

## CAYMAN ISLANDS



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### **THE CHILDREN LAW, 2003**

**(LAW 4 OF 2003)**



**THE CHILDREN LAW, 2003**

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CAYMAN ISLANDS

Law 4 of 2003.

I Assent

James Ryan

Acting Governor.

Date: 4<sup>th</sup> September, 2003

**A LAW TO REFORM THE LAW RELATING TO CHILDREN; TO PROVIDE FOR GOVERNMENT SERVICES FOR CHILDREN AND OTHERS IN NEED; TO MAKE PROVISION FOR CHILDREN'S HOMES, COMMUNITY HOMES, VOLUNTARY HOMES AND VOLUNTARY ORGANISATIONS; TO MAKE PROVISION WITH RESPECT TO FOSTERING, CHILD MINDING AND DAY CARE FOR YOUNG CHILDREN AND ADOPTION; AND FOR CONNECTED PURPOSES**

ENACTED by the Legislature of the Cayman Islands.

## **PART I**

### **INTRODUCTORY**

1. (1) This Law may be cited as the Children Law, 2003.

Short title and  
commencement

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

2. (1) In this Law-

Interpretation

"care order" has the meaning given by section 33(8) 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 16(1) of Schedule 1, a person under the age of 18;

“child assessment order” means an order made under section 45;

"child minder" has the meaning given by section 72;

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

- (a) a child of both parties to a marriage; or
- (b) any other child, not being a child who is placed with those parties as foster parents by the Department, who has been treated by both of those parties as a child of the family;

"children's home" has the meaning given by section 64;

“community home” has the meaning given by section 55 (3);

“constable” means any member of the Royal Cayman Islands Police Force and includes a recruit constable;

"contact order" has the meaning given by section 10(1);

"court" means the Grand Court or a summary court constituted under the Summary Jurisdiction Law (1995 Revision);

"day care" has the meaning given by section 20;

"Department" means the Department of Children and Family Services;

“departmental foster parent” has the meaning given by section 25;

"disabled", in relation to a child, has the meaning given by section 19;

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

"education supervision order" has the meaning given by section 38;

"emergency protection order" means an order made under section 46;

" family assistance order" has the meaning given by section 18;

"family proceedings" has the meaning given in section 10(3);

"functions" includes powers and duties;

“Governor” means the person for the time being holding the office of Governor of the Islands, and includes any person for the time being lawfully performing the functions of that office under section 1 of Schedule 2 to the Cayman Islands (Constitution) Orders 1972 to 1993, and to the extent to which a Deputy appointed under section 4 of Schedule 2 to the Cayman Islands (Constitution) Orders 1972 to 1993 is authorised to act, that Deputy;

“Governor in Cabinet” means the Governor acting in accordance with the advice of the Executive Council of the Islands;

“guardian of a child” means a guardian (other than a guardian of the estate of a child) appointed in accordance with section 8;

"harm" has the meaning given in section 33 (6), and the question of whether harm is significant shall be determined in accordance with section 33 (7);

"registered health practitioner" means a person duly registered as a health practitioner under the Health Practitioner's Law (1995 Revision);

"hospital" includes the George Town Hospital in Grand Cayman, the Faith Hospital in Cayman Brac and any public hospital or health care centre established or operated in the Islands by the Health Service Authority and any private hospital or medical practice approved under the Health Practitioners Law (1995 Revision);

"ill-treatment" has the meaning given by section 33 (6);

“learning difficulty” in relation to a child means-

- (a) he has significantly greater difficulty in learning than the majority of children his age;
- (b) he has a disability which either prevents or hinders him from making use of educational facilities of a kind generally provided for children of his age in schools in the Islands; or
- (c) he is under the age of 5 and is, or would be if special educational provision were not made for him, likely to fall within paragraph (a) or (b) when over that age,

but a child shall not be taken as having a learning difficulty solely because the language (or form of the language) in which he is, or will be, taught is different from a language (or form of language) which has at any time been spoken in his home;

"nanny" has the meaning given by section 72;

"parental responsibility agreement" has the meaning given by section 6;

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

"private school" means any school other than a government school;

"prohibited steps order" has the meaning given by section 10(1);

"public general holiday" means a public general holiday specified under the Public Holidays Law (2003 Revision);

"pupil" means a person receiving or obliged to receive instruction at a school or registered or obliged to be registered with the Education Department under the Education Law (1999 Revision);

"registered children's home" has the meaning given by section 64;

"rehabilitation order" has the meaning given by the Youth Justice Law (2001 Revision);

"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 10(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;

"signed" in relation to any person includes the making by a person of his mark;

"school" includes-

- (a) primary schools;
- (b) middle schools;
- (c) secondary schools;
- (d) high schools;
- (e) vocational or technical schools, or vocational or technical departments in schools;
- (f) special schools for the education or training of pupils who are disabled;
- (g) universities, colleges and institutes of higher education or learning;
- (h) any other schools or departments of such schools which provide educational facilities; and

- (i) such further or other schools as the Governor in Cabinet may prescribe.

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

"special educational needs" means a learning difficulty which calls for special educational provision to be made for him;

"specific issue order" has the meaning given by section 10(1);

"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;

"supervision order" has the meaning given by section 33 (8);

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

"voluntary home" has the meaning given by section 61; and

"voluntary organisation" means a body (other than a public board or statutory 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 19.

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

Welfare of the child

- (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, sex, 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; and
- (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 10 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 also have parental responsibility for the child where 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.

(5) 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 the child.

(6) 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.

(7) 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.

(8) 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.

(9) 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.

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.

Meaning of parental responsibility

(2) "Parental responsibility" 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 does not have parental responsibility for a particular child, but 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.

Acquisition of parental  
responsibility by father

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

- (a) the court may, on the application of the father, order that he shall have parental responsibility for the child; or
- (b) the father and mother may by agreement ("a parental responsibility agreement") provide for the father to have parental responsibility for the child.

(2) No parental responsibility agreement shall have effect for the purposes of this Law unless-

- (a) it is made in the form prescribed by regulations made by the Governor in Cabinet; and
- (b) where regulations are made by the Governor in Cabinet prescribing the manner in which such agreements shall be recorded, it is recorded in the prescribed manner.

(3) Subject to section 14(4), an order under subsection (1)(a), or a parental responsibility agreement, may only be brought to an end by an order of the court made on the application-

- (a) of any person who has parental responsibility for the child; or
- (b) with leave of the court, of the child himself.

(4) The court may only grant leave under subsection (3)(b) if it is satisfied that the child has sufficient understanding to make the proposed application.

Appointment of  
guardians

7. (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.

(4) A guardian of a child may appoint another individual to take his place as the child's guardian in the event of his death.

(5) An appointment under subsection (3) or (4) 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 (1997 Revision); 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.

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

(7) Where—

- (a) on the death of any person making an appointment under subsection (3) or (4), 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.

(8) Where, on the death of any person making an appointment under subsection (3) or (4)–

- (a) the child concerned has a parent with parental responsibility for him; and

(b) subsection (7)(b) does not apply,

the appointment shall take effect when the child no longer has a parent who has parental responsibility for him.

(9) Subsections (1) and (7) 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.

(10) Nothing in this section shall be taken to prevent an appointment under subsection (3) or (4) being made by two or more persons acting jointly.

(11) Subject to any provision made by rules of court, no court shall exercise the Grand Court's inherent jurisdiction to appoint a guardian of the estate of any child.

(12) Where rules of court are made under subsection (11) they may prescribe the circumstances in which, and conditions subject to which, an appointment of such a guardian may be made.

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

Guardians: revocation  
and disclaimer

8. (1) An appointment under section 7(3) or (4) 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.

(2) An appointment under section 7(3) or (4) (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 at his direction, in his presence and in the presence of two witnesses who each attest the signature.

(3) An appointment under section 7(3) or (4) (other than one made in a will or codicil) is revoked if, with the intention of revoking the appointment, the person who made it-

- (a) destroys the instrument by which it was made; or
- (b) has some other person destroy that instrument in his presence.

(4) For the avoidance of doubt, an appointment under section 7(3) or (4) made in a will or codicil is revoked if the will or codicil is revoked.

(5) A person who is appointed as a guardian under section 7(3) or (4) 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.

(6) Where regulations are made by the Governor in Cabinet prescribing the manner in which such disclaimers shall be recorded, no such disclaimer shall have effect unless it is recorded in the prescribed manner.

(7) Any appointment of a guardian under section 7 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 the appointment should be brought to an end even though no application has been made.

9. (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 such 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.

Welfare reports

(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 contained 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 request 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

10. (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 10 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 92(3).

(4) The enactments referred to under subsection (3) are-

- (a) Parts I, II and IV of this Law;
- (b) the Matrimonial Causes Law (1997 Revision);
- (c) the Adoption of Children Law (2003 Revision);
- (d) the Affiliation Law (1996 Revision); and
- (e) section 5 of the Age of Majority Law (1999 Revision).

11. (1) A court shall not make any section 10 order, other than a residence order, with respect to a child who is in the care of the Department.

Restrictions on making  
section 10 orders

(2) A person who is, or was at any time within the last 6 months, a departmental foster parent of a child may not apply for leave to apply for a section 10 order with respect to the child unless-

- (a) he has the consent of the Department;
- (b) he is a relative of the child; or
- (c) the child has lived with him for at least 3 years preceding the application.

(3) A court shall not exercise its powers to make a specific issue order or prohibited steps order-

- (a) with a view to achieving a result which could be achieved by making a residence or contact order; or
- (b) in any way which is denied to the Grand Court (by section 87(2)) in the exercise of its inherent jurisdiction with respect to children.

(4) A court shall not make any section 10 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 that the circumstances of the case are exceptional.

(5) A court shall not make any section 10 order, other than one varying or discharging such an order, with respect to a child who has reached the age of sixteen unless it is satisfied that the circumstances of the case are exceptional.

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

Power of court to make  
section 10 orders

- (a) an application for the order has been made by a person who-
  - (i) is entitled to apply for a section 10 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.

(2) The court may also make a section 10 order with respect to any child on the application of a person who-

- (a) is entitled to apply for a section 10 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 11.
- (4) The following persons are entitled to apply to the court for any section 10 order with respect to a child-
- (a) any parent or guardian of the child; or
  - (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 3 years;
  - (c) any person-
    - (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 consent of the Department; or
    - (iii) in any other case, has the consent of each of those persons (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 10 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) Any person who falls within a category of person prescribed by rules of court is entitled to apply for any such section 10 order as may be prescribed in relation to that category of person.
- (8) Where the person applying for leave to make an application for a section 10 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 10 order.
- (9) Where the person applying for leave to make an application for a section 10 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 10 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.

(10) The period of 3 years mentioned in subsection (5)(b) need not be continuous but must not have begun more than 5 years before, or ended more than 3 months before, the making of the application.

13. (1) In proceedings in which any question of making a section 10 order, or any other question with respect to such an order, arises, the court shall (in the light of any rules made by virtue of subsection (2)) -

General principles and supplementary provisions

- (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 that timetable is adhered to.

(2) Rules of court may-

- (a) specify periods within which specified steps must be taken in relation to proceedings in which such questions arise; and
- (b) make other provision with respect to such proceedings for the purpose of ensuring, so far as is reasonably practicable, that such questions are determined without delay.

(3) Where a court has power to make a section 10 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.

(4) Where a residence order is made in favour of 2 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.

(5) 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 2 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 6 months.

(6) A contact order which requires 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 6 months.

(7) A section 10 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;
- (d) make such incidental, supplemental or consequential provisions as the court thinks fit.

Residence orders and  
parental responsibility

14. (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 6(1) 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 for adoption of a child under the Adoption of Children Law (2003 Revision);
- (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 6 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

15. (1) Where a residence 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 permanently from the Islands,

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

(2) Subsection (1)(b) does not prevent the removal of a child, for a period of less than 1 month, by the person in whose favour the residence order is made.

(3) In making a residence order with respect to a child the court may grant the leave required by subsection (1)(b), either generally or for specified periods.

16. (1) Where-

Enforcement of residence orders

- (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 that 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**

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

Orders for financial relief with respect to children

### **Family assistance orders**

18. (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 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.

Family assistance orders

(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 may make a family assistance order unless-

- (a) it is satisfied that 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 6 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 10 order is also in force with respect to the child,

the officer concerned may refer to the court the question whether the section 10 order should be varied or discharged.

### **PART III**

#### **THE DEPARTMENT'S SUPPORT FOR CHILDREN AND FAMILIES**

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

19. (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 upbringing 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 its 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 in Cabinet 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) The Department-

- (a) shall facilitate the provision by others (including in particular voluntary organisations) of services which the Department has power to provide by virtue of this section, or section 20, 22, 25 or 26; and
- (b) may make such arrangements as it sees fit for any person to act on its behalf in the provision of any such service.

(6) The services provided by the Department in the exercise of functions conferred on it by this section may include giving assistance in kind or, in exceptional circumstances, in cash.

(7) Assistance may be unconditional or subject to conditions as to the repayment of the assistance or of its value (in whole or in part).

(8) Before giving any assistance or imposing any conditions, the Department shall have regard to the means of the child concerned and of each of his parents.

(9) No person shall be liable to make any repayment of assistance or of its value at any time when he is in receipt of income support under the Poor Person's Relief Law (1997 Revision).

(10) 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;
- (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.

(11) For the purposes of this Part, a child is disabled if he is blind, deaf or dumb or suffers from 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

20. (1) The Department shall provide such day care for children in need who are aged 5 or under and not yet attending school as is appropriate.

(2) The Department may provide day care for children who satisfy the conditions mentioned in subsection (1)(a) and (b) even though they are not in need.

(3) 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.

(4) 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).

(5) 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.

(6) The Department may provide such care or supervised activities for children who are attending any school even though those children are not in need.

(7) In this section "supervised activity" means an activity supervised by a responsible person.

Review of provision for  
day care, child minding  
etc.

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

- (a) the provision which they make under section 20;
- (b) the extent to which the services of child minders are available within their area with respect to children under the age of 8; and
- (c) the provision for day care made for children under the age of 8 by persons other, than the Department, required to register under section 72.

(2) A review under subsection (1) shall be conducted at least once in every review period.

(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) In this section-

"review period" means the period of one year beginning with the commencement of this section and each subsequent period of 3 years beginning with an anniversary of that commencement.

(5) Where the Departments have conducted a review under this section they shall publish the result of the review-

- (a) as soon as is reasonably practicable;
- (b) in such form as they consider appropriate; and
- (c) together with any proposals they may have with respect to the matters reviewed.

#### **Provision of accommodation for children**

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

Provision of  
accommodation for  
children: general

- (a) there being no person who has parental responsibility for him;
- (b) his being lost or having been 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) The Department may provide accommodation for any child in need who has reached the age of 16 and whose welfare the Department consider is likely to be seriously prejudiced if it does not provide him with accommodation.

(3) The Department may provide accommodation for any child (even though a person who has parental responsibility for him is able to provide him

with accommodation) if it considers that to do so would safeguard or promote the child's welfare.

(4) The Department may provide accommodation for any person who has reached the age of 16 but is under 21 in any community home which takes children who have reached the age of 16 if the Department considers that to do so would safeguard or promote his welfare.

(5) 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 provision of accommodation; and
- (b) give due consideration (having regard to his age and understanding) to such wishes of the child as it has been able to ascertain.

(6) 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.

(7) 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.

(8) Subsections (6) and (7) 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.

(9) Where there is more than one such person as is mentioned in subsection (8), all of them must agree.



(10) Subsections (6) and (7) do not apply where a child who has reached the age of 16 agrees to being provided with accommodation under this section.

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

Provision for accommodation for children in police protection or detention or on remand, etc

(2) The Department shall receive and provide accommodation for children who are-

- (a) on remand or detained under sections 14 and 15 of the Youth Justice Law (2001 Revision) at a place other than a prison or police station lock-up; or
- (b) the subject of a rehabilitation order imposing a detention residence requirement under section 27 of the Youth Justice Law (2001 Revision).

**Duties of the Department in relation to children it looks after**

24. (1) In this Law, any reference to a child who is looked after by the Department is a reference to a child who is-

General duty of social services in relation to children it looks after

- (a) in its care; or
- (b) provided with accommodation by the Department in the exercise of any of its functions more particularly those under this Law.

(2) In subsection (1) "accommodation" means accommodation which is provided for a continuous period of more than 24 hours.

(3) 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.

(4) Before making any decision with respect to a child whom it is 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 Department considers to be relevant,

regarding the matter to be decided.

(5) 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 (4)(b) to (d) as it has been able to ascertain; and
- (c) to the child's religious persuasion, racial origin and cultural and linguistic background.

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

(7) If the Governor considers it necessary, for the purpose of protecting members of the public from serious injury, to give directions to the Department with respect to the exercise of its powers with respect to a child whom it is looking after, he may give such directions to the Department.

(8) Where any such directions are given to the Department, it shall comply with them even though doing so is inconsistent with its duties under this section.

Provision of accommodation and maintenance by the Department for children whom it is looking after

25. (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 (subject to subsection (5) and any regulations made by the Governor in Cabinet) with-
  - (i) a family;
  - (ii) a relative of his; or
  - (iii) any other suitable person,

on such terms as to payment by the Department and otherwise as the Department may determine;

- (b) maintaining him in a community home;
- (c) maintaining him in a voluntary home;
- (d) maintaining him in a registered children's home;

- (e) making such other arrangements as-
  - (i) seem appropriate to the Department; and
  - (ii) comply with any regulations made by the Governor in Cabinet.

(3) Any person with whom a child has been placed under subsection (2)(a) is referred to in this Law as a “departmental foster parent” unless he falls within subsection (4).

(4) A person falls within this subsection if he is-

- (a) a parent of the child;
- (b) a person who is not a parent of the child but who has parental responsibility for him; or
- (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.

(5) Where a child is in the care of the Department, the Department may only allow him to live with a person who falls within subsection (4) in accordance with regulations made by the Governor in Cabinet.

(6) Subject to any regulations made by the Governor in Cabinet for the purposes of this subsection, the Department while looking after a child shall make arrangements to enable him to live with-

- (a) a person falling within subsection (4); or
- (b) a relative, friend or other person connected with him,

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

(8) Where the Department provides accommodation for a child whom 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 are also providing accommodation for a sibling of his, they are accommodated together.

(9) Where the Department provides accommodation for a child whom 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.

(10) Part II of Schedule 2 shall have effect for the purposes of making further provision as to children looked after by the Department and in particular as to the regulations that may be made under subsections (2)(a) and (e) and (5).

**Advice and assistance for certain children**

Advice and assistance  
for certain children

26. (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 within the Islands who is under 21 and who was, at any time after reaching the age of 16 but while still a child-

- (a) looked after by the Department;
- (b) accommodated in a registered children's home;
- (c) accommodated in any residential home,

for a consecutive period of at least 3 months; or

- (d) privately fostered,

but who is no longer so looked after, accommodated or fostered.

(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 which 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 (3) 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) provide counselling about independent living.

**Secure accommodation**

Use of accommodation  
for restricting liberty

27. (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 charged with, or convicted of an offence of violence; or
- (d) he has been remanded or detained and committed to the care of the Department under sections 14 and 15 of the Youth Justice Law (2001 Revision).

(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 of 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 purpose 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 general 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 general 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 3 months or, if the child has been remanded as mentioned in subsection (1) (e), the period of that remand.

(10) The Governor in Cabinet may by regulations provide that-

- (a) this section shall not apply to any description of children specified in the regulations;
- (b) this section shall have effect in relation to children of a description specified in the regulations subject to such modifications as may be so specified; and
- (c) such other provisions as may be so specified shall have effect for the purpose of determining whether a child of a description specified in the regulations may be placed or kept in secure accommodation.

### **Supplemental**

Review of cases

28. (1) The Governor in Cabinet may make regulations requiring the case of each child who is being looked after by the Department to be reviewed in accordance with the provisions of the regulations.

(2) The regulations 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 is 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 any review, to seek the views of-
  - (i) the child;
  - (ii) parents of the child;
  - (iii) any person who is not a parent of the child but who has parental responsibility for him; and
  - (iv) any other person whose views the Department considers to be relevant,

including, in particular, the views of those persons in relation to any particular matter which is to be considered in the course of the review;

- (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 care order;

- (f) requiring the Department to consider, in the case of a child in accommodation provided by the Department, whether the accommodation accords with the requirements of this Part;
- (g) requiring the Department to inform the child, so far as is reasonably practicable, of any steps he may take under this Law;
- (h) requiring the Department to make arrangements, including arrangements with such other bodies providing services as it considers appropriate, to implement any decision which it proposes to make in the course, or as a result, of the review;
- (i) requiring the Department to notify details of the result of the review and of any decision taken by them in consequence of the review to-
  - (i) the child;
  - (ii) the parents of the child;
  - (iii) any person who is not a parent of his but who has parental responsibility for him; and
  - (iv) any other person whom they consider ought to be notified;
- (j) requiring the Department to monitor the arrangements which it has made with a view to ensuring that it complies with the regulations.

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

Inquiries into representations

- (a) any child who is being looked after by the Department or who is not being looked after by it but is in need;
- (b) a parent of the child;
- (c) any person who is not a parent of the child but who has parental responsibility for him;
- (d) any departmental foster parent;
- (e) such other person as the Department considers has a sufficient interest in the child's welfare to warrant his representations being considered by it,

about the discharge by the Department of any of its functions under this Part in relation to the child.

(2) The procedure shall ensure that at least one person 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 light of the consideration.

(3) In carrying out any consideration of representations under this section the Department shall comply with any regulations made by the Governor in Cabinet for the purpose of regulating the procedure to be followed.

(4) The Governor in Cabinet may make regulations requiring the Department to monitor the arrangements it has made with a view to ensuring that it complies with any regulations made for the purposes of subsection (3),

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

- (a) have 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
  - (ii) 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 its reasons for taking that decision and of any action which it has taken, or propose to take.

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

Co-operation between  
Departments

30. (1) Where it appears to the Department that any government department, statutory authority or other person authorised by the Governor in Cabinet for the purpose of this section 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 or other person 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) a child is being looked after by the Department; and
- (b) the Department proposes to provide accommodation for him in an establishment at which education is provided for children who are accommodated there,



the Department shall, so far as is reasonably practicable, 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 responsible for Health before making any decision, either generally or in a specific case with respect to any medical or psychiatric examination or assessment of the child.

31. (1) Where the Department provides any service under section 19 or 20 other than advice, guidance or counselling, the Department may recover from a person specified in subsection (3) such charge for the service as it considers reasonable.

Recoupment of cost of providing services etc.

(2) Where the Department is satisfied that the means of a person specified under subsection (3) 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 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.

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

Miscellaneous

(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 in Cabinet may by order provide by which department or authority the functions are to be exercised.

**PART IV**  
**CARE AND SUPERVISION**  
**General**

Care and supervision  
orders

33. (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 the child 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.
- (3) A care order or supervision order shall not be made with respect to a child who has reached the age of 17 (or 16, in the case of a child who is married).
- (4) An application under this section may be made on its own or in any other family proceedings.
- (5) The court may—
- (a) on an application for a care order, make a supervision order;
  - (b) on an application for a supervision order, make a care order.
- (6) 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.

(7) 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.

(8) 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 40; 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 40.

34. (1) A court hearing an application for an order under this Part shall (in the light of any rules made by virtue of subsection (2))-

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

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

(2) Rules of court may-

- (a) specify periods within which specified steps must be taken in relation to such proceedings; and
- (b) make other provisions with respect to such proceedings for the purpose of ensuring, so far as is reasonably practicable, that they are disposed of without delay.

### **Care orders**

35. (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.

Effect of care order

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

- (a) 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 the child under the Adoption of Children Law (2003 Revision);
  - (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) Subsection (6)(b) does not-

- (a) prevent the removal of such a child, for a period of less than 1 month, by the Department; or
- (b) apply to arrangements for such a child to live outside the Islands (which are governed by paragraph 14 of Schedule 1).

Parental contact etc.  
with children in care

36. (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-

- (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 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 paragraphs (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 allow contact between the child and any person who is mentioned in paragraphs (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 virtue of subsection (1) or an order under this section if-

- (a) it is satisfied that it is necessary to do so in order to safeguard or promote the child's welfare; and
- (b) the refusal-
  - (i) is decided upon as a matter of urgency; and
  - (ii) 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 Governor in Cabinet may by regulations make provision as to-

- (a) the steps to be taken by the Department in exercising its powers under subsection (6);

- (b) the circumstances in which, and conditions subject to which, the terms of any order under this section may be departed from by agreement between the Department and the person in relation to whom the order is made; and
- (c) notification by the Department of any variation or suspension of arrangements made (otherwise than under an order under this section) with a view to affording any person contact with a child to whom this section applies.

(9) 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.

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

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

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

### **Supervision orders**

Supervision orders

37. (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

38. (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 compulsory 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 educational 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 (1999 Revision), 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 provision with respect to education supervision orders.

#### **Powers of court**

39. (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.

Powers of court in  
certain family  
proceedings

(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 for a supervision order with respect to the child;
- (b) provide services or assistance for 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 they have provided, or intend to provide, for the child and his family; and
- (c) any other action which they have taken, or propose 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, they shall determine the date on which that review is to begin.

Interim orders

40. (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 39(1),

the court may make an interim care order or an interim supervision order with respect to the child concerned.

(2) A court shall not make an interim care order or interim supervision order under this section unless it is satisfied that there are reasonable grounds for believing that the circumstances with respect to the child are as mentioned in section 33(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) 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 relevant period;
- (c) in a case which falls within subsection (1)(a), the disposal of the application;
- (d) in a case which falls within subsection (1)(b), 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 39(4), 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) In subsection (4)(b) "the relevant period" means-

- (a) the period of 4 weeks beginning with the date on which the order in question is made; or
- (b) the period of 8 weeks beginning with the date on which the first order was made if that period ends later than the period mentioned in paragraph (a).

(6) 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.

(7) A direction under subsection (6) 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.

(8) A direction under subsection (6) may be-

- (a) given when the interim order is made or at any time while it is in force; and
- (b) varied at any time on the application of any person falling within any class of person prescribed by rules of court for the purposes of this subsection.

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

(10) 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

41. (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 33(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

42. (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**

43. (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.

Representation of child  
and of his interests in  
certain proceedings

(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-at-law; and
  - (b) any of the conditions mentioned in subsection (4) is satisfied,the court may appoint an attorney-at-law 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-at-law and wishes to do so;
  - (c) it appears to the court that it would be in the child's best interests for him to be represented by an attorney.
- (5) Any attorney-at-law 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 39(1) and has made, or is considering whether to make, an interim care order;
  - (c) on an application for the discharge of a care order or the variation or discharge of a supervision order;
  - (d) on an application under section 41(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 36;
    - (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 subparagraph (i) or (ii);
    - (iv) the refusal of an application under section 41(4); or
    - (v) the making of, or refusal to make, an order under Part V; or

- (i) which are specified for the time being, for the purposes of this section, by rules of court.

(7) The Governor in Cabinet may, by regulations provide for the establishment of panels of persons from whom guardians ad litem appointed under this section shall be selected and these regulations may, in particular, make provision-

- (a) as to the constitution, administration and procedures of panels;
- (b) for the defrayment by the court of expenses incurred by members of the panel;
- (c) for the payment by the court of fees and allowances for members of the panel;
- (d) as to the qualifications for membership of a panel;
- (e) as to the training to be given to members of panels; 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 by the court 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.

44. (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

Right of guardian ad litem to have access to departmental records

- (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.

(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**

Child assessment orders

45. (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 only make the order if, it is satisfied that-

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

(2) In this Law "a child assessment order" means an order under this section.

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

(4) A court shall not make a child assessment order if it is satisfied-

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

(5) A child assessment order shall-

- (a) specify the date by which the assessment is to begin; and
- (b) have effect for such period, not exceeding 7 days beginning with that date, as may be specified in the order.

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

- (a) to produce him to such person as may be named in the order; and
- (b) to comply with such directions relating to the assessment of the child as the court thinks fit to specify in the order.

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

(8) Regardless of subsection (7), if the child is of sufficient understanding and capacity to make an informed decision he may refuse to submit to a medical or psychiatric examination or other assessment.

(9) A child may only be kept away from home—

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

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

(11) Where the Department applies for a child assessment order it shall take such steps as are reasonably practicable to ensure that notice of the application is given to—

- (a) the child's parents;
- (b) any person who is not a parent of the child but who has parental responsibility for him;
- (c) any other person caring for the child;
- (d) any person in whose favour a contact order is in force with respect to the child;
- (e) any person who is allowed to have contact with the child by virtue of an order under section 36; and
- (f) the child,

before the hearing of the application.

(12) Rules of court may make provision as to the circumstances in which—

- (a) any of the persons mentioned in subsection (11); or
- (b) such other person as may be specified in the rules,

may apply to the court for a child assessment order to be varied or discharged.

Orders for emergency  
protection of children

46. (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 only make the order 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;
- (b) enquiries are being made with respect to the child under section 50(1)(a); and those enquiries are being frustrated by access to the child being unreasonably refused to a person authorised to seek access 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 50 (1)(a); and
- (b) purporting to be a person authorised to do so,

shall, on being asked to do so, produce some duly authenticated document as evidence that he is such a 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 Department;
- (b) authorises—
  - (i) the removal of the child at any time to accommodation 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 in Cabinet 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 him 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,

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

(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 \$2000 or to imprisonment for a term not exceeding 6 months or to both.

Directions of the court in relation to emergency protection orders

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

(2) A direction under subsection (1) (a) may impose conditions, and a condition 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 36.

Duration of emergency protection orders and other supplemental provisions

48. (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 general holiday,

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

(3) Where an emergency protection order is made on an application under section 49 (7), the period of 8 days mentioned in subsection (1) shall begin with the first day on which the child was taken into police protection under section 49.

(4) Any person who-

- (a) has parental responsibility for a child as the 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.

(5) On an application under subsection (4) 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.

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

(7) 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.

(8) Any of the following may apply to the court for an emergency protection order to be discharged—

- (a) the child;
- (b) a parent of the child;

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

(9) The court shall not hear an application for the discharge of an emergency protection order by the court before the expiry of the period of 72 hours beginning with the making of the order.

(10) An appeal shall not be made against-

- (a) the making of, or refusal to make, an emergency protection order;
- (b) the extension of, or refusal to extend, the period during which such an order is to have effect;
- (c) the discharge of, or refusal to discharge, such an order; or
- (d) the giving of, or refusal to give, any direction in connection with such an order.

(11) Subsection (8) 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 (in accordance with rules of court) 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 subsection (5).

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

Removal and  
accommodation of  
children by police in  
cases of emergency

49. (1) Where a constable has reasonable cause to believe that a child would otherwise be likely to suffer significant harm, he may-

- (a) remove the child to suitable accommodation and keep him there; or
- (b) take such steps as are reasonable to ensure that the child's removal from any hospital, or other place, in which he is then being accommodated is prevented.

(2) For the purposes of this Law, a child with respect to whom a constable has exercised his powers under this section is referred to as having been taken into police protection.

(3) As soon as is reasonably practicable after taking a child into police protection, the constable concerned shall-

- (a) inform the Department of the steps that have been, and are proposed to be, taken with respect to the child under this section and the reasons for taking them;
- (b) give details to the Department of the place at which the child is being accommodated;
- (c) inform the child (if he appears capable of understanding)-
  - (i) of the steps that have been taken with respect to him under this section and of the reasons for taking them; and
  - (ii) of the further steps that may be taken with respect to him under this section;
- (d) take such steps as are reasonably practicable to discover the wishes and feelings of the child;
- (e) secure that the case is inquired into by an officer designated (“the designated officer”) for the purposes of this section by the Commissioner of Police; and
- (f) where the child was taken into police protection by being removed to accommodation which is not provided-
  - (i) by or on behalf of the Department; or
  - (ii) as a refuge, in compliance with the requirements of section 54,

secure that he is moved to accommodation which is so provided.

(4) As soon as is reasonably practicable after taking a child into police protection, the constable concerned shall take such steps as are reasonably practicable to inform—

- (a) the child’s parents;
- (b) every person who is not a parent of the child but who has parental responsibility for him; and
- (c) any other person with whom the child was living immediately before being taken into police protection,

of the steps that he has taken under this section with respect to the child, the reasons for taking them and the further steps that may be taken with respect to him under this section.

(5) On completing any inquiry under subsection (3)(e), the designated officer shall release the child from police protection unless he considers that there is still reasonable cause for believing that the child would be likely to suffer significant harm if released.

(6) A child shall not be kept in police protection for more than 72 hours.

(7) While a child is being kept in police protection, the designated officer may apply on behalf of the Department for an emergency protection order to be made under section 46 with respect to the child.

(8) An application may be made under subsection (7) whether or not the Department knows of it or agrees to its being made.

(9) While a child is being kept in police protection-

- (a) neither the constable concerned nor the designated officer shall have parental responsibility for him; but
- (b) the designated officer shall do what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child's welfare (having regard in particular to the length of the period during which the child will be so protected).

(10) Where a child has been taken into police protection, the designated officer shall allow—

- (a) the child's parents;
- (b) any person who is not a parent of the child but who has parental responsibility for him;
- (c) any person with whom the child was living immediately before he was taken into police protection;
- (d) any person in whose favour a contact order is in force with respect to the child;
- (e) any person who is allowed to have contact with the child by virtue of an order under section 36; and
- (f) any person acting on behalf of any of those persons,

to have such contact (if any) with the child as, in the opinion of the designated officer, is both reasonable and in the child's best interests.

(11) Where a child who has been taken into police protection is in accommodation provided by, or on behalf of, the Department, subsection (10) shall have effect as if it referred to the Department rather than to the designated officer.

Duty of the Department  
to investigate

50. (1) Where the Department-

- (a) has reasonable cause to suspect 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,

the Department shall make, or cause to be made, such enquiries as it considers necessary to enable it to decide whether they should take any action to safeguard or promote the child's welfare.

(2) Where the Department 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.

(3) 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 other powers under this Law, with respect to the child;
- (b) whether, in the case of a child-
  - (i) with respect to whom an emergency protection order has been made; and
  - (ii) who is not in accommodation provided by or on behalf of the 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.

(4) 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 its behalf, by a person authorised by it for the purpose,

unless the Department is satisfied that it already has sufficient information with respect to him.

(5) 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.

(6) 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 child assessment 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 its doing so.

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

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

(8) 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 them to do so).

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

(10) Subsection (9) does not oblige any department of government 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

51. (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 for the order; 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) A person shall not be excused from complying with a requirement under subsection (1) 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 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 applicant 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 exist 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 \$2000 or to imprisonment for a term not exceeding 6 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 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.

(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 registered health practitioner.

(12) An application for a warrant under this section shall be made in the manner and form prescribed by rules of court.

(13) 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.

52. (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;
- (b) the subject of an emergency protection order; or
- (c) in police protection,

and in this section "the responsible person" means any person who for the time being has care of him by virtue of the care order, the emergency protection order, or section 49, 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 \$5000 or to both.

Recovery of abducted children etc.

53. (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 52 applies and in this section "the responsible person" has the same meaning as in section 52.

(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; and
- (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;
- (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; and

(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 \$2000 or to imprisonment for a term not exceeding 6 months or to both.

(11) A person shall be not be excused from complying with 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

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

(2) The Governor in Cabinet 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 52; and
- (b) section 27 and Schedule 2 of the Youth Justice Law (2001 Revision).

## **PART VI**

### **COMMUNITY HOMES**

Provision of community homes by Department

55. (1) The Department shall make such arrangements as it considers appropriate for securing that homes ("community homes") are available-

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

(2) In making such arrangements, a Department shall have regard to the need for ensuring the availability of accommodation-

- (a) of different descriptions; and
- (b) which is suitable for different purposes and the requirements of different descriptions of children.

(3) A community home may be a home-

- (a) provided, equipped and maintained by the Department; or
- (b) provided by a voluntary organisation but in respect of which the Department and the organisation-
  - (i) propose that, in accordance with an instrument of management, the management, equipment and maintenance of the home shall be the responsibility of the Department; or
  - (ii) so propose that the management, equipment and maintenance of the home shall be the responsibility of the voluntary organisation.

(4) Where the Department is to be responsible for the management of a community home provided by a voluntary organisation, the Department shall designate the home as a controlled community home.

(5) Where a voluntary organisation is to be responsible for the management of a community home provided by the organisation, the Department shall designate the home as an assisted community home.

(6) Schedule 4 has effect for the purpose of supplementing the provisions of this Part.

56. (1) Where it appears to the Governor in Cabinet that-

- (a) any premises used for the purposes of a community home are unsuitable for those purposes; or
- (b) the conduct of a community home-
  - (i) is not in accordance with regulations made under paragraph 4 of Schedule 4; or
  - (ii) is otherwise unsatisfactory,

Directions that premises  
be no longer used for  
community home

the Governor in Cabinet may, by notice in writing served on the responsible body, direct that as from such date as may be specified in the notice the premises shall not be used for the purposes of a community home.

(2) Where-

- (a) the Governor in Cabinet has given a direction under subsection (1); and
- (b) the direction has not been revoked,

it may at any time by order revoke the instrument of management for the home concerned.

(3) For the purposes of subsection (1), the responsible body-

- (a) in relation to a community home provided or controlled by the Department is the Department; and
- (b) in relation to an assisted community home, is the voluntary organisation by which the home is provided.

Determination of disputes relating to controlled and assisted community homes

57. (1) Where any dispute relating to a controlled community home arises between the Department and the voluntary organisation by which the home is provided the dispute may be referred by either party to the Governor in Cabinet for determination.

(2) Where any dispute relating to an assisted community home arises between the voluntary organisation by which the home is provided and the Department the dispute may be referred by either party to the Governor in Cabinet for determination.

(3) Where a dispute is referred to the Governor in Cabinet under this section it may, in order to give effect to its determination of the dispute, give such directions as it thinks fit to the Department or voluntary organisation concerned.

(4) This section applies even though the matter in dispute may be one which, under or by virtue of Part II of Schedule 4, is reserved for the decision, or is the responsibility, of-

- (a) the Department as specified in the home's instrument of management; or
- (b) (as the case may be) the voluntary organisation by which the home is provided.

(5) Where any trust deed relating to a controlled or assisted community home contains provisions whereby a bishop or any other ecclesiastical or denominational authority has power to decide questions relating to religious instruction given in the home, a dispute which is capable of being dealt with in accordance with that provision shall not be referred to the Governor in Cabinet under this section.

(6) In this Part "trust deed", in relation to a voluntary home, means any instrument (other than an instrument of management) regulating—

- (a) the maintenance, management or conduct of the home; or
- (b) the constitution of a body of managers or trustees of the home.

58. (1) The voluntary organisation by which a controlled or assisted community home is provided shall not cease to provide the home except after giving to the Governor in Cabinet and Department not less than two years' notice in writing of their intention to do so.

Discontinuance by  
voluntary organisation  
of controlled or assisted  
community home

(2) A notice under subsection (1) shall specify the date from which the voluntary organisation intends to cease to provide the home as a community home.

(3) Where such a notice is given and is not withdrawn before the date specified in it, the home's instrument of management shall cease to have effect on that date and the home shall then cease to be a controlled or assisted community home.

(4) Where a notice is given under subsection (1) and the home's managers give notice in writing to the Governor in Cabinet that they are unable or unwilling to continue as its managers until the date specified in the subsection (1) notice, the Governor in Cabinet may by order—

- (a) revoke the home's instrument of management; and
- (b) require the Department to conduct the home until—
  - (i) the date specified in the subsection (1) notice; or
  - (ii) such earlier date (if any) as may be specified for the purposes of this paragraph in the order,
 as if it were a community home provided by the Department.

(5) Where the Governor in Cabinet imposes a requirement under subsection (4)(b)—

- (a) nothing in the trust deed for the home shall affect the conduct of the home by the Department;
- (b) the Governor in Cabinet may by order direct that for the purposes of any provision specified in the direction and made by or under any enactment relating to community homes (other than this section) the home shall, until the date or earlier date specified as mentioned in subsection (4)(b), be treated as a controlled or assisted community home;
- (c) except in so far as the Governor in Cabinet so directs, the home shall until that date be treated for the purposes of any such

enactment as a community home provided by the Department;  
and

- (d) on the date or earlier date specified as mentioned in subsection (4)(b) the home shall cease to be a community home.

Closure by Department  
of controlled or assisted  
community home

59. (1) The Department may give-

- (a) the Governor in Cabinet; and
- (b) the voluntary organisation by which the home is provided,

not less than 2 years' notice in writing of its intention to withdraw its designation of the home as a controlled or assisted community home.

(2) A notice under subsection (1) shall specify the date ("the specified date") on which the designation is to be withdrawn.

(3) Where-

- (a) a notice is given under subsection (1) in respect of a controlled or assisted community home;
- (b) the home's managers give notice in writing to the Governor in Cabinet that they are unable or unwilling to continue as managers until the specified date; and
- (c) the managers' notice is not withdrawn,

the Governor in Cabinet may by order revoke the home's instrument of management from such date earlier than the specified date as may be specified in the order.

(4) Before making an order under subsection (3), the Governor in Cabinet shall consult the Department and the voluntary organisation.

(5) Where a notice has been given under subsection (1) and is not withdrawn, the home's instrument of management shall cease to have effect on-

- (a) the specified date; or
- (b) where an earlier date has been specified under subsection (3), that earlier date,

and the home shall then cease to be a community home.

Financial provisions  
applicable on cessation  
of controlled or assisted  
community home or  
disposal etc. of premises

60. (1) Where-

- (a) the instrument of management for a controlled or assisted community home is revoked or otherwise ceases to have effect under section 56(2), 58(3) or (4)(a) or 59(3) or (5); or



- (b) any premises used for the purposes of such a home are disposed of, or put to use otherwise than for those purposes,

the proprietor shall become liable to pay compensation ("the appropriate compensation") in accordance with this section.

(2) Where the instrument of management in force at the relevant time relates—

- (a) to a controlled community home; or
- (b) to an assisted community home which, at any time before the instrument came into force, was a controlled community home,

the appropriate compensation is the sum equal to the expenditure incurred by the Department in relation to the premises while the home was a controlled community home.

(3) Where the instrument of management in force at the relevant time relates—

- (a) to an assisted community home; or
- (b) to a controlled community home which, at any time before the instrument came into force, was an assisted community home,

the appropriate compensation is a sum equal to that part of the value of the premises which is attributable to the expenditure of money provided by way of grant .

(4) Where the home is, at the relevant time, conducted in premises which formerly were used as a home the appropriate compensation is a sum equal to the market value of that home.

(5) The appropriate compensation shall be paid in-

- (a) the case of compensation payable under subsection (2), to the Department who was the responsible authority at the relevant time; and
- (b) to the Governor in Cabinet in any other case.

(6) In this section-

"disposal" includes the grant of a tenancy and any other assignment, transfer, grant, variation or extinguishment of an interest in or right over land, whether made by instrument or otherwise;

"premises" means any premises or part of premises (including land) used for the purposes of the home and belonging to the proprietor;

"the proprietor" means-

- (a) the voluntary organisation by which the home is, at the relevant time, provided; or
- (b) if the premises are not, at the relevant time, vested in that organisation, the persons in whom they are vested;

"the relevant time" means the time immediately before the liability to pay arises under subsection (1); and

"the responsible authority" means the Department.

(7) For the purposes of this section an event of a kind mentioned in subsection (1)(b) shall be taken to have occurred-

- (a) in the case of a disposal, on the date on which the disposal was completed or, in the case of a disposal which is effected by a series of transactions, the date on which the last of those transactions was completed;
- (b) in the case of premises which are put to different use, on the date on which they first begin to be put to their new use.

(8) The amount of any sum payable under this section shall be determined in accordance with such arrangements-

- (a) as may be agreed between the voluntary organisation by which the home is, at the relevant time, provided and the Department or the Governor in Cabinet; or
- (b) in default of agreement, as may be determined by the Governor in Cabinet.

(9) With the agreement of the Governor in Cabinet the liability to pay any sum under this section may be discharged, in whole or in part, by the transfer of any premises.

(10) This section has effect regardless of-

- (a) anything in any trust deed for a controlled or assisted community home; or
- (b) the provisions of any enactment or instrument governing the disposition of the property of a voluntary organisation.

## **PART VII**

### **VOLUNTARY HOMES AND VOLUNTARY ORGANISATIONS**

61. (1) A voluntary home shall not be carried on unless it is registered in a register to be kept for the purposes of this section by the Governor in Cabinet.

Registration and  
regulation of voluntary  
homes

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

(3) In this Law "voluntary home" means any home or other institution providing care and accommodation for children which is carried on by a voluntary organisation but does not include-

- (a) a nursing home, mental nursing home or residential care home
- (b) a school;
- (c) any community home;
- (d) any home or other institution provided, equipped and maintained by the Government; or
- (e) any home which is exempted by regulations made for the purposes of this section by the Governor in Cabinet.

(4) Schedule 5 has effect for the purpose of supplementing the provisions of this Part.

62. (1) Where a child is accommodated by a voluntary organisation, it shall be the duty of the organisation-

Duties of voluntary  
organisations

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

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

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

- (d) any other person whose wishes and feelings the organisation consider to be relevant,

regarding the matter to be decided.

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

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

Duties of the  
Department

63. (1) The Department shall satisfy itself that any voluntary organisation providing accommodation—

- (a) within the Islands for any child; or
- (b) on behalf of the Department,

are satisfactorily safeguarding and promoting the welfare of the children so provided with accommodation.

(2) The Department shall arrange for children who are accommodated by voluntary organisations to be visited, from time to time, in the interests of their welfare.

(3) The Governor in Cabinet may make regulations-

- (a) requiring every child who is accommodated within the Islands by a voluntary organisation, to be visited by an officer of the Department-
  - (i) in prescribed circumstances; and
  - (ii) on specified occasions or within specified periods; and
- (b) imposing requirements which must be met by the Department or officer of the Department, carrying out functions under this section.

(4) Subsection (2) does not apply in relation to community homes.

(5) Where the Department is not satisfied that the welfare of any child who is accommodated by a voluntary organisation is being satisfactorily safeguarded or promoted it shall-

- (a) unless it 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 the child;
    - (ii) any person who is not a parent of the child but who has parental responsibility for him; or
    - (iii) a relative of the child; and
  - (b) consider the extent to which (if at all) it should exercise any of its functions with respect to the child.
- (6) Any person authorised by 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 premises in which children are being accommodated as mentioned in subsection (1) or (2);
  - (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 paragraph 7 of Schedule 5 (in whatever form they are held), or allow him to inspect such records, as he may at any time direct.
- (7) Any person exercising the power conferred by subsection (6) shall, if asked to do so, produce some duly authenticated document showing his authority to do so.
- (8) Any person authorised to exercise the power to inspect records conferred by subsection (6)—
- (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.
- (9) Any person who intentionally obstructs another in the exercise of any power conferred by subsection (6) or (8) shall be guilty of an offence and liable on summary conviction to a fine not exceeding \$2000.

## **PART VIII**

### **REGISTERED CHILDREN'S HOMES**

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

64. (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) For the purposes of this Part, "a children's home"—

(a) means a home which provides (or usually provides or is intended to provide) care and accommodation wholly or mainly for more than 3 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 regulations made for the purposes of this subsection by the Governor in Cabinet.

(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 of the child;

(b) a person who is not a parent of the child but who has parental responsibility for him; or

(c) any relative of the child.

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

(a) a community home;

(b) a voluntary home;

(c) a residential care home nursing home or mental nursing home;

(d) a home provided, equipped and maintained by the Governor in Cabinet; or

(e) a school.

(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 \$5000,

unless he has a reasonable excuse.

(10) Schedule 6 has effect with respect to children's homes.

(11) Schedule 7 has effect for the purpose of setting out the circumstances in which a person may foster more than three children without being treated as carrying on a children's home.

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

Welfare of children in  
children's homes

- (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 that person reasonable in the case of the child; and
- (c) advise, assist and befriend the child 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 other person who is not a parent of the child 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 the child as he has been able to ascertain;
- (b) to such other wishes and feelings mentioned in subsection (2) as he has been able to ascertain; and

- (c) to the child's religious persuasion, racial origin and cultural and linguistic background.

(4) Section 63 except subsection (4), shall apply in relation to any person who is carrying on a children's home as it applies in relation to any voluntary organisation.

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

66. (1) A person who is disqualified (under section 69) from fostering a child privately 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 its written consent.

(2) A person shall not employ a person who is disqualified as specified under sub-section (1) in a children's home unless he has-

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

(3) Where the Department refuses to give its consent under this section, it shall inform the applicant by a written notice which states-

- (a) the reason for the refusal;
- (b) the applicant's right to appeal against the refusal to the Grand Court under paragraph 8 of Schedule 6; and
- (c) the time within which he may do so.

(4) Any person who contravenes subsection (1) or (2) shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding \$5000 or to both.

(5) Where a person contravenes subsection (2) he shall not be guilty of an offence if he proves that he did not know, and had no reasonable grounds for believing, that the person whom he was employing was disqualified under section 69.

## **PART IX**

### **PRIVATE ARRANGEMENTS FOR FOSTERING CHILDREN**

Privately fostered children

67. (1) In this Part-



- (a) "a privately fostered child" means a child who is under the age of 16 and who is cared for, and provided with accommodation by, someone other than-
  - (i) a parent of his;
  - (ii) a person who is not a parent of his but who has parental responsibility for him; or
  - (iii) a relative of his; and
- (b) "to foster a child privately" means to look after the child in circumstances in which he is a privately fostered child as defined by this section.

(2) A child is not a privately fostered child if the person caring for and accommodating him-

- (a) has done so for a period of less than 28 days; and
- (b) does not intend to do so for any longer period.

(3) Subsection (1) is subject to-

- (a) the provisions of section 64; and
- (b) the exceptions made by paragraphs 1 to 5 of Schedule 8.

(4) In the case of a child who is disabled, subsection (1)(a) shall have effect as if for "16" there were substituted "18".

(5) Schedule 8 has effect for the purposes of supplementing the provision made by this Part.

68. (1) It shall be the duty of the Department to satisfy itself that the welfare of children who are privately fostered within the Islands is being satisfactorily safeguarded and promoted and to secure that such advice is given to those caring for them as appears to the Department to be needed.

Welfare of privately  
fostered children

(2) The Governor in Cabinet may make regulations-

- (a) requiring every child who is privately fostered within the Islands to be visited by an officer of the Department-
  - (i) in prescribed circumstances; and
  - (ii) on specified occasions or within specified periods; and
- (b) imposing requirements which are to be met by the Department, or officer of the Department in carrying out functions under this section.

(3) Where any person who is authorised by the Department to visit privately fostered children has reasonable cause to believe that-

- (a) any privately fostered child is being accommodated in premises in the Islands; or
- (b) it is proposed to accommodate any such child in any such premises,

he may at any reasonable time inspect those premises and any children there.

(4) Any person exercising the power under subsection (3) shall, if so required, produce some duly authenticated document showing his authority to do so.

(5) Where the Department is not satisfied that the welfare of any child who is privately fostered in the Islands is being satisfactorily safeguarded or promoted it shall-

- (a) unless it 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 the child;
  - (ii) any person who is not a parent of the child but who has parental responsibility for him; or
  - (iii) a relative of the child; and
- (b) consider the extent to which (if at all) it should exercise any of its functions under this Law with respect to the child.

Persons disqualified  
from being private foster  
parents

69. (1) Unless he has disclosed the fact to the Department and obtained its written consent, a person shall not foster a child privately if he is disqualified from doing so by regulations made by the Governor in Cabinet for the purposes of this section.

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

- (e) a prohibition has been imposed on him at any time under section 70 or under any other specified enactment;
- (f) his rights and powers with respect to a child have at any time been vested in a specified authority under a specified enactment.

(3) Unless he has disclosed the fact to the Department and obtained its written consent, a person shall not foster a child privately if-

- (a) he lives in the same household as a person who is himself prevented from fostering a child by subsection (1); or
- (b) he lives in a household at which any such person is employed.

(4) Where the Department refuses to give its consent under this section, it shall inform the applicant by a written notice which states-

- (a) the reason for the refusal;
- (b) the applicant's right under paragraph 7 of Schedule 8 to appeal against the refusal; and
- (c) the time within which he may do so.

70. (1) This section applies where a person-

Power to prohibit private fostering

- (a) proposes to foster a child privately; or
- (b) is fostering a child privately.

(2) Where the Department is of the opinion that-

- (a) a person referred to under sub-section (1) he is not a suitable person to foster a child;
- (b) the premises in which the child will be, or is being, accommodated are not suitable; or
- (c) it would be prejudicial to the welfare of the child for him to be, or continue to be, accommodated by that person in those premises,

the Department may impose a prohibition on him under subsection (3).

(3) A prohibition imposed on any person under this subsection may prohibit him from fostering privately-

- (a) any child in any premises in the Islands;
- (b) any child in premises specified in the prohibition;
- (c) a child identified in the prohibition, in premises specified in the prohibition.

(4) The Department, may if it thinks fit, cancel the prohibition under subsection (3)-

- (a) of its own motion; or

(b) on an application made by the prohibited person,  
if it is satisfied that the prohibition is no longer justified.

(5) Where the Department imposes a requirement on any person under paragraph 5 of Schedule 8 it may also impose a prohibition on him under subsection (3).

(6) Any prohibition imposed by virtue of subsection (5) shall not have effect unless-

- (a) the time specified for compliance with the requirement has expired; and
- (b) the requirement has not been complied with.

(7) A prohibition imposed under this section shall be imposed by notice in writing addressed to the person on whom it is imposed and informing him of-

- (a) the reason for imposing the prohibition;
- (b) his right under paragraph 7 of Schedule 8 to appeal against the prohibition; and
- (c) the time within which he may do so.

Offences

71. (1) A person shall be guilty of an offence if-

- (a) being required, under any provision made by or under this Part, to give any notice or information—
  - (i) he fails without reasonable excuse to give the notice within the time specified in that provision; or
  - (ii) he fails without reasonable excuse to give the information within a reasonable time; or
  - (iii) he makes, or causes or procures another person to make, any statement in the notice or information which he knows to be false or misleading in a material particular;
- (b) he refuses to allow a privately fostered child to be visited by a duly authorised officer of the Department;
- (c) he intentionally obstructs another in the exercise of the power conferred by section 68(3);
- (d) he contravenes section 68;
- (e) he fails without reasonable excuse to comply with any requirement imposed by the Department under this Part;
- (f) he accommodates a privately fostered child in any premises in contravention of a prohibition imposed by the Department under this Part;

- (g) he knowingly causes to be published, or publishes, an advertisement which he knows contravenes paragraph 10 of Schedule 8.

(2) Where a person contravenes section 69(3), he shall not be guilty of an offence under this section if he proves that he did not know, and had no reasonable ground for believing, that any person to whom section 69(1) applies was living or employed in the premises in question.

(3) A person guilty of an offence under subsection (1)(a) shall be liable on summary conviction to a fine not exceeding \$2000.

(4) A person guilty of an offence under subsection (1)(b), (c) or (g) shall be liable on summary conviction to a fine not exceeding \$5000.

(5) A person guilty of an offence under subsection (1)(d) or (f) shall be liable to a fine not exceeding \$2000.

(6) A person guilty of an offence under subsection (1)(e) shall be liable on summary conviction to a fine not exceeding \$2000.

(7) Where any person who is required, under any provision of this Part, to give a notice fails to give the notice within the time specified in that provision, proceedings for the offence may be brought at any time within 6 months from the date when evidence of the offence came to the knowledge of the Department.

## **PART X**

### **CHILD MINDING AND DAY CARE FOR YOUNG CHILDREN**

72. (1) A register shall be kept-
- Registration
- (a) by the Department, 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—
    - (i) he looks after one or more children under the age of 8, for reward; and

- (ii) the period, or the total of the periods, which he spends so looking after children in any day exceeds 2 hours; and
- (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 in any day.

(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;
- (b) has parental responsibility for a child; or
- (c) is a foster parent of 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 so employing her.

(6) Where a person is so employed by 2 different employers, she does not act as a child minder when looking after any of the children concerned wholly or mainly in the home of either of her employers.

(7) 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 to look after children under the age of 8.

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

- (a) any person living, or likely to be living, at any premises on which the applicant is, or is likely to be, child minding; or
- (b) any person employed, or likely to be employed, on those premises,

is not fit to be in the proximity of children under the age of 8.

(9) An application for registration may be refused under subsection (1) (b) if the Education Department is satisfied that any person looking after, or likely to be looking after, any children on the premises to which the application applies is not fit to look after children under the age of 8.

(10) The Education Department may refuse to register an applicant for registration under subsection (1) (b) this section 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 to be in the proximity of children under the age of 8.

(11) The Education Department may refuse to register an applicant for registration under this section if it is satisfied in the case of an application under subsection (1) (b), 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, constitution or size.

(12) In this section-

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

"premises" includes any vehicle.

(13) For the purposes of this Part a person acts as a nanny for a child if she is employed to look after the child by-

- (a) a parent of the child;
- (b) a person who is not a parent of the child but who has parental responsibility for him; or
- (c) a person who is a relative of the child and who has assumed responsibility for his care.

(14) For the purposes of this section, a person fosters a child if-

- (a) he is a departmental foster parent in relation to the child; or
- (b) he fosters the child privately.

(15) Any register kept under this section-

- (a) shall be open to inspection by members of the public at all reasonable times; and

(b) may be kept by means of a computer.

(16) Schedule 9 has effect for the purpose 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

73. (1) Where the Department registers a person under section 72(1)(a), it shall impose such reasonable requirements on him as it considers appropriate in his case.

(2) In imposing requirements on him, 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 a child minder;
- (b) require him 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 to keep a record of the name and address 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 at any time 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 in Cabinet may by regulations make provision as to-

- (a) requirements which must be imposed by the Department under this section in prescribed circumstances; and
- (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 any 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 imposes other requirements, those other requirements shall not be incompatible with any of the subsection (2) requirements.

(6) The Department may at any time vary any requirement imposed under this section, impose any additional requirement or remove any requirement.



74. (1) Where the Education Department registers a person under section 72(1)(b) it shall impose such reasonable requirements on him as it considers appropriate in his case.

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

(2) Where a person is registered under section 72(1)(b) with respect to different premises this section applies separately in relation to each registration.

(3) In imposing requirements on him, 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 of any change in the 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 registered 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 of any change in the persons mentioned in paragraph (e)(ii) and (iii).

(4) The Governor in Cabinet 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 descriptions 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 shall not be incompatible with any of the subsection (3) requirements.

(8) The Education Department may at any time vary any requirements imposed under this section, impose any additional requirement or remove any requirement.

Cancellation of  
registration

75. (1) The Department may at any time cancel the registration of any person under section 72(1)(a) where—

- (a) it appears to it 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, seriously inadequate having regard to the needs of that child; or
- (c) that person has-
  - (i) contravened, or failed to comply with, any requirement imposed on him under section 73; or
  - (ii) failed to pay any annual fee under paragraph 6 of Schedule 9 within the prescribed time.

(2) The Education Department may at any time cancel the registration of any person under section 72(1)(b) with respect to particular premises where-

- (a) it appears to it 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, seriously 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 74; or
  - (ii) failed to pay any annual fee under paragraph 7 of Schedule 9 within the prescribed time.

(3) The Education Department may at any time cancel all registrations of any person under section 72(1)(b) if it appears to it 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 73 or 74, 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) Any cancellation under this section must be in writing.

(6) In considering the needs of any child for the purposes of subsection (1)(b) or (2)(b), the Education Department shall, in particular, have regard to the child's religious persuasion, racial origin and cultural and linguistic background.

76. (1) A court may make an order where-

Protection of children in  
an emergency

- (a) the 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 73 or 74; 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.

(2) Any cancellation, variation, removal or imposition made in accordance with subsection (1) 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 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 statement 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 78, as if it had been imposed under section 73 or (as the case may be) 74 by the department concerned.

Inspection

77. (1) Any person authorised to do so by the Department may at any reasonable time enter-

- (a) any domestic premises on which child minding is at any time carried on; or
- (b) any premises on which day care for children under the age of 8 is at any time provided.

(2) Where the Department has reasonable cause to believe that a child is being looked after on any premises within the Islands in contravention of this Part, any person authorised to do so by the Department may enter those premises at any reasonable time.

(3) Any person 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 Department shall exercise its power to inspect the premises mentioned in subsection (1) at least once every year.

(5) Any person inspecting any 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) A person 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 another in the exercise of any power under this subsection shall be guilty of an offence and liable on summary conviction to a fine not exceeding \$5000.

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

Appeals

- (a) refusing an application for registration under section 72;
- (b) cancelling any such registration;
- (c) refusing consent under paragraph 2 of Schedule 9;
- (d) imposing, removing or varying any requirement under section 73 or 74; 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 reasons for proposing 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 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) Where 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 their 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 department concerned.

(8) Where the court allows an appeal against the refusal or cancellation of any registration under section 72 it may impose requirements under section 73 or 74.

(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 (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

79. (1) A person shall not provide day care for children under the age of 8 on any premises within the Islands unless he is registered by the Department under section 72(1)(b) with respect to those premises.

(2) Any person who contravenes subsection (1) without reasonable excuse shall be guilty of an offence.

(3) A person shall not act as a child minder on domestic premises within the Islands unless he is registered by the Department under section 71(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 1 year beginning with the date on which it is served.

(6) Where a person with respect to whom an enforcement notice is in force contravenes subsection (3) without reasonable excuse 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 73 or 74 shall be guilty of an offence.

(8) Where 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 9; or

(b) contravenes any of sub-paragraphs (3) to (5) of paragraph 2,

he shall be guilty of an offence.

(9) Where a person contravenes sub-paragraph (3) of paragraph 2 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 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 whom 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 (8), to a fine not exceeding \$5000;
- (b) in the case of an offence under subsection (9), to a fine not exceeding \$5000; and
- (c) in the case of any other offence, to a fine not exceeding \$5000.

## **PART XI**

### **GOVERNOR IN CABINET'S AND GOVERNOR'S SUPERVISORY FUNCTIONS AND RESPONSIBILITIES**

80. (1) The Governor in Cabinet may cause to be inspected from time to time any-

Inspection of children's  
homes etc. by persons  
authorised by the  
Governor in Cabinet

- (a) children's home;
- (b) premises in which a child who is being looked after by the Department is living;
- (c) premises in which a child who is being accommodated by or on behalf of the Education Department is living;
- (d) premises in which a child is living with a person with whom he has been placed through adoption;
- (e) premises in which a child who is a protected child is, or will be, living;
- (f) premises in which a privately fostered child, or child who is treated as a foster child by virtue of paragraph 8 of Schedule 8, is living or in which it is proposed that he will live;
- (g) premises on which any person is acting as a child minder;
- (h) premises with respect to which a person is registered under section 72(1)(b); and
- (k) premises which are provided by the Department.

(2) An inspection under this section shall be conducted by a person authorised to do so by the Governor in Cabinet.

(3) An officer of the Department shall not be so authorised except with the consent of the Department.

(4) The Governor in Cabinet may require any person of a kind mentioned in subsection (5) to furnish it with such information, or allow it to inspect such records (in whatever form they are held), relating to-

- (a) any premises to which subsection (1) applies;
- (b) any child who is living in any such premises;
- (c) the discharge by the Governor in Cabinet of any of its functions under this Law; or
- (d) the discharge by the Department of any of its functions under this Law,

as the Governor in Cabinet may at any time direct.

(5) The persons referred to in subsection (4) are any-

- (a) Government department;
- (b) voluntary organisation;
- (c) person carrying on a children's home;
- (d) person fostering any privately fostered child or providing accommodation for a child on behalf of the Department or the Education Department;
- (e) person employed in a teaching or administrative capacity at any educational establishment (whether or not maintained by the Education Department ) at which a child is accommodated on behalf of the Department or the Education Department;
- (f) person who is the occupier of any premises in which any person acts as a child minder (within the meaning of Part X) or provides day care for young children (within the meaning of that Part);
- (g) person carrying on any home of a kind mentioned in subsection (1)(j).

(6) Any person inspecting a home or other premises under this section may-

- (a) inspect the children there; and
- (b) make such examination into the state and management of the home or premises and the treatment of the children there as he thinks fit.

(7) A person authorised by the Governor in Cabinet 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 reasonable assistance as he may require.

(8) A person authorised to inspect any premises under this section shall have a right to enter the premises for that purpose, and for any purpose specified in subsection (4), at any reasonable time.

(9) Any person exercising the power under subsection (8) shall, if so required, produce some duly authenticated document showing his authority to do so.

(10) Any person who intentionally obstructs another in the exercise of the power under subsection (8) shall be guilty of an offence and liable on summary conviction to a fine not exceeding \$5000.

(11) The Governor in Cabinet may by order provide for subsections (1), (4) and (6) not to apply in relation to such homes, or other premises, as may be specified in the order and any such order may make different provisions with respect to each of those subsections.

81. (1) The Governor in Cabinet may cause an inquiry to be held into any matter connected with- Inquiries

- (a) the functions of the Department so far as those functions relate to children;
- (b) the functions of the Adoption Board;
- (c) the functions of a voluntary organisation, in so far as those functions relate to children; or
- (d) a registered children's home or voluntary home.

(2) Before an inquiry is begun, the Governor in Cabinet may direct that it shall be held in private.

(3) Where no direction has been given, the person holding the inquiry may if he thinks fit hold it, or any part of it, in private.

(4) In this section "functions" includes powers and duties which a person has otherwise than by virtue of any enactment.

82. (1) The Governor in Cabinet may conduct, or assist other persons in conducting, research into any matter connected with- Research and returns of information

- (a) its functions, or the functions of the Department or the Education Department under the enactments mentioned in subsection (8); or
- (b) the adoption of children.

(2) The Department and the Education Department, acting jointly, may conduct, or assist other persons in conducting, research into any matter connected with—

- (a) their functions under the enactments mentioned in subsection (8); or
- (b) the adoption of children.

(3) The Department and the Education Department shall, at such times and in such form as the Governor may direct, transmit to him such particulars as he may require with respect to-

- (a) the performance by the Department or the Education Department of all or any of their functions under the enactments mentioned in subsection (8); and
- (b) the children in relation to whom the departments have exercised those functions.

(4) Every voluntary organisation shall, at such times and in such form as the Governor in Cabinet may direct, transmit to it such particulars as he may require with respect to children accommodated by them.

(5) The Governor in Cabinet may direct each court to which the direction under subsection (4) is expressed to relate to transmit-

- (a) to such person as may be specified in the direction; and
- (b) at such times and in such form as he may direct;

such particulars as it may require with respect to proceedings of the court which relate to children.

(6) The Governor in Cabinet may institute research designed to provide information on which requests for information under this section may be based.

(7) The Governor in Cabinet shall keep under review the adequacy of the provision of child care training and for that purpose shall receive and consider any information from or representations made by-

- (a) such representatives of the Department as appear to it to be appropriate; or
- (b) such other persons or organisations as appear to it to be appropriate,

concerning the provision of such training.

(8) The enactments referred to under this section are this Law and the Youth Justice Law (2001 Revision).

83. (1) Where the Governor is satisfied that any department of government has failed, without reasonable excuse, to comply with any of the duties imposed on the department by or under this Law he may make an order declaring that department to be in default with respect to that duty.

Departmental failure to comply with statutory duty: default power of the Governor

(2) An order under subsection (1) shall give the Governor's reasons for making it.

(3) An order under subsection (1) may contain such directions for the purpose of ensuring that the duty is complied with, within such period as may be specified in the order, as appears to the Governor to be necessary.

(4) Any direction under subsection (3) shall, on the application of the Governor, be enforceable by mandamus.

## **PART XII**

### **MISCELLANEOUS AND GENERAL**

#### **Effect and duration of orders etc.**

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

Effect and duration of orders etc.

(2) The making of a care order with respect to a child who is the subject of any section 10 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) The making of a care order with respect to a child who is the subject of a school attendance order discharges the school attendance order.

(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) Any order made under section 6(1) or 7(1) shall continue in force until the child reaches the age of 18, unless it is brought to an end earlier.

(8) Any—

- (a) agreement under section 6; or
- (b) appointment under section 7(3) or (4),

shall continue in force until the child reaches the age of 18, unless it is brought to an end earlier.

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

(10) A section 10 order shall, if it would otherwise still be in force, cease to have effect when the child reaches the age of 16, unless it is to have effect beyond that age by virtue of section 11(6).

(11) Where a section 10 order has effect with respect to a child who has reached the age of 16, it shall, if it would otherwise still be in force, cease to have effect when he reaches the age of 18.

(12) 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.

(13) 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.

(14) 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 an application for an order under this Law of any specified kind shall not be made with respect to the child concerned by any person named in the order without leave of the court.

(15) 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;
- (d) the substitution of a supervision order for a care order; or
- (e) a child assessment order,

a further application of a kind mentioned in paragraphs (a) to (e) shall not 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.

(16) Subsection (15) does not apply to applications made in relation to interim orders.

(17) Where-

- (a) a person has made an application for an order under section 36;
- (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.

#### **Jurisdiction and procedure etc.**

85. (1) Proceedings under this Law shall be treated as family proceedings in relation to summary courts. Jurisdiction of courts

(2) A summary court shall not be competent to entertain any application, or make any order, involving the administration or application of-

- (a) any property belonging to or held in trust for a child; or
- (b) the income of any such property.

(3) The summary court has no power to suspend or rescind any order made under this Law.

(4) The Chief Justice may make orders with respect to the allocation of proceedings to the courts and justices of the peace notwithstanding any other provision of this Law.

86. (1) The Rules Committee of the Grand Court may make such rules for giving effect to- Rules of court

- (a) this Law;
- (b) the provisions of any statutory instrument made under this Law;
- or
- (c) any amendment made by this Law in any other enactment,

as appears to the Rules Committee to be necessary or expedient.

(2) The rules may, in particular, make provision-

- (a) with respect to the procedure to be followed in any relevant proceedings (including the manner in which any application is to be made or other proceedings commenced);
- (b) as to the persons entitled to participate in any relevant proceedings, whether as parties to the proceedings or by being given the opportunity to make representations to the court;
- (c) with respect to the documents and information to be furnished, and notices to be given, in connection with any relevant proceedings;
- (d) applying (with or without modification) enactments which govern the procedure to be followed with respect to proceedings brought on a complaint made to a summary court to relevant proceedings in such a court brought otherwise than on a complaint;
- (e) with respect to preliminary hearings;
- (f) for the service outside these Islands in such circumstances and in such manner as may be prescribed, of any notice of proceedings in a summary court;
- (g) for the exercise by summary courts, in such circumstances as may be prescribed, of such powers as may be prescribed (even though a party to the proceedings in question is or resides outside the Islands;
- (h) enabling the court, in such circumstances as may be prescribed, to proceed on any application even though the respondent has not been given notice of the proceedings; and
- (i) authorising a summary court to order any of the parties to such relevant proceedings as may be prescribed, in such circumstances as may be prescribed, to pay the whole or part of the costs of all or any of the other parties.

(3) In subsection (2)-

"notice of proceedings" means a summons or such other notice of proceedings as is required; and "given", in relation to a summons, means "served";

"prescribed" means prescribed by the rules; and

"relevant proceedings" means any application made, or proceedings brought, under any of the provisions mentioned in paragraphs (a) to (c) of subsection (1) and any part of such proceedings.

(4) This section and any other power in this Law to make rules of court are not to be taken as in any way limiting any other power of the Rules Committee of the Grand Court.

87. (1) Subject to any express provisions to the contrary made by or under this Law an appeal shall lie to the Grand Court against- Appeals

- (a) the making by a summary court of any order under this Act; or
- (b) any refusal by a summary court to make such an order.

(2) Where a summary court has power, in relation to any proceedings under this Law, to decline jurisdiction because it considers that the case can more conveniently be dealt with by the Grand Court, no appeal shall lie against any exercise by that summary court of that power.

(3) Subsection (1) does not apply in relation to an interim order for periodical payments made under Schedule 1.

(4) On an appeal under this section, the Grand Court may make such orders as may be necessary to give effect to its determination of the appeal.

(5) Where an order is made under subsection (4) the Grand Court may also make such incidental or consequential orders as appear to it to be just.

(6) Where an appeal from a summary court relates to an order for the making of periodical payments, the Grand Court may order that its determination of the appeal shall have effect from such date as it thinks fit to specify in the order.

(7) The date specified under subsection (6) shall not be earlier than the earliest date allowed in accordance with rules of court made for the purposes of this section.

(8) Where, on an appeal under this section in respect of an order requiring a person to make periodical payments, the Grand Court reduces the amount of those payments or discharges the order-

- (a) it may order the person entitled to the payments to pay to the person making them such sum in respect of payments already made as the Grand Court thinks fit; and
- (b) if any arrears are due under the order for periodical payments, it may remit payment of the whole, or part, of those arrears.

(9) Any order of the Grand Court made on an appeal under this section (other than one directing that an application be re-heard by a summary court) shall, for the purposes-

- (a) of the enforcement of the order; and
- (b) of any power to vary, revive or discharge orders,

be treated as if it were an order of the summary court from which the appeal was brought and not an order of the Grand Court.

(10) The Chief Justice may by order make provision as to the circumstances in which appeals may be made against decisions taken by courts on questions arising in connection with the transfer, or proposed transfer, of proceedings by virtue of any order under section 85(4).

(11) Except to the extent provided for in any order made under subsection (10), no appeal may be made against any decision of a kind mentioned in that subsection.

Attendance of child at  
hearing under Part IV or  
V

88. (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 any such 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 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, or such person as may be specified in the order-

- (a) to take charge of the child concerned and to bring him to the court; and
- (b) to enter and search any premises specified in the order if he has reasonable cause to believe that the child concerned 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 concerned to the court.



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

89. (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.

Evidence given by, or  
with respect to, children

(2) A 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) The Chief Justice may by order make provision for the admissibility of evidence which would otherwise be inadmissible under any rule of law relating to hearsay.

(4) An order under subsection (3) shall only be made with respect to-

- (a) civil proceedings in general or such civil proceedings, or class of civil proceedings, as may be prescribed; and
- (b) evidence in connection with the upbringing, maintenance or welfare of a child.

(5) An order under subsection (3)-

- (a) may, in particular, provide for the admissibility of statements which are made orally or in a prescribed form or which are recorded by any prescribed method of recording;
- (b) may make different provision for different purposes and in relation to different descriptions of court; and
- (c) may make such amendments and repeals in any enactment relating to evidence (other than in this Law) as the Chief Justice considers necessary or expedient in consequence of the provision made by the order.

(7) In this section-

"civil proceedings" means civil proceedings, before any tribunal, in relation to which the strict rules of evidence apply, whether as a matter of law or by agreement of the parties, and references to "the court" shall be construed accordingly; and

"prescribed" means prescribed by an order under subsection (3).

Privacy for children  
involved in certain  
proceedings

90. (1) A court may decide to sit in private for the whole or any 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 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 \$5000 or to imprisonment for a term not exceeding 12 months or to both.

Self-incrimination

91. (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.

92. (1) An application for any exercise of the Grand Court's inherent jurisdiction with respect to children shall not be made by the Department unless the Department has obtained the leave of that court.

Restrictions on use of  
wardship jurisdiction

(2) The Grand Court may only grant leave under subsection (1) if it is satisfied that-

- (a) the result which the Department wishes to achieve could not be achieved through the making of any order of a kind to which subsection (3) applies; 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.
- (3) This subsection applies to any order-
- (a) made otherwise than in the exercise of the Grand Court's inherent jurisdiction; and
  - (b) which the Department is entitled to apply for (assuming, in the case of any application which may only be made with leave, that leave is granted).

#### **Search warrants**

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

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

- (a) that a person attempting to exercise powers under any provision mentioned in subsection (6) has been prevented from doing so by being refused entry to the premises concerned or refused 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 exercise any of those 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 registered health practitioner if he so chooses.

(4) An application for a warrant under this section shall be made in the manner and form prescribed by rules of court.

(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.

(6) The provisions referred to under subsection (1) are-

(a) sections 64, 65, 68, 77 and 80; and

(b) paragraph 8(1)(b) and (2)(b) of Schedule 3;

### **General**

Offences by bodies  
corporate

94. (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

95. (1) Any power of the Governor in Cabinet under this Law to make an order, regulations, or rules, except an order under section 56(2), 58(4)(a), 59(3), 83 or 90(4) or paragraph 1(1) of Schedule 4, shall be exercisable by statutory instrument.

(2) Any such statutory instrument, except one made under section 19(4), shall be subject to annulment in pursuance of a resolution of the Legislative Assembly.

(3) An order under section 19(4) shall not be made unless a draft of it has been laid before, and approved by a resolution of, the Legislative Assembly.

(4) Any statutory instrument made under this Law may-

- (a) make different provision for different matters;
- (b) provide for exemptions from any of its provisions; and
- (c) contain such incidental, supplemental and transitional provisions as the person making it considers expedient.

96. (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.

Financial Provisions

(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 into the general revenue of the Islands.

97. (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.

Notices

(2) Any notice or 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 (1995 Revision) 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;
- (c) in any other case, shall be the last known address of the person to be served.

98. (1) Legal aid shall be available to such persons and in respect of any proceedings under this Law as are provided in the Legal Aid Law (1999 Revision).

Amendments,  
transitional provisions,  
savings and repeals

(2) The minor and consequential amendments set out in Part I of Schedule 10 has effect.

(3) The transitional provisions and savings set out in Part II of Schedule 10 has effect.

- (4) The repeals set out in Part III of Schedule 10 has effect.

Repeal of the Children  
Law, 1995

99. The Children Law, 1995 is repealed.

Section 17

## **SCHEDULE 1**

### **FINANCIAL PROVISION FOR CHILDREN**

#### **Orders 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 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 a settlement to be made for the benefit of the child, and to the satisfaction of the court, of property-
  - (i) to which either parent is entitled (either in possession or in reversion); and
  - (ii) which is specified in the order;

- (e) an order requiring either or both parents of a child-
  - (i) to transfer to the applicant, for the benefit of the 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 in 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) or (e) 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.

(7) Where a child is a ward of the court, the court may exercise any of its powers under this Schedule even though no application has been made to it.

### **Orders for financial relief for persons over 18**

2. (1) Where, on an application by a person who has reached the age of 18, it appears to the court-

- (a) that the applicant is, will be or (if an order were made under this 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) that there are special circumstances which justify the making of an order under this paragraph,

the court may make one or both of the orders mentioned in sub-paragraph (2).

(2) The orders are-

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

(3) An application may not be made under this paragraph by any person if, immediately before he reached the age of 16, a periodical payments order was in force with respect to him.

(4) No order shall be made under this paragraph at a time when the parents of the applicant are living with each other in the same household.

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

(6) In sub-paragraph (3) "periodical payments order" means an order made under—

- (a) this Schedule or
- (b) section 22 or 24 of the Matrimonial Causes Law (1997 Revision),

for the making or securing of periodical payments.

(7) The powers conferred by this paragraph shall be exercisable at any time.

(8) Where the court makes an order under this paragraph it may from time to time while that order remains in force make a further such order.

#### **Duration of orders for financial relief**

3. (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 or a date ascertained in accordance with sub-paragraph (5) or (6) 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) of 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 was 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) or



2(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 court is to have regard in making orders for financial relief**

4. (1) In deciding whether to exercise its powers under paragraph 1 or 2, 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 (4) 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; and
- (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) in relation to a decision whether to exercise its powers under paragraph 2, the mother and father of the child;
  - (c) the applicant for the order; or
  - (d) any other person in whose favour the court proposes to make the order.

**Provisions relating to lump sums**

5. (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 purpose 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 amount of any lump sum required to be paid by an order made by a court under paragraph 1 or 2 shall not exceed \$2000 or such larger amount as the Governor in Cabinet may from time to time by order fix for the purposes of this sub-paragraph.

(3) The power of the court under paragraph 1 or 2 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.

(4) The amount of any lump sum which a person may be required to pay by virtue of sub-paragraph (3) shall not, in the case of an order made by a court, exceed the maximum amount that may at the time of the making of the order be required to be paid under sub-paragraph (2), but a court may make an order for the payment of a lump sum not exceeding that amount even though the parent was required to pay a lump sum by a previous order under this Law.

(5) An order made under paragraph 1 or 2 for the payment of a lump sum may provide for the payment of that sum by instalments.

(6) 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 instalment payable; and
- (c) the date on which any instalment becomes payable.

**Variation etc. of orders for periodical payments**

6. (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 or 2 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 revive any provision so suspended.

(3) Where on an application under paragraph 1 or 2 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 reaches the age of 16, or at any time after that date but before or on 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) Where on an application under sub-paragraph (5) it appears to the court that-

- (a) the child is, 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 revive 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 revived 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 revived 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**

7. (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) An application for the variation of the order shall, except with the permission of the court, not 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 considering for the purposes of sub-paragraph (2) the question when representation was first taken out, a grant limited to settled land or to trust

property shall be left out of account and a grant limited to real estate or to personal estate shall be left out of account unless a grant limited to the remainder of the estate has previously been made or is made at the same time.

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

#### **Financial relief under other enactments**

8. (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 and 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 the order or by substituting the applicant for the person to whom any such sum is otherwise payable under that order.

#### **Interim orders**

9. (1) Where an application is made under paragraph 1 or 2 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 made 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 or 2.

(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.

### **Alteration of maintenance agreements**

10. (1) In this paragraph and in paragraph 11 "maintenance agreement" means any agreement in writing made with respect to a child, whether before or after the commencement of this paragraph, which-

- (a) is or was made between the father and mother of the child; and
- (b) contains provision with respect to the making or securing of payments, or the disposition or use of any property, for the maintenance or education of the child,

and any such provisions are in this paragraph, and paragraph 11, referred to as "financial arrangements".

(2) Where a maintenance agreement is for the time being subsisting and each of the parties to the agreement is for the time being either domiciled or resident in the Islands, then, either party may apply to the court for an order under this paragraph.

(3) Where the court to which the application is made is satisfied either-

- (a) that, by reason of a change in the circumstances in the light of which any financial arrangements contained in the agreement were made (including a change foreseen by the parties when making the agreement), the agreement should be altered so as to make different financial arrangements; or
- (b) that the agreement does not contain proper financial arrangements with respect to the child,

then that court may by order make such alterations in the agreement by varying or revoking any financial arrangements contained in it as may appear to it to be just having regard to all the circumstances.

(4) Where the maintenance agreement is altered by an order under this paragraph, the agreement shall have effect thereafter as if the alteration had been made by agreement between the parties and for valuable consideration.

(5) Where a court decides to make an order under this paragraph altering the maintenance agreement-

- (a) by inserting provision for the making or securing by one of the parties to the agreement of periodical payments for the maintenance of the child; or
- (b) by increasing the rate of periodical payments required to be made or secured by one of the parties for the maintenance of the child,

then, in deciding the term for which under the agreement as altered by the order the payments or (as the case may be) the additional payments attributable to the increase are to be made or secured for the benefit of the child, the court shall apply the provisions of sub-paragraphs (1) and (2) of paragraph 3 as if the order were an order under paragraph 1(2)(a) or (b).

(6) A court shall not entertain an application under sub-paragraph (2) unless both the parties to the agreement are resident in the Islands and shall not have power to make any order on such an application except-

- (a) in a case where the agreement contains no provision for periodical payments by either of the parties, an order inserting provision for the making by one of the parties of periodical payments for the maintenance of the child;
- (b) in a case where the agreement includes provision for the making by one of the parties of periodical payments, an order increasing or reducing the rate of, or terminating, any of those payments.

(7) For the avoidance of doubt it is hereby declared that nothing in this paragraph affects any power of a court before which any proceedings between the parties to a maintenance agreement are brought under any other enactment to make an order containing financial arrangements or any right of either party to apply for such an order in such proceedings.

11. (1) Where a maintenance agreement provides for the continuation, after the death of one of the parties, of payments for the maintenance of a child and that party dies domiciled in the Islands, the surviving party or the personal representatives of the deceased party may apply to the Grand Court for an order under paragraph 10.

(2) Where a maintenance agreement is altered by a court on an application under this paragraph, the agreement shall have effect thereafter as if the alteration had been made, immediately before the death, by agreement between the parties and for valuable consideration.

(3) An application under this paragraph shall not, except with leave of the Grand Court, be made after the end of the period of 6 months beginning with the day on which representation in regard to the estate of the deceased is first taken out.

(4) In considering for the purposes of sub-paragraph (3) the question when representation was first taken out, a grant limited to settled land or to trust property shall be left out of account and a grant limited to real estate or to personal estate shall be left out of account unless a grant limited to the remainder

of the estate has previously been made or is made at the same time.

(5) The provisions of this paragraph shall not render the personal representatives of the deceased liable for having distributed any part of the estate of the deceased after the expiry of the period of 6 months referred to in sub-paragraph (3) on the ground that they ought to have taken into account the possibility that a court might grant leave for an application by virtue of this paragraph to be made by the surviving party after that period.

(6) Sub-paragraph (5) shall not prejudice any power to recover any part of the estate so distributed arising by virtue of the making of an order in pursuance of this paragraph.

#### **Enforcement of orders for maintenance**

12. (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 a notice shall be guilty of an offence and liable on summary conviction to a fine not exceeding \$2000 or to imprisonment for a term not exceeding 6 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 Court's Fund Office 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 Court's Fund Office; and
- (b) any sum payable under the order is in arrears, the Clerk of the Courts 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 Clerk of the Courts shall not proceed for the recovery under the 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 Clerk of the Courts) had taken the proceedings.



**Direction for settlement of instrument by Crown Counsel**

13. Where the court decides to make an order under this Law for the securing of periodical payments or for the transfer or settlement of property, it may direct that the matter be referred to Crown Counsel to settle a proper instrument to be executed by all necessary parties.

**Financial provision for child not resident in the Islands**

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

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

the child 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).

**Department's contribution to child's maintenance**

15. (1) Where a child lives, or is to live, with a person as the result of a residence order, the Department may make contributions to that person towards the cost of the accommodation and maintenance of the child.

(2) Sub-paragraph (1) does not apply where the person with whom the child lives, or is to live, is a parent of the child or the husband or wife of a parent of the child.

**Interpretation**

16. (1) In this Schedule "child" includes, in any case where an application is made under paragraph 2 or 6 in relation to a person who has reached the age of 18, that person.

(2) In this Schedule, except paragraphs 2 and 15, "parent" includes any party to a marriage (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 the child and to all of child's parents.

Sections 19, 25, 31

## **SCHEDULE 2**

### **DEPARTMENT'S 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 provided by them under sections 19, 20, 22 and 26; and

(ii) where it 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.

##### **Assessment of children's needs**

3. Where it appears to the Department that a child is in need, the Department may assess his needs for the purposes of this Law.

**Prevention of neglect and abuse**

4. The Department shall take 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 of accommodation in order to protect child**

5. (1) Where-

- (a) it appears to the Department that a child who is living on particular premises is suffering, or is likely to suffer, ill treatment at the hands of another person who is living on those premises; and
- (b) that other person proposes to move from the premises,

the Department may assist that other person to obtain alternative accommodation.

(2) Assistance given under this paragraph may be in cash.

(3) Subsections (7) to (9) of section 19 shall apply in relation to assistance given under this paragraph as they apply in relation to assistance given under that section.

**Provision for disabled children**

6. The Department shall provide services designed-

- (a) to minimise the effect on disabled children of their disabilities; and
- (b) to give such children the opportunity to lead lives which are as normal as possible.

**Provision to reduce need for care proceedings etc.**

7. The Department shall take reasonable steps designed-

- (a) to reduce the need to bring—
  - (i) proceedings for care or supervision orders with respect to children within the Islands;
  - (ii) criminal proceedings against such children;
  - (iii) any family or other proceedings with respect to such children which might lead to them being placed in the Department's care; or

- (iv) proceedings under the inherent jurisdiction of the Grand with respect to children;
- (b) to encourage children within the Islands not to commit criminal offences; and
- (c) to avoid the need for children within the Islands to be placed in secure accommodation.

**Provision for children living with their families**

8. The Department shall make such provision as it considers appropriate for the following services to be available with respect to children in need within the Islands while they are living with their families-

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

**Family centres**

9. (1) The Department shall provide such family centres as it considers appropriate in relation to children within the Islands.

(2) "Family centre" means a centre at which any of the persons mentioned in sub-paragraph (3) may-

- (a) attend for occupational, social, cultural or recreational activities;
- (b) attend for advice, guidance or counselling; or
- (c) be provided with accommodation while he is receiving advice, guidance or counselling.

(3) The persons referred to in sub-paragraph (2) are-

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

**Maintenance of the family home**

10. The Department shall take such steps as are reasonably practicable, where any child in the Islands who is in need and whom they are not looking after is living apart from his family-

- (a) to enable him to live with his family; or
- (b) to promote contact between him and his family,

if, in its opinion, it is necessary to do so in order to safeguard or promote his welfare.

## **PART II**

### **CHILDREN LOOKED AFTER BY THE DEPARTMENT**

#### **Regulations as to placing of children with departmental foster parents**

11. Regulations under section 25(2)(a) may, in particular, make provision-
- (a) with regard to the welfare of children placed with departmental foster parents;
  - (b) as to the arrangements to be made by the Department in connection with the health and education of such children;
  - (c) as to the records to be kept by the Department;
  - (d) for securing that a child is not placed with a departmental foster parent unless that person is for the time being approved as a departmental foster parent by the Department;
  - (e) for securing that where possible the departmental foster parent with whom a child is to be placed is-
    - (i) of the same religious persuasion as the child; or
    - (ii) gives an undertaking that the child will be brought up in that religious persuasion;
  - (f) for securing that children placed with the departmental foster parents, and the premises in which they are accommodated, will be supervised and inspected by the Department and that the children will be removed from those premises if their welfare appears to require it;
  - (g) as to the circumstances in which the Department may make arrangements for duties imposed on them by the regulations to be discharged, on their behalf.

#### **Regulations as to conditions under which child in care is allowed to live with parent, etc.**

12. Regulations under section 25(5) may, in particular, impose requirements on the Department as to-
- (a) the making of any decision by the Department to allow a child to live with any person falling within section 25(4) (including requirements as to those who must be consulted before the

decision is made, and those who must be notified when it has been made);

- (b) the supervision or medical examination of the child concerned;
- (c) the removal of the child, in such circumstances as may be prescribed, from the care of the person with whom he has been allowed to live;
- (d) the records to be kept by the Department.

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

13. (1) Where a child is being looked after by the Department, the Department 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 the child but who has parental responsibility for him; and
- (c) any relative, friend or other person connected with the child.

(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 the child but who has parental responsibility for him,are kept informed of where he is being accommodated; and
- (b) every such person shall secure that the Department is kept informed of the address of the child.

(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 \$2000.

(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 appropriate authority that both of them were residing at that address.

**Appointment of visitor for child who is not being visited**

14. (1) Where it appears to the Department in relation to any child that it is looking after that-

- (a) communication between the child and-
  - (i) a parent of the child, or
  - (ii) any person who is not a parent of his but who has parental responsibility for him,has been infrequent; or
- (b) he has not visited or been visited by (or lived with) any such person during the preceding 12 months,

and that it would be in the child's best interests for an independent person to be appointed to be his visitor for the purposes of this paragraph, it shall appoint such a visitor.

(2) A person so appointed shall-

- (a) have the duty of visiting, advising and befriending the child; and
- (b) be entitled to recover from the Department who appointed him any reasonable expenses incurred by him for the purposes of his functions under this paragraph.

(3) A person's appointment as a visitor in pursuance of this paragraph shall be determined if-

- (a) he gives notice in writing to the Department that he resigns the appointment; or
- (b) the Department gives him notice in writing that they have terminated it.

(4) The determination of such an appointment shall not prejudice any duty under this paragraph to make a further appointment.

(5) Where the Department proposes to appoint a visitor for a child under this paragraph, the appointment shall not be made if-

- (a) the child objects to it; and
- (b) the Department is satisfied that he has sufficient understanding to make an informed decision.

(6) Where a visitor has been appointed for a child under this paragraph, the Department shall determine the appointment if-

- (a) the child objects to its continuing; and
- (b) the Department is satisfied that he has sufficient understanding to make an informed decision.

(7) The Governor in Cabinet may make regulations as to the circumstances in which a person appointed as a visitor under this paragraph is to be regarded as independent of the Department.

**Power to guarantee apprenticeship deeds etc.**

15. (1) While a child is being looked after by the Department, or is a person qualifying for advice and assistance, the Department may undertake any obligation by way of guarantee under any deed of apprenticeship or articles of clerkship which he enters into.

(2) Where the Department has undertaken any such obligation under any deed or articles they may at any time (whether or not they are still looking after the person concerned) undertake the like obligation under any supplemental deed or articles.

**Death of children being looked after by the Department**

16. (1) Where a child who is being looked after by the Department dies, the Department —

- (a) shall notify the Governor in Cabinet;
- (b) shall, so far as is reasonably practicable, notify the child's parents and every person who is not a parent of the child but who has parental responsibility for him;
- (c) may, with the consent (so far as it is reasonably practicable to obtain it) of every person who has parental responsibility for the child, arrange for the child's body to be buried or cremated; and
- (d) may, if the conditions mentioned in sub-paragraph (2) are satisfied, make payments to any person who has parental responsibility for the child, or any relative, friend or other person connected with the child, in respect of travelling, subsistence or other expenses incurred by that person in attending the child's funeral.

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

- (a) it appears to the Department that the person concerned could not otherwise attend the child's funeral without undue financial hardship; and
- (b) that the circumstances warrant the making of the payments.

(3) Where the Department has exercised its power under sub-paragraph (1)(c) with respect to a child who was under 16 when he died, it may recover from any parent of the child any expenses incurred by the Department.



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

(5) Nothing in this paragraph affects any enactment regulating or authorising the burial, cremation or anatomical examination of the body of a deceased person.

### **PART III**

#### **CONTRIBUTIONS TOWARDS MAINTENANCE OF CHILDREN LOOKED AFTER BY THE DEPARTMENT**

##### **Liability to contribute**

17. (1) Where the Department is looking after a child (other than in the cases mentioned in sub-paragraph (7)) 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 16, each of his parents; and
- (b) where he has reached the age of 16, the child himself.

(4) A person is not liable to contribute towards the maintenance of a child in the care of the Department in respect of any period during which the child is allowed by the Department (under section 25(5)) to live with a parent of the child.

(6) 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.

(7) A contributor is not obliged to make any contribution towards a child's maintenance in cases where the child is looked after by the Department under-

- (a) section 23; and
- (b) an interim care order.

### **Agreed contributions**

18. (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 it considers that he should contribute; and
- (b) arrangements for payment.

(2) The contribution notice shall be in writing and 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 before that date ceased to be looked after by the Department ); and
- (c) the date on which the first payment is to be made.

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

(5) The Department shall not specify in a contribution notice a weekly sum greater than that which it considers 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**

19. (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 18(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 18(8) withdrawing his agreement,

the Department may apply to the court for an order under this paragraph.

(2) On an application under sub-paragraph (1) 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 specified 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) have effect while the contributor is not liable to contribute (by virtue of paragraph 18); or
- (c) remain in force after the child has ceased to be looked after by the Department.

(5) The Department shall 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 18(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 Department.

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

- (a) the weekly sum which, having regard to paragraph 17, 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 variation; and
- (b) shall be made with due regard to the contributor's means.

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

#### **Enforcement of contribution orders etc.**

20. (1) A contribution order made by a summary court shall be enforceable by the summary court in accordance with the Summary Jurisdiction Law (1995 Revision).

(7) In any proceedings under this paragraph, a certificate which-

- (a) purports to be signed by the clerk or some other duly authorised officer of the Department who obtained the contribution order; and
- (b) states that any sum due to the Department under the order is overdue and unpaid,

shall be evidence that the sum is overdue and unpaid.

#### **Regulations**

21. The Governor in Cabinet may make regulations-

- (a) as to the considerations which the Department shall take into account in deciding-

- (i) whether it is reasonable to recover contributions; and
- (ii) what the arrangements for payment should be;
- (b) as to the procedures they must follow in reaching agreements with contributors

### **SCHEDULE 3**

Sections 37, 38

## **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; and
- (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 which he gives.

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

#### **Imposition of obligations on responsible person**

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

include a requirement-

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

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

#### **Psychiatric and medical examinations**

4. (1) A supervision order may require the supervised child-
- (a) to submit to a medical or psychiatric examination; or
  - (b) to submit to any such examination from time to time as directed by the supervisor.
- (2) Any such examination shall be required to be conducted-
- (a) by, or under the direction of, such registered health practitioner as may be specified in the order; and
  - (b) at a place specified in the order and at which the supervised child is to attend as a non-resident patient.
- (3) A court shall not 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 registered health practitioner that the physical and

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) shall be—

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

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

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

- (a) by, or under the direction of, such registered 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 in a hospital.

(5) A court shall not include a requirement under this paragraph in a supervision order unless it is satisfied-

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

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

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

(d) he does not require further treatment,  
the practitioner shall make a report in writing to that effect to the supervisor.

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

## **PART II**

### **MISCELLANEOUS**

#### **Life of supervision order**

6. (1) Subject to section 84, a supervision order shall cease to have effect at the end of the period of one year beginning with the date on which it was made.

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

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

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

7. (1) A supervision order may require the supervised child-
- (a) to keep the supervisor informed of any change in his address; and
  - (b) to allow the supervisor to visit him at the place where he is living.
- (2) 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.

#### **Selection of supervisor**

8. (1) A supervision order shall not designate the Department as the supervisor unless the Department agrees.

(2) A court shall not place a child under the supervision of a probation



officer unless-

- (a) the Department so requests; and
- (b) a probation officer is already exercising or has exercised, in relation to another member of the household to which the child belongs, duties imposed on probation officers.

(3) Where a supervision order places a person under the supervision of a probation officer, the officer shall be selected in accordance with arrangements made by the Department

(4) If the selected probation officer is unable to carry out his duties, or dies, another probation officer shall be selected in the same manner as set out in subparagraph (3).

#### **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-

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

#### **Department's 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 their supervision by a supervision order.

(2) Where a supervision order requires compliance with directions given by virtue of this part of the 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 parents,

in such a way as will, in the opinion of the supervisor, secure that the child is properly educated; and

- (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 the child and his parents, including, in particular, their wishes as to the place 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 the child as the supervisor has been able to ascertain; and
- (b) to such wishes and feelings of the child's parents as the supervisor 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, (1999 Revision) (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, (1999 Revision);
  - (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, sections 14, 17, 18 and 22 (8) of the Education Law, (1999 Revision)

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 Department) extended the period during which it is in force.

(3) An application under sub-paragraph (2) may not be made earlier than 4 months before the date on 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 under sub-paragraph (4) shall 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 (1999 Revision)); or
- (b) the making of a care order with respect to the 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 the child; 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) Where 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 had 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 \$2000 or to imprisonment for a term not exceeding 6 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 any 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 in Cabinet 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 in Cabinet to be necessary or expedient in consequence of the provision made by this Law with respect to such orders.

**Interpretation**

20. In this Part of this Schedule "parent" has the same meaning as in the Education Law (1999 Revision) (as amended by Part 1 of Schedule 10).

**SCHEDULE 4**

Section 55(6)

**MANAGEMENT AND CONDUCT OF COMMUNITY HOMES**

**PART I**

**INSTRUMENTS OF MANAGEMENT**

**Instruments of management for controlled and assisted community homes**

1. (1) The Governor in Cabinet may by order make an instrument of management providing for the constitution of a body of managers for any home which is designated as a controlled or assisted community home.

(2) Sub-paragraph (3) applies where two or more homes are designated as controlled community homes or as assisted community homes.

(3) Where the homes referred to in sub-paragraph (2) are, or are to be, provided by the same voluntary organisation a single instrument of management may be made by the Governor in Cabinet under this paragraph constituting one body of managers for those homes or for any two or more of them.

(4) The number of persons who, in accordance with an instrument of management, constitute the body of managers for a home shall be such number (which must be a multiple of three) as may be specified in the instrument.

(5) The instrument shall provide that the Department shall appoint-

- (a) in the case of a home which is designated as a controlled community home, two-thirds of the managers; and
- (b) in the case of a home which is designated as an assisted community home, one-third of them.

(6) An instrument of management shall provide that the foundation managers shall be appointed, in such manner and by such persons as may be specified in the instrument-

- (a) so as to represent the interests of the voluntary organisation by which the home is, or is to be, provided; and
- (b) for the purpose of securing that-
  - (i) so far as is practicable, the character of the home will be preserved; and
  - (ii) subject to paragraph 2(3), the terms of any trust deed relating to the home are observed.

(7) An instrument of management shall come into force on such date as it may specify.

(8) Where an instrument of management is in force in relation to a home the home shall be (and be known as) a controlled community home or an assisted community home, according to its designation.

(9) In this paragraph-

"foundation managers", in relation to a home, means those of the managers of the home who are not appointed by the Department in accordance with sub-paragraph (5); and

"designated" means designated in accordance with section 55.

2. (1) An instrument of management shall contain such provisions as the Governor in Cabinet considers appropriate.

(2) Nothing in the instrument of management shall affect the purposes for which the premises comprising the home are held.

(3) Without prejudice to the generality of sub-paragraph (1), an instrument

of management may contain provisions-

- (a) specifying the nature and purpose of the home (or each of the homes) to which it relates;
- (b) requiring a specified number or proportion of the places in that home (or those homes) to be made available to the Department and to any other body specified in the instrument; and
- (c) relating to the management of that home (or those homes) and the charging of fees with respect to-
  - (i) children placed there; or
  - (ii) places made available to the Department or other body.

(4) Subject to sub-paragraphs (1) and (2), in the event of any inconsistency between the provisions of any trust deed and an instrument of management, the instrument of management shall prevail over the provisions of the trust deed in so far as they relate to the home concerned.

(5) After consultation with the voluntary organisation concerned and with the Department, the Governor in Cabinet may by order vary or revoke any provisions of the instrument.

## **PART II**

### **MANAGEMENT OF CONTROLLED AND ASSISTED COMMUNITY HOMES**

3. (1) The management, equipment and maintenance of a controlled community home shall be the responsibility of the Department.

(2) The management, equipment and maintenance of an assisted community home shall be the responsibility of the voluntary organisation by which the home is provided.

(3) In this paragraph-

"home" means a controlled community home or (as the case may be) assisted community home; and

"the managers", in relation to a home, means the managers constituted by the home's instrument of management; and

"the responsible body", in relation to a home, means the Department or (as the case may be) voluntary organisation responsible for its management, equipment and maintenance.

(4) The functions of a home's responsible body shall be exercised through the managers.

(5) Anything done, liability incurred or property acquired by a home's managers shall be done, incurred or acquired by them as agents of the responsible body.

(6) In so far as any matter is reserved for the decision of a home's responsible body by-

- (a) sub-paragraph (8);
- (b) the instrument of management;
- (c) the service by the body on the managers, or any of them, of a notice reserving any matter,

that matter shall be dealt with by the body and not by the managers.

(7) In dealing with any matter so reserved, the responsible body shall have regard to any representations made to the body by the managers.

(8) The employment of persons at a home shall be a matter reserved for the decision of the responsible body.

(9) Where the instrument of management of a controlled community home so provides, the responsible body may enter into arrangements with the voluntary organisation by which that home is provided whereby, in accordance with such terms as may be agreed between them and the voluntary organisation, persons who are not in the employment of the responsible body shall undertake duties at that home.

(10) Subject to sub-paragraph (11)—

- (a) where the responsible body for an assisted community home proposes to engage any person to work at that home or to terminate without notice the employment of any person at that home, it shall consult the Department and if the Department so direct, the responsible body shall not carry out its proposal without its consent; and
- (b) the Department may, after consultation with the responsible body, require that body to terminate the employment of any person at that home.

(11) Paragraphs (a) and (b) of sub-paragraph (10) shall not apply-

- (a) in such cases or circumstances as may be specified by notice in writing given by the Department to the responsible body; and



- (b) in relation to the employment of any persons or class of persons specified in the home's instrument of management.

(12) The accounting year of the managers of a home shall be such as may be specified by the responsible body.

(13) Before such date in each accounting year as may be specified under sub-paragraph (12), the managers of a home shall submit to the responsible body estimates, in such form as the body may require, of expenditure and receipts in respect of the next accounting year.

(14) Any expenses incurred by the managers of a home with the approval of the responsible body shall be defrayed by that body.

(15) The managers of a home shall keep—

- (a) proper accounts with respect to the home; and
- (b) proper records in relation to the accounts.

(16) Where an instrument of management relates to more than one home, one set of accounts and records may be kept in respect of all the homes to which it relates.

### **PART III**

#### **REGULATIONS**

4. (1) The Governor in Cabinet may make regulations—
- (a) as to the placing of children in community 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, and as to the arrangements to be made for protecting the health of children in such homes;
  - (c) provide for the control and discipline of children in such homes;
  - (d) impose requirements as to the keeping of records and giving of notices in respect of children in such homes;
  - (e) impose requirements as to the facilities which are to be provided for giving religious instruction to children in such homes;

- (f) authorise the Governor in Cabinet to give and revoke directions requiring-
    - (i) in the case of a controlled community home, the Department; or
    - (ii) the voluntary organisation by which an assisted community home is provided,to accommodate in the home a child looked after by the Department for whom no places are made available in that home or to take such action in relation to a child accommodated in the home as may be specified in the directions;
  - (g) provide for consultation with the Governor in Cabinet as to applicants for appointment to the charge of a home;
  - (h) empower the Governor in Cabinet to prohibit the appointment of any particular applicant except in the cases (if any) in which the regulations dispense with such consultation by reason that the person to be appointed possesses such qualifications as may be prescribed;
  - (i) require the approval of the Governor in Cabinet 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 27) as to the placing of a child in accommodation provided for that purpose, including a requirement to obtain the permission of the Department;
  - (j) provide that, to such extent as may be provided for in the regulations, the Governor in Cabinet may direct that any provision of regulations under this paragraph which is specified in the direction and makes any such provision as is referred to in paragraph (a) or (b) shall not apply in relation to a particular home or the premises used for it, and may provide for the variation or revocation of any such direction by the Governor in Cabinet.
- (3) Without prejudice to the power to make regulations under this paragraph conferring functions on-
- (a) the Department or voluntary organisation by which a community home is provided; or
  - (b) the managers of a controlled or assisted community home,
- regulations under this paragraph may confer functions in relation to a controlled or assisted community home on the Department.

**SCHEDULE 5**

Section 61(4)

**VOLUNTARY HOMES AND VOLUNTARY ORGANISATIONS**

**PART I**

**REGISTRATION OF VOLUNTARY HOMES**

**General**

1. (1) An application for registration under this paragraph shall-
  - (a) be made by the persons intending to carry on the home to which the application relates; and
  - (b) be made in such manner, and be accompanied by such particulars, as the Governor in Cabinet prescribes.
- (2) On an application duly made under sub-paragraph (1) the Governor in Cabinet may -
  - (a) grant or refuse the application, as he thinks fit; or
  - (b) grant the application subject to such conditions as he considers appropriate.
- (3) The Governor in Cabinet may from time to time -
  - (a) vary any condition for the time being in force with respect to a voluntary 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.
- (4) Where at any time it appears to the Governor in Cabinet that the conduct of any voluntary home-
  - (a) is not in accordance with regulations made under paragraph 7; or
  - (b) is otherwise unsatisfactory,

he may cancel the registration of the home and remove it from the register.
- (5) Any person who, without reasonable excuse, carries on a voluntary home in contravention of—
  - (a) section 61; or

- (b) a condition to which the registration of the home is for the time being subject by virtue of this Part,

shall be guilty of an offence.

(6) Any person guilty of such an offence shall be liable on summary conviction to a fine not exceeding—

- (a) \$5000, if the offence is under sub-paragraph (5)(a); or
- (b) \$4000 if the offence is under sub-paragraph (5)(b).

(7) Where the Governor in Cabinet registers a home under this paragraph, or cancels the registration of a home, it shall notify the Department.

### **Procedure**

2. (1) Where—

- (a) a person applies for registration of a voluntary home; and
- (b) the Governor in Cabinet proposes to grant his application,

the Governor in Cabinet shall give him written notice of his proposal and of the conditions subject to which it proposes to grant the application.

(2) The Governor in Cabinet 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 Governor in Cabinet and the applicant have subsequently agreed.

(3) Where the Governor in Cabinet proposes to refuse such an application it shall give notice of his proposal to the applicant.

(4) The Governor in Cabinet shall give any person carrying on a voluntary home notice of a proposal to—

- (a) cancel the registration of the home;
- (b) vary any condition for the time being in force with respect to the home by virtue of paragraph 1; or
- (c) impose any additional condition.

(5) A notice under this paragraph shall give the Governor in Cabinet's reasons for his proposal.

### **Right to make representations**

3. (1) A notice under paragraph 2 shall state that within 14 days of service of

the notice any person on whom it is served may (in writing) require the Governor in Cabinet to give him an opportunity to make representations to the Governor in Cabinet concerning the matter.

(2) Where a notice has been served under paragraph 2, the Governor in Cabinet shall not determine the matter until either-

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

(3) The conditions are that—

- (a) a person on whom the notice was served has required the Governor in Cabinet to give him an opportunity to make representations to the Governor in Cabinet;
- (b) the Governor in Cabinet has allowed him a reasonable period to make his representations; and
- (c) 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.

(5) Where the person making representations informs the Governor in Cabinet that he desires to make oral representations, the Governor in Cabinet shall give him an opportunity of appearing before, and of being heard by the Governor in Cabinet.

#### **Decision of Governor in Cabinet**

4. (1) Where the Governor in Cabinet decides to adopt the proposal, 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 a notice explaining the right of appeal conferred by paragraph 5.

(3) A decision of the Governor in Cabinet, other than a decision to grant an application for registration subject only to such conditions as are mentioned in paragraph 2(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 5(3); and
- (b) if an appeal is brought, until it is determined or abandoned.

### **Appeals**

5. (1) An appeal against a decision of the Governor under Part VII shall lie to the Grand Court.

(2) An appeal shall not 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 Governor in Cabinet's decision or direct that it shall not have effect;
- (b) vary any condition for the time being in force by virtue of Part VII with respect to the home to which the appeal relates;
- (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.

### **Notification of particulars with respect to voluntary homes**

6. (1) It shall be the duty of the person in charge of any voluntary home established after the commencement of this Law to send to the Governor in Cabinet within three months from the establishment of the home such particulars with respect to the home as the Governor in Cabinet may prescribe.

(2) It shall be the duty of the person in charge of any voluntary home (whether established before or after the commencement of this Law) to send to the Governor in Cabinet such particulars with respect to the home as may be prescribed.

(3) The particulars under sub-paragraph (2) shall be sent

- (a) in the case of a home established before the commencement of this Law, in every year, or
- (b) in the case of a home established after the commencement of this Law, in every year subsequent to the year in which particulars are sent under sub-paragraph (1),

by such date as the Governor in Cabinet may prescribe.

(4) Where the Governor in Cabinet by regulations varies the particulars which are to be sent to him under sub-paragraph (1) or (2) by the person in charge of a voluntary home—

- (a) that person shall send to the Governor in Cabinet the prescribed particulars within three months from the date of the making of the regulations;
- (b) where any such home was established before, but not more than three months before, the making of the regulations, compliance with paragraph (a) shall be sufficient compliance with the requirement of sub-paragraph (1) to send the prescribed particulars within three months from the establishment of the home; and
- (c) in the year in which the particulars are varied, compliance with paragraph (a) by the person in charge of any voluntary home shall be sufficient compliance with the requirement of sub-paragraph (2) to send the prescribed particulars before the prescribed date in that year.

(5) Where the person in charge of a voluntary home fails without reasonable excuse, to comply with any of the requirements of this paragraph he shall be guilty of an offence.

(6) Any person guilty of such an offence shall be liable on summary conviction to a fine not exceeding \$2000.

## **PART II**

### **REGULATIONS AS TO VOLUNTARY HOMES**

#### **Regulations as to conduct of voluntary homes**

7. (1) The Governor in Cabinet may make regulations-
- (a) as to the placing of children in voluntary 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, and as to the arrangements to be made for protecting the health of children in such homes;
  - (c) provide for the control and discipline of children in such homes;
  - (d) require the furnishing to the Governor in Cabinet of information as to the facilities provided for -

- (i) the parents of children in the homes; and
- (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 the children;

- (e) authorise the Governor in Cabinet to limit the number of children who may be accommodated in any particular voluntary home;
- (f) require the approval of the Governor in Cabinet 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 27) as to the placing of a child in accommodation provided for that purpose, including a requirement to obtain the permission of the Department;
- (g) impose requirements as to the keeping of the records and giving of notices with respect to children in such homes;
- (h) impose requirements as to the facilities which are to be provided for giving religious instruction to children in such homes;
- (i) require notice to be given to the Governor in Cabinet of any change of the person carrying on or in charge of a voluntary 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 to a fine not exceeding \$4000.

### **Disqualification**

8. The Governor in Cabinet may by regulation make provision with respect to the disqualification of persons in relation to voluntary homes of a kind similar to that made in relation to children's homes by section 67.

Section 64(10)

## **SCHEDULE 6**

### **REGISTERED CHILDREN'S HOMES**

#### **PART I**

#### **REGISTRATION**

#### **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.

(2) The application shall be made in the prescribed manner and shall be accompanied by—

- (a) such particulars as may be prescribed; and
- (b) such reasonable fee as the Department may determine.

(3) In this Schedule "prescribed" means prescribed by regulations made by the Governor in Cabinet.

(4) Where 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—

- (a) with such requirements as may be prescribed, and
- (b) with such other requirements (if any) as appear to them to be appropriate,

it shall grant the application, either unconditionally or subject to conditions imposed under paragraph 2.

(5) Before deciding whether or not to grant an application the Department shall comply with any prescribed requirements.

(6) Regulations made for the purposes of sub-paragraph (5) may, in particular, make provision as to the inspection of the home in question.

(7) 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.

(8) Where the Department is not satisfied as mentioned in sub-paragraph (4), it shall refuse the application.

(9) For the purposes of this Law an application which has not been granted or refused within the period of 12 months beginning with the date when it is served on the Department shall be deemed to have been refused by them, and the applicant shall be deemed to have been notified of their 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) Where 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 \$5000.

#### **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 its registration for the purpose of determining whether the registration should continue in force or be cancelled under paragraph 4(3).

(2) Where 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 shall continue in force.

(3) The Department shall give to the person carrying on the home notice of its determination under sub-paragraph (2) and the notice shall require him to pay to the Department with respect to the review such reasonable fee as the Department may determine.

(5) It shall be a condition of the home's continued registration that the fee under sub-paragraph (3) is 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.

(6) In this Schedule "the relevant requirements" means any requirements of Part VIII and of any regulations made under paragraph 10, and any conditions imposed under paragraph 2.

### **Cancellation of registration**

4. (1) The person carrying on a registered children's home may, within such period as may be prescribed, make an application, in such manner and including such particulars as may be prescribed, for the cancellation by the Department for the registration of the home.

(2) Where on any annual review under paragraph 3, or at any other time, it appears to the Department that a registered home is being carried on otherwise than in accordance with the relevant requirements, it may determine that the registration of the home should be cancelled.

(3) The Department may at any time determine that the registration of a 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,

it shall give him written notice of its proposal and of 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 Department and the applicant 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 VIII; 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 its 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.

(5) Where a person making representations informs the Department that he desires to make oral representations, the Department shall give him an opportunity of appearing before and of being heard by a committee or sub-committee of the Department.

### **Decision of the Department**

7. (1) Where the Department decides to adopt its proposal 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 their 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 VIII shall lie to the Grand Court.

(2) An appeal shall not 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 on further applications**

9. (1) Where an application for the registration of a home is refused, no further application may be made within the period of 6 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) When the registration of a 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.

## **PART II**

### **Regulations**

10. (1) The Governor in Cabinet 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 the 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 the 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 of annual reviews under paragraph 3;
  - (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 in Cabinet 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 27) as to the placing of a child in accommodation provided for that purpose, including a requirement to obtain the permission of the Department;
  - (k) require notice 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;
- (l) make provision similar to that made by regulations under section 28.

(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 an offence against the regulations shall be liable on summary conviction to a fine not exceeding \$5000.

## **SCHEDULE 7**

Section 64 (11)

### **FOSTER PARENTS: LIMITS ON NUMBER OF FOSTER CHILDREN**

#### **Interpretation**

1. For the purposes of this Schedule, a person fosters a child if-
  - (a) he is the departmental foster parent in relation to the child;
  - (b) he is a foster parent with whom the child has been placed by a voluntary organisation; or
  - (c) he fosters the child privately.

#### **The usual fostering limit**

2. Subject to this Part, a person may not foster more than three children ("the usual fostering limit").

#### **Siblings**

3. A person may exceed the usual fostering limit where the children concerned are all siblings with respect to each other.

#### **Exemption by the Department**

4. (1) A person may exceed the usual fostering limit if he is exempted from such limit by the Department.  
  
(2) In considering whether to exempt a person, the Department shall have regard, in particular, to-
  - (a) the number of children whom the person proposes to foster;
  - (b) the arrangements which the person proposes for the care and accommodation of the fostered children;

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

(3) Where the Department exempts a person, it shall inform him by notice in writing—

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

(4) The Department may at any time by notice in writing-

- (a) vary or cancel an exemption; or
- (b) impose, vary or cancel a condition to which the exemption is subject,

and, in considering whether to do so, the Department shall have regard in particular to the considerations mentioned in sub-paragraph (2).

(5) The Governor in Cabinet may make regulations amplifying or modifying the provisions of this paragraph in order to provide for cases where children need to be placed with foster parents as a matter of urgency.

#### **Effect of exceeding fostering limit**

5. (1) A person shall cease to be treated as fostering and shall be treated as carrying on a children's home if-

- (a) he exceeds the usual fostering limit; or
- (b) where he is exempted under paragraph 4 -
  - (i) he fosters any child not named in the exemption; and
  - (ii) in so doing, he exceeds the usual fostering limit.

(2) Sub-paragraph (1) does not apply if the children concerned are all siblings in respect of each other.

#### **Complaints etc.**

6. (1) The Department shall establish a procedure for considering any representations (including any complaint) made to it about the discharge of its functions under paragraph 4 by a person exempted or seeking to be exempted under that paragraph.



(2) In carrying out any consideration of representations under sub-paragraph (1), the Department shall comply with any regulations made by the Governor in Cabinet for the purposes of this paragraph.

## **SCHEDULE 8**

Section 67(5)

### **PRIVATELY FOSTERED CHILDREN**

#### **Exemptions**

1. A child is not a privately fostered child while he is being looked after by the Department.

2. (1) A child is not a privately fostered child while he is in the care of any person—

- (a) in premises in which any-
  - (i) parent of his;
  - (ii) person who is not a parent of his but who has parental responsibility for him; or
  - (iii) person who is a relative of his and who has assumed responsibility for his care,

is for the time being living;

- (b) in any children's home;
- (c) in accommodation provided by any voluntary organisation;
- (d) in any school in which he is receiving full-time education;
- (e) in any residential care home or nursing home; or
- (f) in any home or institution not specified in this paragraph but if provided, equipped and maintained by the Department.

(2) Sub-paragraph (1)(b) to (f) does not apply where the person caring for the child is doing so in his personal capacity and not in the course of carrying out his duties in relation to the establishment mentioned in the paragraph in question.

3. A child is not a privately fostered child while he is liable to be detained, or subject to guardianship, under the Mental Health Law (1997 Revision).

4. A child is not a privately fostered child while-

- (a) he is placed in the care of a person who proposes to adopt him under arrangements made under the Adoption of Children Law (2003 Revision); or
- (b) he is a protected child.

**Power of the Department to impose requirements**

5. (1) Where a person is fostering any child privately, or proposes to foster any child privately, the Department may impose on him requirements as to—

- (a) the number, age and sex of the children who may be privately fostered by him;
- (b) the standard of the accommodation and equipment to be provided for them;
- (c) the arrangements to be made with respect to their health and safety; and
- (d) particular arrangements which must be made with respect to the provision of care for them,

and it shall be the duty of the person to comply with any such requirement before the end of such period as the Department may specify unless, in the case of a proposal, the proposal is not carried out.

(2) A requirement may be limited to a particular child or class of child.

(3) A requirement (other than one imposed under sub-paragraph (1)(a)) may be limited by the Department so as to apply only when the number of children fostered by the person exceeds a specified number.

(4) A requirement shall be imposed by notice in writing addressed to the person on whom it is imposed and informing him of-

- (a) the reason for imposing the requirement;
- (b) his right under paragraph 8 to appeal against it; and
- (c) the time within which he may do so.

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

(6) In this Schedule "requirement", in relation to any person, means a requirement imposed on him under this paragraph.

**Regulations requiring notification of fostering etc.**

6. (1) The Governor in Cabinet may by regulations make provision as to-

- (a) the circumstances in which notification is required to be given in connection with children who are, have been or are proposed to be fostered privately; and
- (b) the manner and form in which such notification is to be given.

(2) The regulations may, in particular-

- (a) require any person who is, or proposes to be, involved (whether or not directly) in arranging for a child to be fostered privately to notify the Department;
- (b) require any person who is-
  - (i) a parent of a child; or
  - (ii) a person who is not a parent of the child but who has parental responsibility for a child,

and who knows that it is proposed that the child should be fostered privately, to notify the Department;

- (c) require any parent of a privately fostered child, or person who is not a parent of such a child but who has parental responsibility for him, to notify the Department of any change in his address;
- (d) require any person who proposes to foster a child privately, to notify the Department of his proposal;
- (e) require any person who is fostering a child privately, or proposes to do so, to notify the Department of-
  - (i) any offence of which he has been convicted;
  - (ii) any disqualification imposed on him under section 69; or
  - (iii) any prohibition imposed on him under section 70;
- (f) require any person who is fostering a child privately, to notify the Department of any change in his address;
- (g) require any person who is fostering a child privately to notify the Department in writing of any person who begins, or ceases, to be part of his household; and
- (h) require any person who has been fostering a child privately, but has ceased to do so, to notify the Department (indicating, where the child has died, that that is the reason).

### **Appeals**

7. (1) A person aggrieved by-

- (a) a requirement imposed under paragraph 6;
- (b) a refusal of consent under section 69;
- (c) a prohibition imposed under section 70;
- (d) a refusal to cancel such a prohibition;
- (e) a refusal to make an exemption under paragraph 4 of Schedule 7;
- (f) a condition imposed in such an exemption; or
- (g) a variation or cancellation of such an exemption,

may appeal to the court.

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

(3) Where the appeal is against-

- (a) a requirement imposed under paragraph 5;
- (b) a condition of an exemption imposed under paragraph 4 of Schedule 7; or
- (c) a variation or cancellation of such an exemption,

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

(4) Where it allows an appeal against a requirement or prohibition, the court may, instead of cancelling the requirement or prohibition—

- (a) vary the requirement, or allow more time for compliance with it; or
- (b) if an absolute prohibition has been imposed, substitute for it a prohibition on using the premises after such time as the court may specify unless such specified requirements as the Department had power to impose under paragraph 5 are complied with.

(5) Any requirement or prohibition specified or substituted by a court under this paragraph shall be deemed for the purposes of Part IX (other than this paragraph) to have been imposed by the Department under paragraph 5 or (as the case may be) section 70.

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

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

(7) Any exemption made or varied under sub-paragraph (6), or any condition imposed under that sub-paragraph, shall be deemed for the purposes of Schedule 7 (but not for the purposes of this paragraph) to have been made, varied or imposed under that Schedule.

(8) Nothing in sub-paragraph (1)(e) to (g) confers any right of appeal on—

- (a) a person who is, or would be if exempted under Schedule 7, a

- departmental foster parent; or
- (b) a person who is, or would be if so exempted, a person with whom a child is placed by a voluntary organisation.

**Extension of Part IX to certain school children during holidays**

8. (1) Sub-paragraph (2) applies to any person who proposes to care for and accommodate one or more children at a school in circumstances in which some or all of them will be treated as private foster children by virtue of this paragraph.

(2) That person shall, not less than 2 weeks before the first of those children is treated as a private foster child by virtue of this paragraph during the holiday in question, give written notice of his proposal to the Department within stating the estimated number of the children.

(3) The Department may exempt any person from the duty of giving notice under sub-paragraph (2).

(4) Any exemption under sub- paragraph (3) may be granted for a special period or indefinitely and may be revoked at any time by notice in writing given to the person exempted.

(6) Where a child who is treated as a private foster child by virtue of this paragraph dies, the person caring for him at the school shall, not later than 48 hours after the death, give written notice of it—

- (a) to the Department ; and
- (b) where reasonably practicable, to each parent of the child and to every person who is not a parent of his but who has parental responsibility for him.

(7) Where a child who is treated as a foster child by virtue of this paragraph ceases for any other reason to be such a child, the person caring for him at the school shall give written notice of the fact to the Department.

**Prohibition of advertisements relating to fostering**

10. A person shall not publish or cause to be published an advertisement indicating that a person will undertake, or will arrange for, a child to be privately fostered unless the advertisement states that person's name and address.

**SCHEDULE 9**

Section 72 (16)

**CHILD MINDING AND DAY CARE FOR YOUNG CHILDREN**

### **Applications for registration**

1. (1) An application for registration under section 72 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 in Cabinet; 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 72 shall be accompanied by such fee as may be prescribed.

(4) On receipt of an application for registration under section 72 from any person who is acting, or proposes to act, in any way which requires him to be registered under that section, the Department 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 72 if he is disqualified by regulations made by the Governor in Cabinet 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 X or any other prescribed enactment or had any such registration cancelled;
- (e) he has been convicted of any offence of a prescribed kind, or has been placed on probation or discharged absolutely or

- conditionally for any such offence;
- (f) he has at any time been disqualified from fostering a child privately; or
- (g) his rights and powers with respect to a child have at any time been vested in a prescribed authority under a prescribed enactment.

(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 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 unless he has—

- (a) disclosed the fact to the Department; and
- (b) obtained its written consent.

(5) A person shall not employ, in connection with the provision of day care, a person who is disqualified, unless he has-

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

#### **Exemption of certain schools**

3. (1) Section 72 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" has the same meaning as in the Education Law (1999 Revision).

### **Exemption for other establishments**

4. (1) Section 72(1)(b) does not apply in relation to any child looked after in—

- (a) a registered children's home;
- (b) a voluntary home;
- (c) a community home;
- (d) a hospital or any other establishment under the management of a registered 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 the establishment and authorised to make that provision as part of the establishment's activities.

### **Certificates of registration**

5. (1) Where the Department or the Education Department registers a person under section 72 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 72 (1)(b), the address or situation of the premises concerned; and
- (c) any requirements imposed under section 73 or 74.

(3) Where, due to a change of circumstances, any part of the certificate requires to be amended, the Department shall issue an amended certificate.

(4) Where the Department is satisfied that the 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 72, and
- (b) the Department concerned make an annual inspection of the premises in question under section 77,



it shall serve on that person a notice informing him that the inspection is to be carried out and requiring him to pay such fee as may be prescribed.

(2) It shall be a condition of the continued registration of that person under section 72 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.

### **Co-operation between departments**

7. (1) Where it appears to the Department that any department of government could, by taking any specified action, help in the exercise of any of its functions under Part X, it may request the help of that department specifying the action in question.

(2) A department 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 its functions.

## **SCHEDULE 10**

Section 98

### **AMENDMENTS, TRANSITIONAL PROVISIONS, SAVINGS AND REPEALS**

#### **PART I**

#### **AMENDMENTS**

##### **The Wills Law (1997 Revision)**

1. In section 2 of the Wills Law (1997 Revision), 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 (1995 Revision)**

2. In section 24 of the Marriage Law (1995 Revision) 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 Children and Family 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 2002."

### **The Matrimonial Causes Law (1997 Revision)**

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 up bringing and welfare) it should exercise any of its powers under the Children Law 2003 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 2003 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, (1999 Revision)**

4. (1) At the beginning of section 17 of the Education Law, (1999 Revision) there shall be inserted the subsection designation "(1)".

(2) After section 17 of the Education Law, (1999 Revision) there shall be inserted-

"(2) Before notifying a parent under section 17 (1) of the Education Law, (1999 Revision) 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 2000 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 (1997 Revision) or the Guardianship and Custody of Children Law (1996 Revision);
  - (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 12(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) after section 36(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 7 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 (9) there were substituted-

"(9) 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 12 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 22 shall have effect as if for subsection (5)(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 12(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 12 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 18(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 47(4) 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 10 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 10 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 (1996 Revision) or under the Grand Court's inherent jurisdiction with respect to children; and
  - (b) has taken effect before the commencement of section 7, shall be deemed, on and after the commencement of section 7, the 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 7 (as modified, where it applies, by paragraph 9(2) of this Schedule).

(3) For the purposes of the Wills Law (1997 Revision) 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 7 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 33 (1)(a),(b) or (c) of the Juveniles Law, 1990; and



(b) 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 supervision order made under section 32 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 84 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 84 unless-

- (a) the court directs that it shall cease to have effect at the end of a different period (which shall not exceed 3 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, (1999 Revision) 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, (1999 Revision) 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 (1996 Revision) shall be repealed.

19. In section 6(1) of the Education Law (1999 Revision), paragraph (a) shall be repealed.

20. The Juveniles Law, 1990 is repealed.

Passed by the Legislative Assembly the 13th day of June , 2003.

JULIANNA O'CONNOR - CONNOLLY

Speaker.

WENDY LAUER EBANKS

Clerk of the Legislative Assembly.