) the child's ceasing to be of school age (within the meaning of the Education Law, 1983); or

- (b) the making of a care order with respect to a child; and sub-paragraphs (1) to (4) are subject to this sub-paragraph.

Information to be given to supervisor etc.

- 15. (1) An education supervision order may require the 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) A person who is the parent of a child with respect to whom an education supervision order has been made shall -
 - (a) if asked by the supervisor, inform him of the child's address (if it is known to him); and
 - (b) if he is living with the child, allow the supervisor reasonable contact with the child.

Discharge of orders

- 16. (1) The court may discharge any education supervision order on the application of -
 - (a) the child concerned;
 - (b) a parent of his; or
 - (c) the Education Department.
- (2) On discharging an education supervision order, the court may direct the Education Department to investigate the circumstances of the child.

Offences

- 17. (1) If a parent of a child with respect to whom an education supervision order is in force persistently fails to comply with a direction given under the order he shall be guilty of an offence.
- (2) It shall be a defence for any person charged with such an offence to prove that -
 - (a) he took all reasonable steps to ensure that the direction was complied with;
 - (b) the direction was unreasonable; or

- (c) he has complied with -
- (i) a requirement included in a supervision order made with respect to the child; or
 - (ii) directions given under such a requirement, and that it was not reasonably practicable to comply both with the direction and with the requirement or directions mentioned in this paragraph.

(3) A person guilty of an offence under this paragraph shall be liable on summary conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding six months or to both.

Persistent failure of child to comply with directions

18. (1) Where a child with respect to whom an education supervision order is in force persistently fails to comply with a direction given under the order, the Education Department shall notify the Department.

(2) Where the Department has been notified under sub-paragraph (1) it shall investigate the circumstances of the child.

Miscellaneous

19. The Governor may by regulations make provision modifying or displacing the provisions of any enactment about education in relation to any child with respect to whom an education supervision order is in force to such extent as appears to the Governor to be necessary or expedient in consequence of the provision made by this Law with respect to such orders.

Interpretation

20. (1) In this Part of this Schedule "parent" has the same meaning as in the Education Law, 1983, (as amended by Part I of Schedule 6).

SCHEDULE 4

Section 52

REGISTERED CHILDREN'S HOMES

Application for registration

1. (1) An application for the registration of a children's home shall be made to the Department by the person carrying on, or intending to carry on, the home to which the application relates.

(2) The application shall be made in the prescribed manner and shall be accompanied by such particulars and such reasonable fee as may be prescribed.

(3) If the Department is satisfied that a children's home with respect to which an application has been made in accordance with this Schedule complies or (as the case may be) will comply with such requirements as may be prescribed, the Department shall grant the application, either unconditionally or subject to conditions imposed under paragraph 2.

(4) Before deciding whether or not to grant an application the Department shall comply with any prescribed requirements.

(5) Regulations made for the purposes of this paragraph may, in particular, make provision as to the inspection of the home in question.

(6) Where an application is granted, the Department shall notify the applicant that the home has been registered under this Law as from such date as may be specified in the notice.

(7) If the Department is not satisfied as mentioned in sub-paragraph (3), it shall refuse the application.

(8) For the purposes of this Law, an application which has not been granted or refused within the period of twelve months beginning with the date when it is served on the Department shall be deemed to have been refused by the Department, and the applicant shall be deemed to have been notified of the Department's refusal at the end of that period.

Conditions imposed on registration

2. (1) The Department may grant an application for registration subject to such conditions relating to the conduct of the home as it thinks fit.

(2) The Department may from time to time -

(a) vary any condition for the time being in force with respect to a home by virtue of this paragraph; or

(b) impose an additional condition, either on the application of the person carrying on the home or without such an application.

(3) If any condition imposed or varied under this paragraph is not complied with, the person carrying on the home shall, if he has no reasonable excuse, be guilty of an offence and liable on summary conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding six months or to both.

Annual review of registration

3. (1) The Department shall, at the end of the period of 12 months beginning with the date of registration, and annually thereafter, review the registration of that home for the purpose of determining whether the registration should continue in force or be cancelled under paragraph 4(2).

(2) If on any such annual review the Department is satisfied that the home is being carried on in accordance with the relevant requirements it shall determine that, subject to sub-paragraph (3), the registration should continue in force.

(3) The Department shall give to the person carrying on the home notice of their determination under sub-paragraph (2) and the notice shall require that person to pay to the Department with respect to the review such reasonable fee as may be prescribed.

(4) It shall be a condition of the home's continued registration that the fee is so paid before the expiry of the period of 28 days beginning with the date on which the notice is received by the person carrying on the home.

(5) In this Schedule "the relevant requirements" means any requirements of Part VI and of any regulations made under section 58, and any conditions imposed under paragraph 2.

Cancellation of registration

4. (1) The person carrying on a registered children's home may -

- (a) within such period as may be prescribed; and
- (b) in such manner and including such particulars as may be prescribed, make an application for the cancellation by the Department of the registration of the home.

(2) If on any annual review under paragraph 3, or at any other time, it appears to the Department that a registered children's home is being carried on otherwise than in accordance with the relevant requirements, the Department may determine that the registration of the home should be cancelled.

(3) The Department may at any time determine that the registration of a children's home should be cancelled on the ground -

- (a) that the person carrying on the home has been convicted of an offence under this Part or any regulations made under paragraph 10; or
- (b) that any other person has been convicted of such an offence in relation to the home.

Procedure

5. (1) Where -

- (a) a person applies for the registration of a children's home; and
- (b) the Department proposes to grant his application, the Department shall give him written notice of its proposal and the conditions (if any) subject to which it proposes to grant his application.

(2) The Department need not give notice if it proposes to grant the application subject only to conditions which -

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

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

(4) The Department 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 Department's reasons for its 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 Department to give him an opportunity to make representations to the Department concerning the matter.

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

- (a) any person on whom the notice was served has made representations to the Department concerning the matter;
- (b) the period during which any such person could have required the Department to give him an opportunity to make representations has elapsed without the Department being

required to give such an opportunity; or

(c) the conditions specified in sub-paragraph (3) are satisfied.

(3) The conditions are -

(a) that a person on whom the notice was served has required the Department to give him an opportunity to make representations to the Department concerning the matter;

(b) that the Department has allowed him a reasonable period to make his representations; and

(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 the Department

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

(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 Department, 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(3); and

(b) if an appeal is brought, until it is determined or abandoned.

Appeals

8. (1) An appeal against a decision of the Department under Part VI shall lie to the Grand Court.

(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 court may in particular -

(a) confirm the Department's decision or direct that it shall not have effect;

(b) vary any condition in force with respect to the home to which

the appeal relates by virtue of paragraph 2;

- (c) direct that any such condition shall cease to have effect; or
- (d) direct that any such condition as it thinks fit shall have effect with respect to the home.

Prohibition of further applications

9. (1) Where an application for the registration of a children's home is refused, no further application may be made within the period of 3 months beginning with the date when the applicant is notified of the refusal.

(2) Sub-paragraph (1) shall have effect, where an appeal against the refusal of an application is determined or abandoned, as if the reference to the date when the applicant is notified of the refusal were a reference to the date on which the appeal is determined or abandoned.

(3) Where the registration of a children's home is cancelled, no application for the registration of the home shall be made within the period of 6 months beginning with the date of cancellation.

(4) Sub-paragraph (3) shall have effect, where an appeal against the cancellation of the registration of a home is determined or abandoned, as if the reference to the date of cancellation were a reference to the date on which the appeal is determined or abandoned.

SCHEDULE 5

Section 59

CHILD MINDING AND DAY CARE FOR YOUNG CHILDREN

Applications for registration

1. (1) An application for registration under section 59 shall be of no effect unless it contains -

- (a) a statement with respect to the applicant which complies with the requirements of regulations made for the purposes of this paragraph by the Governor; and
- (b) a statement with respect to any person assisting or likely to be assisting in looking after children on the premises in question, or living or likely to be living there, which complies with the requirements of such regulations.

(2) Where a person provides, or proposes to provide, day care for children under the age of 8 on different premises he shall make a separate application with respect to each of those premises.

(3) An application under section 59 shall be accompanied by such fee as may be prescribed.

(4) On receipt of an application for registration under section 59 from any person who is acting, or proposes to act, in any way which requires him to be registered under that section, the department concerned shall register him if the application is properly made and it is not otherwise entitled to refuse to do so.

Disqualification from registration

2. (1) A person may not be registered under section 59 if he is disqualified by regulations made by the Governor for the purposes of this paragraph.

(2) The regulations may, in particular, provide for a person to be disqualified where -

- (a) an order of a prescribed kind has been made at any time with respect to him;
- (b) an order of a prescribed kind has been made at any time with respect to any child who has been in his care;
- (c) a requirement of a prescribed kind has been imposed at any time with respect to such a child, under or by virtue of any enactment;
- (d) he has at any time been refused registration under Part VII or any other prescribed enactment or had any such registration cancelled.
- (e) he has been convicted of an offence of a prescribed kind, or has been placed on probation or discharged absolutely or conditionally for any such offence.

(3) A person who lives -

- (a) in the same household as a person who is himself disqualified by the regulations; or
- (b) in a household at which any such person is employed, shall be disqualified unless he has disclosed the fact to the department concerned and obtained its written consent.

(4) A person who is disqualified shall not provide day care, or be concerned in the management of, or have any financial interest, in any provision of day care.

(5) No person shall employ, in connection with the provisions of day care, a person who is disqualified.

Exemption of certain schools

3. (1) Section 59 does not apply in relation to any child looked after in any Government School or Private School.

(2) The exemption provided by sub-paragraph (1) only applies where the child concerned is being looked after in accordance with provision for day care made by -

- (a) the person carrying on the school as part of the school's activities; or
- (b) a person employed to work at that school and authorised to make that provision as part of the school's activities.

(3) In sub-paragraph (1) "Government School" and "Private School" have the same meaning as in the Education Law, 1983.

Exemption for other establishments

4. (1) Section 59(1)(b) does not apply in relation to any child looked after in -

- (a) a registered children's home; or
- (b) a hospital or any other establishment under the management of a health practitioner.

(2) The exemption provided by sub-paragraph (1) only applies where the child concerned is being looked after in accordance with provision for day care made by -

- (a) the person carrying on the establishment in question as part of the establishment's activities; or
- (b) a person employed to work at that establishment and authorised to make that provision as part of the establishment's activities.

Certificate of registration

5. (1) Where the Department of Social Services or the Education Department registers a person under section 59 it shall issue him with a certificate of registration.

(2) The certificate shall specify -

- (a) the registered person's name and address;
- (b) in a case falling within section 59(1)(b), the address and

situation of the premises concerned; and

(c) any requirements imposed under section 60 or 61.

(3) Where, due to a change of circumstances, any part of the certificate requires to be amended, the department concerned shall issue an amended certificate.

(4) Where the Department of Social Services or, as the case may be, the Education Department is satisfied that a certificate has been lost or destroyed, it shall issue a copy, on payment by the registered person of such fee as may be prescribed.

Fees for annual inspection of premises

6. (1) Where -

(a) a person is registered under section 59, and

(b) the department concerned make an annual inspection of the premises in question under section 65, it shall serve on that person a notice informing him that the inspection is to be carried out and requiring him to pay to it such fee as may be prescribed.

(2) It shall be a condition of the continued registration of that person under section 60 that the fee is so paid before the expiry of the period of 28 days beginning with the date on which the inspection is carried out.

SCHEDULE 6

Section 80

AMENDMENTS, TRANSITIONAL PROVISIONS, SAVINGS AND REPEALS

PART I

AMENDMENTS

The Wills Law (Revised)

1. In section 2 of the Wills Law (Revised), in the definition of "will", for the words "and also to a disposition by will and testament or devise of the custody and tuition of any child" there shall be substituted "and also to an appointment by will of a guardian of a child".

The Marriage Law

2. In section 23 of the Marriage Law for subsection (2) there shall be

substituted-

"(2) Where a person under eighteen years of age not being a widower or widow intends to marry the consent of the person or persons specified in subsection (2A) of this section shall be required.

(2A) The consents are -

- (a) subject to paragraphs (b) to (d) of this subsection, the consent of -
 - (i) each parent (if any) of the child who has parental responsibility for him; and
 - (ii) each guardian (if any) of the child;
- (b) where a residence order is in force with respect to the child, the consent of the person or persons with whom he lives, or is to live, as a result of the order (in substitution for the consent mentioned in paragraph (a) of this subsection);
- (c) where a care order is in force with respect to the child, the consent of the Department of Social Services (in addition to the consents mentioned in paragraph (a) of this subsection);
- (d) where neither (b) nor (c) of this subsection applies but a residence order was in force with respect to the child immediately before he reached the age of sixteen, the consent of the person or persons with whom he lived, or was to live, as a result of the order (in substitution for the consents mentioned in paragraph (a) of this subsection).

(2B) In this section "guardian of a child", "parental responsibility", "residence order" and "care order" have the same meaning as in the Children Law, 1995."

The Matrimonial Causes Law

3. After section 12 of the Matrimonial Causes Law there shall be inserted -

"Restrictions on
decree. 12A. (1) In any proceedings for a decree of divorce or nullity of marriage, or a decree of judicial separation, the court shall consider -

- (a) whether there are any children of the marriage to whom this section applies; and
- (b) where there are any such children, whether (in the light of the arrangements which have been, or are proposed to be, made for their upbringing and welfare) it should exercise any of its powers under

[The Children Law, 1995 -108]

the Children Law, 1995 with respect to any of them.

(2) Where, in any case to which this section applies, it appears to the court that -

- (a) the circumstances of the case require it, or are likely to require it, to exercise any of its powers under the Children Law, 1995 with respect to any child of the marriage;
- (b) it is not in a position to exercise that power or (as the case may be) those powers without giving further consideration to the case; and
- (c) there are exceptional circumstances which make it desirable in the interests of the child that the court should give a direction under this section, it may direct that the decree of divorce or nullity is not to be made absolute, or that the decree of judicial separation is not to be granted, until the court orders otherwise.

(3) This section applies to -

- (a) any child of the marriage who has not reached the age of sixteen at the date when the court considers the case in accordance with the requirements of this section; and
- (b) any child of the marriage who has reached that age at that date and in relation to whom the court directs that this section should apply."

The Education Law, 1983

4. (1) At the beginning of section 17 of the Education Law, 1983 there shall be inserted the subsection designation "(1)".

(2) After section 17 of the Education Law, 1983 there shall be inserted -

"(2) Before notifying a parent under section 17 (1) of the Education Law, 1983 the Chief Education Officer shall consider whether it would be appropriate, instead of or as well as giving the notice, to apply for an education supervision order under the Children Law, 1995 with respect to the child."

PART II

TRANSITIONAL PROVISIONS AND SAVINGS

Pending proceedings

5. (1) Subject to sub-paragraph (3), nothing in any provision of this Law shall affect any proceedings which are pending immediately before the commencement of that provision.

(2) For the purposes of the provisions of this Part of this Schedule, any reference to an order in force immediately before the commencement of a provision of this Law shall be construed as including a reference to an order made after that commencement in proceedings pending before that commencement.

(3) Sub-paragraph (2) is not to be read as making the order in question have effect from a date earlier than that on which it was made.

Existing custody etc. orders

6. (1) In paragraphs 7 to 11 "an existing order" means any order which -

(a) was in force immediately before the commencement of Parts I and II of this Law;

(b) was made under the Matrimonial Causes Law or the Guardianship and Custody of Children Law (Revised);

(c) determines all or any of the following -

(i) who is to have custody of a child;

(ii) who is to have care and control of a child;

(iii) who is to have access to a child;

(iv) any matter with respect to a child's education or upbringing; and

(d) is not an order of a kind mentioned in paragraph 11(1).

(2) For the purposes of this paragraph and paragraphs 7 to 11 "custody" includes legal custody and joint as well as sole custody but does not include access.

Parental responsibility of parents

7. (1) Where -
- (a) a child's father and mother were married to each other at the time of his birth; and
 - (b) there is an existing order with respect to the child, each parent shall have parental responsibility for the child in accordance with section 4 as modified by sub-paragraph (3).
- (2) Where -
- (a) a child's father and mother were not married to each other at the time of his birth; and
 - (b) there is an existing order with respect to the child, section 4 shall apply as modified by sub-paragraphs (3) and (4).
- (3) The modification is that for section 4(8) there shall be substituted -
- "(8) The fact that a person has parental responsibility for a child does not entitle him to act in a way which would be incompatible with any existing order or any order made under this Law with respect to the child."
- (4) The modifications are that -
- (a) for the purposes of sub-section (2) of section 4, where the father has custody or care and control of the child by virtue of any existing order, the court shall be deemed to have made (at the commencement of that sub-section) an order under subsection (5) of section 4 giving him parental responsibility for the child; and
 - (b) where by virtue of paragraph (a) a court is deemed to have made an order under subsection (5) of section 4 in favour of a father who has care and control of a child by virtue of an existing order, the court shall not bring the order under subsection (5) of section 4 to an end at any time while he has care and control of the child by virtue of the order.

Persons who are not parents but who have custody or care and control

8. (1) Where a person who is not the parent or guardian of a child has custody or care and control of him by virtue of an existing order, that person shall have parental responsibility for him so long as he continues to have that custody or care and control by virtue of the order.

(2) Where sub-paragraph (1) applies, Parts I, II and IV of this Law shall have effect as modified by this paragraph.

(3) The modifications are that -

(a) for section 4(8) there shall be substituted -

"(8) The fact that a person has parental responsibility for a child does not entitle him to act in a way which would be incompatible with any existing order or with any order made under this Law with respect to the child.";

(b) at the end of section 10(4) there shall be added -

"(c) any person who has custody or care and control of a child by virtue of any existing order."; and

(c) at the end of section 34(1)(c) there shall be inserted -

"(cc) where, immediately before the care order was made, there was an existing order by virtue of which a person had custody or care and control of the child, that person;".

Persons who have care and control

9. (1) Sub-paragraphs (2) to (5) apply where a person has care and control of a child by virtue of an existing order, but they shall cease to apply when that order ceases to have effect.

(2) Section 6 shall have effect as if -

(a) for any reference to a residence order in favour of a parent or guardian there were substituted a reference to any existing order by virtue of which the parent or guardian has care and control of the child; and

(b) for subsection (8) there were substituted -

"(8) Subsections (1) and (6) do not apply if the existing order referred to in paragraph (b) of those subsections was one by virtue of which a surviving parent of the child also had care and control of him.".

(3) Section 10 shall have effect as if for subsection (5)(c)(i) there were substituted -

"(i) in any case where by virtue of an existing order any person or persons has or have care and control of the child, has the consent of that person or each of those persons;".

(4) Section 20 shall have effect as if for subsection (4)(a) there were

substituted "who has care and control of the child by virtue of an existing order;"

(5) In Schedule 1, paragraphs 1(1) and 10(1) shall have effect as if for the words "in whose favour a residence order is in force with respect to the child" there were substituted "who has been given care and control of the child by virtue of an existing order".

Persons who have access

10. (1) Sub-paragraphs (2) to (4) apply where a person has access by virtue of an existing order.

(2) Section 10 shall have effect as if after subsection (5) there were inserted -

"(5A) Any person who has access to a child by virtue of an existing order is entitled to apply for a contact order."

(3) Section 16(2) shall have effect as if after paragraph (b) there were inserted -

"(bb) any person who has access to the child by virtue of an existing order."

(4) Section 44(5) shall have effect as if after paragraph (d) there were inserted -

"(dd) any person who has been given access to him by virtue of an existing order;"

Discharge of existing orders

11. (1) The making of a residence order or a care order with respect to a child who is subject of an existing order discharges the existing order.

(2) Where the court makes any section 8 order (other than a residence order) with respect to a child with respect to whom any existing order is in force, the existing order shall have effect subject to the section 8 order.

(3) The court may discharge an existing order which is in force with respect to a child -

(a) in any family proceedings relating to the child or in which any question arises with respect to the child's welfare; or

(b) on the application of -

(i) any parent or guardian of the child;

- (ii) the child himself; or
- (iii) any person named in the order.

(4) A child may not apply for the discharge of an existing order except with the leave of the court.

(5) The power in sub-paragraph (3) to discharge an existing order includes the power to discharge any part of the order.

(6) In considering whether to discharge an order under the power conferred by sub-paragraph (3) the court shall, if the discharge of the order is opposed by any party to the proceedings, have regard in particular to the matters mentioned in section 4(3).

Guardians

12. (1) Any appointment of a person as a guardian of a child which -
- (a) was made under the Guardianship and Custody of Children Law or under the Grand Court's inherent jurisdiction with respect to children; and
 - (b) has taken effect before the commencement of section 6, shall be deemed, on and after the commencement of section 6, to be an appointment made and having effect under that section.
- (2) Any appointment of a person to be a guardian of a child -
- (a) which was made as mentioned in paragraph (1)(a); but
 - (b) which, immediately before the commencement of section 6, had not taken effect, shall take effect in accordance with section 6 (as modified, where it applies, by paragraph 9(2) of this Schedule).
- (3) For the purposes of the Wills Law (Revised) and of this Law any disposition by will and testament or devise of the custody and tuition of any child, made before the commencement of section 6 of this Law and paragraph 1 of this Schedule, shall be deemed to be an appointment by will of a guardian of a child.

Supervision Orders etc. under the juveniles Law, 1990

13. (1) This paragraph applies to any order -
- (a) made under section 32(1)(a),(b) or (c) of the Juveniles Law, 1990; and
 - (b) in force immediately before the commencement of Part IV.

[The Children Law, 1995 -114]

(2) On and after the commencement of Part IV, the order shall be deemed to be a supervision order made under section 31 and -

- (a) any requirement of the order that the child reside with a fit person or other named individual shall continue to have effect while the order remains in force, unless the court otherwise directs;
- (b) any other requirement imposed by the court, or directions given by the supervisor, shall be deemed to have been imposed or given under the appropriate provisions of Schedule 3.

(3) The order shall cease to have effect, after the commencement of Part IV, in accordance with section 69 and paragraph 6 of Schedule 3 unless -

- (a) the court directs that it shall cease to have effect at the end of a different period (which shall not exceed three years); or
- (b) it would have ceased to have effect earlier had this Law not been passed.

**Rehabilitation orders in civil proceedings
under the Juveniles Law, 1990**

14. (1) This paragraph applies to any order -

- (a) made under section 32(1)(d) or section 55(A)(2) of the Juveniles Law, 1990; and
- (b) which is in force immediately before the commencement of Part IV.

(2) On and after the commencement of Part IV, the order shall be deemed to be a care order made under section 31 and any requirement imposed by the court shall be deemed to have been imposed under that Part.

(3) The order shall cease to have effect, after the commencement of Part IV, in accordance with section 69 unless -

- (a) the court directs that it shall cease to have effect at the end of a different period (which shall not exceed three years); or
- (b) it would have ceased to have effect earlier had this Law not been passed.

**Contributions for maintenance of children in the
care of the Department**

15. (1) Where, immediately before the day on which Part III of Schedule 2 comes into force, there was in force an order made (or having effect as if made) as specified in sub-paragraph (2), then, on and after that day -

- (a) the order shall have effect as if made under paragraph 12(2) of Schedule 2 against a person liable to contribute; and
- (b) Part III of Schedule 2 shall apply to the order, subject to the modifications in sub-paragraph (3).

(2) The order is any order by virtue of which a parent, guardian or other person is liable to pay to the Department, while the Department has the care of a child, any periodical sum towards the maintenance of that child.

(3) The modifications are that, in paragraph 12 of Schedule 2 -

- (a) in sub-paragraph (4), paragraph (a) shall be omitted;
- (b) for sub-paragraph (6) there shall be substituted -

"(6) Where -

- (a) a contribution order is in force;
- (b) the Department serves a contribution notice under paragraph 11; and
- (c) the contributor and the Department reach an agreement under paragraph 11(7) in respect of the contribution notice, the effect of the agreement shall be to discharge the order from the date on which it is agreed that the agreement shall take effect."; and

(c) at the end of sub-paragraph (10) there shall be inserted -

"and

- (c) where the order is against a person who is not a parent of the child, shall be made with due regard to -
 - (i) whether that person has assumed responsibility for the maintenance of the child, and, if so, the extent to which and basis on which he assumed that responsibility and the length of the period during which he met that responsibility;
 - (ii) whether he did so knowing that the child was not his child;

- (iii) the liability of any other person to maintain the child."

Recovery of children

16. (1) The repeal by this Law of Part VIA of the Juveniles Law, in so far as it relates to any juvenile rehabilitation order mentioned in sub-paragraph (2), shall not affect the operation of that Part with respect to any offence committed under that Part before the coming into force of the repeal.

(2) The juvenile rehabilitation orders are any such orders made with respect to a child who was a juvenile brought before a court under -

- (a) sections 30, 31 and 33; or
- (b) section 55A(1), of the Juveniles Law, 1990.

Nurseries and child minding

17. (1) Sub-paragraph (2) applies where, immediately before the commencement of Part VII of this Law, any private school is registered under section 31 of the Education Law, 1983 as an infant or nursery school or includes a department providing pre-primary education.

(2) During the transitional period, the provisions of the Education Law, 1983 shall continue to have effect with respect to that school to the exclusion of Part VII of this Law.

(3) Nothing in sub-paragraph (2) shall prevent the Education Department from registering any person under section 59(1)(b) with respect to the premises on which that school is carried on.

(4) In this paragraph "the transitional period" means the period ending with -

- (a) the first anniversary of the commencement of Part VII of this Law; or
- (b) if earlier, the date on which the Education Department registers any person under section 59(1)(b) with respect to the premises.

PART III

REPEALS

18. The Guardianship and Custody of Children Law (Revised) shall be repealed.

[The Children Law, 1995 -117]

19. In section 6(1) of the Education Law, 1983, paragraph (a) shall be repealed.

20. (1) The provisions of the Juveniles Law, 1990 mentioned in sub-paragraph (2) shall be repealed.

(2) The provisions are -

(a) Part V, and

(b) part VIA to the extent that it applies to any juvenile rehabilitation order made by a court with respect to a juvenile brought before the court under -

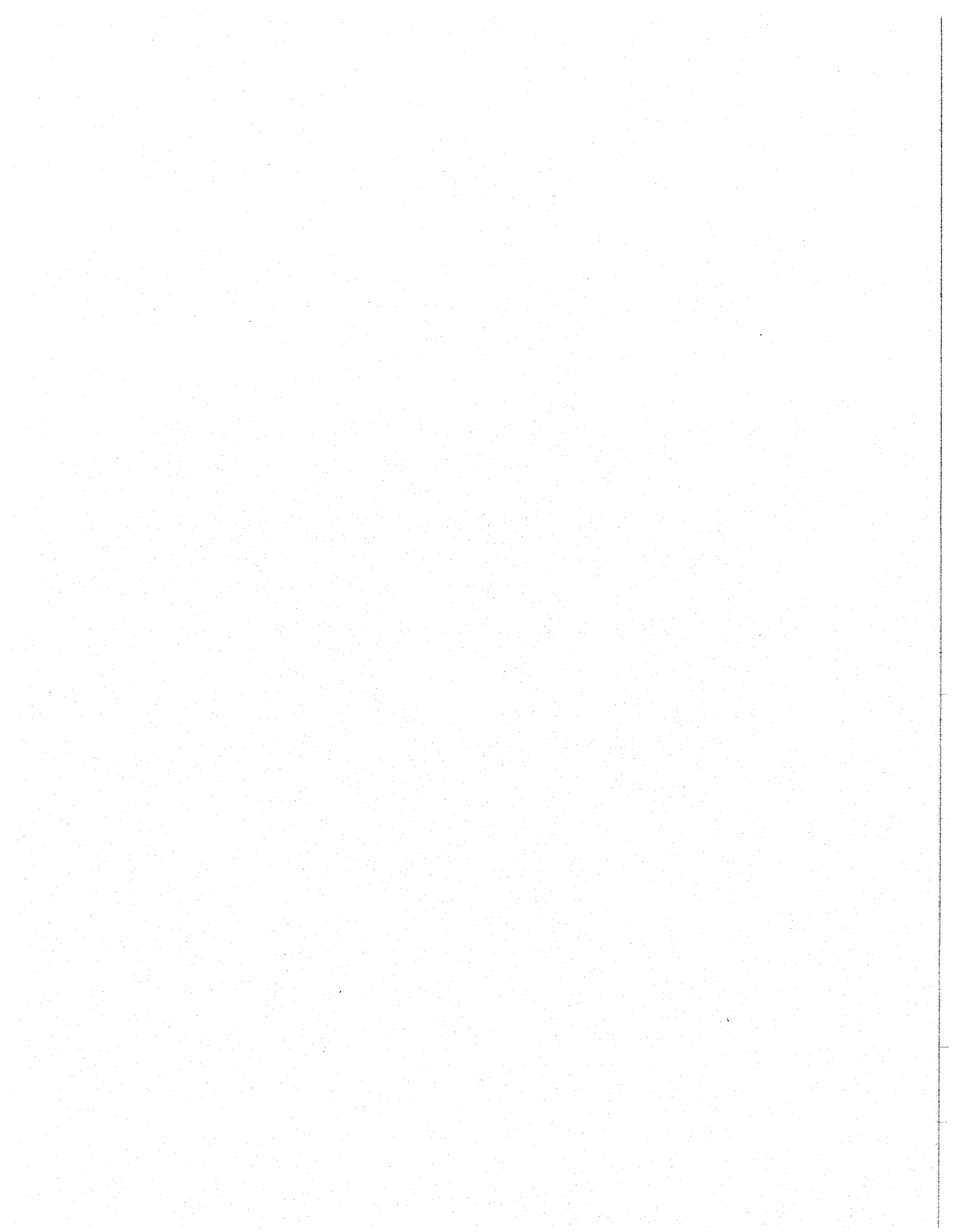
(i) sections 30, 31 and 33; or

(ii) section 55A(1), of the Juveniles Law, 1990.

Passed by the Legislative Assembly the 13th day of September, 1995.

SYBIL McLAUGHLIN
Speaker.

GEORGETTE MYRIE
Clerk of the Legislative Assembly.



(Price \$24.00)

