



Government of Anguilla

Official Gazette

[Extraordinary]

Published by Authority

VOL. 43

FRIDAY 15TH FEBRUARY 2019

NO. 7

NOTICES

The following documents are circulated herewith and form this issue of the Official Gazette:-

ACTS:-

33. Labour Relations (Amendment) Act, 2019
34. Child Protection Act, 2019
35. Status of Children and Parentage Testing Act, 2019
36. Maintenance of Children Act, 2019



ANGUILLA

LABOUR (RELATIONS) (AMENDMENT) ACT, 2019

Published by Authority

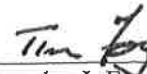
LABOUR (RELATIONS) (AMENDMENT) ACT, 2019

TABLE OF CONTENTS

SECTION

1. Interpretation
2. Amendment of section 98
3. Amendment of section 99
4. Citation

I Assent


Timothy J. Foy, OBE
Governor

15 February 2019
Date

ANGUILLA

No. 5/2019

LABOUR (RELATIONS) (AMENDMENT) ACT, 2019

[Gazette Dated: 15 February, 2019] [Commencement: Assent under section 57 of the Constitution]

An Act to amend the Labour (Relations) Act, 2018 (Act No. 14/2018).

ENACTED by the Legislature of Anguilla

Interpretation

1. In this Act the “Principal Act” means the Labour (Relations) Act, No. 14/2018.

Amendment of section 98

2. Section 98 of the Principal Act is amended by deleting paragraph (a).

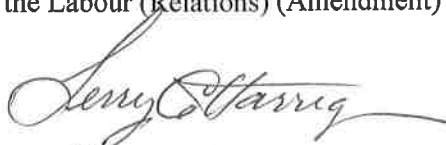
Amendment of section 99

3. Section 99 of the Principal Act is amended by—

- (a) inserting the phrase “*in accordance with the provisions of this Act*” immediately after the word “employment” and immediately before the word “the” where it occurs the second time; and
- (b) inserting the phrase “, *unless otherwise provided,*” directly after the word “shall” where it occurs the first time and immediately before the word “be” where it occurs for the first time.

Citation

4. This Act may be cited as the Labour (Relations) (Amendment) Act, 2019.



Terry T. C. Harrigan
Speaker

Passed by the House of Assembly this 12th day of February, 2019



Lenox J. Proctor
Clerk of the House of Assembly

OBJECTS AND REASONS
(The objects and reasons do not form part of the Bill)

Clause 1 is the interpretation section of the Bill.

Clause 2 to make it explicitly clear that there are only 4 ways in which a contract of employment may be terminated; i.e. dismissal, Agreement or mutual consent, Operation of law/Supervening event or redundancy

Clause 3 outlines the required notice to be given for termination of a contract of employment, unless otherwise specified in the Act.

Clause 4 provides the citation for the Bill



ANGUILLA

CHILD PROTECTION ACT, 2019

Published by Authority

CHILD PROTECTION ACT, 2019

TABLE OF CONTENTS

SECTION

PART 1

PRELIMINARY

1. Interpretation
2. Objects of this Act
3. Best interests of the child
4. Principles to be applied in the administration of this Act
5. Children's rights to basic conditions of living
6. Duties in respect of children

PART 2

ADMINISTRATION OF THE ACT

7. Responsibility of the Minister
8. Mandate of Department
9. Commissioner and Department
10. Functions of the Commissioner
11. Minister to approve and review multi-agency protocol
12. Commissioner to issue and review case management procedures
13. Protocol and Procedures to be publicly available
14. Commissioner's request for services from other agencies
15. Commissioner to ensure participation of child
16. Delegation
17. Support provided
18. Medical examination of child
19. Information sharing
20. Protected Health Information

PART 3

CHILD SAFEGUARDING BOARD

21. Safeguarding Board
22. Board to regulate own proceedings
23. Objective of the Safeguarding Board
24. Functions of the Board
25. Meetings of Safeguarding Board

PART 4

PARENTAL RESPONSIBILITY

- 26. Parental responsibility
- 27. Meaning of parental responsibility
- 28. Acquisition of parental responsibility by father

PART 5

CARE AND PROTECTION OF CHILDREN

- 29. Child in need of care and protection
- 30. Request for assistance from parent or guardian or child

PART 6

REPORTING

- 31. Mandatory reporting of harm to a child
- 32. Records of reports and subsequent action
- 33. Protection of persons who make reports

PART 7

INVESTIGATION AND ASSESSMENT

- 34. Conduct of initial investigation and assessment
- 35. Matters for consideration
- 36. Action taken by Commissioner
- 37. Decision against taking action
- 38. Principles of intervention
- 39. Alternative dispute resolution
- 40. Development and enforcement of care plans
- 41. Application for certain orders

PART 8

EMERGENCY PROTECTION

- 42. Removal of child
- 43. Prompt application to Court for a care order
- 44. Emergency protection order
- 45. Care responsibility of child removed from parents
- 46. Care responsibility
- 47. Care responsibility by Commissioner
- 48. Discharge of child from care responsibility of Commissioner

PART 9

ASSESSMENT ORDERS

- 49. Making of assessment order
- 50. Matters for consideration in making assessment order
- 51. Information concerning assessment

52. Report of assessment

PART 10

ORDERS FOR THE CARE AND PROTECTION OF A CHILD

53. Application for care order
54. Evidence of prior alternative actions
55. Notification of care applications
56. Leave to withdraw application
57. Court not limited by terms of care application
58. Interim care orders
59. Consideration of necessity for interim care order
60. Supervision and care orders
61. Grounds for making a care order
62. Duration of care order
63. Purpose of the care order
64. Care orders for child care service
65. Duty to enforce care order
66. Parental responsibility vested in person in charge of childcare service
67. Special duties of Commissioner in relation to care orders
68. Application for supervision order
69. Supervision order
70. Duties of a supervisor while a supervision order is in force
71. Requirements of supervision order
72. Duration of supervision order
73. Commissioner to enforce supervision order
74. Care plans
75. Requirement to consider care plan
76. Social inquiry report
77. Other orders which may be made by the Court
78. Order accepting undertakings
79. Order for the provision of support services
80. Order to attend therapeutic or treatment programme
81. Compulsory assistance order
82. Contact order
83. Orders with significant impact on persons
84. Preparation and requirements of permanency plan
85. Provision of services to facilitate restoration
86. Review of permanency plan
87. Costs
88. Final orders to be given to parties
89. Variation and revocation of orders

PART 11

CHILD CARE SERVICES

90. Principles
91. Conditions for official foster care placements

92. Approved child care services
93. Purpose of approved child care service
94. Parental responsibility at approved child care service
95. Approved child care services (secure accommodation)
96. Contact with parents and relatives
97. Abduction of children in care etc.
98. Recovery of abducted children etc.
99. Absconding from approved child care service
100. Court's power to order parent to contribute

PART 12

COURT APPLICATIONS

101. Right to be heard and to counsel
102. Application for court date
103. Evidence
104. Child need not be present
105. Hearing private
106. Child evidence
107. Evidence that may be admissible
108. Live Link in criminal proceedings
109. Video Recorded Evidence

PART 13

MISCELLANEOUS

110. Child from outside Anguilla
111. Order or agreement from another jurisdiction
112. Child harm registry
113. Appeals
114. Offences
115. Regulations
116. Amendments
117. Transitional
118. Citation

SCHEDULE

I Assent



Timothy Foy
Governor

15 February 2019
Date

ANGUILLA

No. 6/2019

CHILD PROTECTION ACT

[Gazette Date: 15 February, 2019] [Commencement: Assent under section 57 of the Constitution]

AN ACT to provide for the protection of children and the preservation of the fundamental rights and freedoms of a child and other related matters.

ENACTED by the Legislature of Anguilla

PART 1**PRELIMINARY****Interpretation**

1. In this Act—

“alternative action” means any plan—

- (a) that sets out the way in which the needs of the child are proposed to be met having regard to the breakdown in the relationship between the child and his parents or guardians; and
- (b) that may include proposals concerning the—
 - (i) allocation of parental responsibility or specific aspects of parental responsibility;
 - (ii) residential arrangements;
 - (iii) supervision;

- (iv) contact arrangements;
- (v) education and training;
- (vi) medical care; or
- (vii) the provision of services;

“care application” means an application for a care order made under section 53;

“care order” means an order made by a Court, to place a child in the care and under the protection of a person or an authority, pursuant to this Act and includes a contact order made under section 82;

“care plan” means a plan developed by the Commissioner pursuant to section 74;

“care responsibility” means the authority of a person to exercise the functions specified in section 46 in relation to a child;

“child” means a person who is under the age of 18 years;

“child care service” includes—

- (a) a boarding home;
- (b) a group home;
- (c) a foster home;
- (d) a residential care facility;
- (e) a training centre;
- (f) an assessment centre;
- (g) a children’s home; or
- (h) such other service.

“child sexual exploitation” occurs where anyone under the age of 18 is persuaded, coerced or forced into sexual activity in exchange for, amongst other things, money, drugs/alcohol, gifts, affection, status or any other type of reward or gratification and is a form of harm to a child;

“Court” means the High Court, Family Division;

“custody” means the legal authority and responsibility for physically possessing a child and providing for the normal daily requirements related to the care and development of the child;

“Commissioner” means the Commissioner of the Department of Social Development;

- “Department” means the Department of Social Development established under section 9;
- “development” means physical, intellectual, emotional, social or behavioural development;
- “guardianship” means the legal responsibility and authority for making decisions with respect to a child;
- “harm” means ill-treatment or the impairment of health or development including, for example, impairment suffered from seeing or hearing the ill-treatment of another;
- “health” means physical or mental health;
- “ill-treatment” includes sexual abuse and forms of ill-treatment which are not physical;
- “Minister” means the Minister with responsibility for Social Services;
- “official foster parent” means a person assessed and approved by the department or with interim approval under Part 11 as a child care service provider or child care giver;
- “order” means a care order or a supervision order made by the Court under Part 10;
- “parent” includes—
- (a) a natural or adoptive parent who has the parental responsibility of the child;
 - (b) a person, who has stood in loco parentis to a child for a period of not less than one year and who has a continuing relationship with the child; or
 - (c) a legal guardian of the child who has custody or guardianship rights of the child, but does not include a person acting as care giver on behalf of the Commissioner;
- “parental responsibility”—
- (a) means the duties, powers, responsibilities and authority; and
 - (b) includes the rights and obligations,
- which by any law in force in Anguilla, the parent of a child has in relation to that child;
- “permanency plan” means a plan referred to in section 84 that makes provision with respect to permanency planning;
- “Protocol” means the protocol from time to time approved by the Minister under section 13; and includes any amendments to the protocol from time to time approved by the Minister;
- “police officer” means a member of the Royal Anguilla Police Force;
- “relevant agency” means any agency given the mandate of child protection under any Enactment or by the Minister or the Commissioner of the Department of Social Development and

includes any non-government agency that assists the Department of Social Development in child protection activities, processes and procedures;

“removal” means the taking of a child and placing the child in the care and protection of the Commissioner in accordance with this Act;

“United Nations Convention on the Rights of the Child” means the Convention on the Rights of the Child adopted by the General Assembly of the United Nations on 20th November 1989 (including any Protocols to that Convention which are in force in relation to the United Kingdom and extended to Anguilla), subject to any reservations, objections or interpretative declarations by the United Kingdom for the time being in force.

Objects of this Act

2. The objects of this Act include but are not limited to—
- (a) protecting and promoting the well-being of all children; and
 - (b) giving effect to Anguilla’s obligations concerning the well-being, development and protection of children in terms of the United Nations Conventions on the Rights of the Child.

Best interests of the child

3. (1) This Act must be interpreted and applied so that in all matters concerning the care, protection and well-being of a child arising under this Act or under any proceedings, actions and decisions by an organ of state in any matter concerning a child or children in general, the best interests of the child concerned is the paramount consideration.

(2) In determining what is in the best interest of the child in any particular case the Commissioner or the Court shall have regard to all relevant considerations including but not limited to—

- (a) the safety of the child and any harm which he has suffered or is at risk of suffering;
- (b) the capacity of the parent to properly discharge parental obligations with respect to the child;
- (c) the physical, mental and emotional needs of the child, and the appropriate care or treatment required to meet those needs;
- (d) the physical, mental, emotional or psychological development of the child;
- (e) the ascertainable wishes and feelings of the child concerned considered in the light of his age and understanding;
- (f) a secure place for the child and the development of a positive relationship as a member of a family;
- (g) the love, affection and ties between the child and other persons in the life of the child;

- (h) the capacity of persons other than a parent to exercise custody rights and duties respecting a child; and
- (i) the continuity of the care for the child and the possible effect of disruption of that care on the child.

Principles to be applied in the administration of this Act

4. (1) The principles to be applied in the administration of this Act include the principles set out in other Parts of this Act and the following—

- (a) in all actions and decisions made under this Act, concerning a child, whether by legal or administrative process, the safety, welfare and well-being of the child shall be paramount;
- (b) whenever a child is able to form his own views on a matter concerning his safety, welfare or well-being, he shall be given an opportunity to express those views freely and those views are to be given due weight in accordance with the developmental capacity of the child and the circumstances;
- (c) in deciding what action is necessary to be taken, whether by administrative or legal process, in order to protect a child from harm, the course to be followed shall be the least intrusive intervention in the life of the child and his family, that is consistent with the paramount concern to protect the child from harm and to promote the development of the child;
- (d) if a child is temporarily or permanently deprived of his environment, or cannot be allowed to remain in that environment in his own best interest, the child shall be entitled to special protection and assistance from the Crown, and his own name and identity shall, where possible, be preserved;
- (e) if a child is placed in an approved child care service, arrangements should be made, in a timely manner, to ensure the provision of a safe, nurturing, stable and secure environment, recognising the child's circumstances and that, the younger the age of the child, the greater the need for early decisions to be made in relation to a permanent placement; and
- (f) where a child is removed from the home of his parents pursuant to this Act, whether temporarily or permanently, the child is entitled to a safe, nurturing, stable and secure environment and unless it is contrary to his best interests, and taking into account the wishes of the child, this may include the retention by the child of relationships with people significant to the child, including his birth or adoptive parents, legal guardian, siblings, extended family, peers, family friends and community.

(2) The Commissioner must in particular, have regard to the United Nations Convention on the Rights of the Child in considering for the purpose of the primary function of what constitute the rights and interests of children (generally or so far as relating to a particular matter).

(3) 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.

Children's right to basic conditions of living

5. (1) A child has the right to conditions of living necessary for development, including adequate—
- (a) food;
 - (b) shelter;
 - (c) clothing;
 - (d) care and protection;
 - (e) medical care;
 - (e) education; and
 - (f) play and leisure.

(2) It is the duty of a child's parents, guardian or other care-giver to secure, within their abilities and financial capacities, the conditions of living set out in subsection (1).

Duties in respect of children

6. Every person with parental responsibilities and rights towards a child and any other person legally responsible for a child, has the duty to—
- (a) ensure that the best interests of the child are that person's paramount concern at all times;
 - (b) guide and direct the child in the exercise of all of that child's rights under this Act or any law in a manner consistent with the child's evolving capacities;
 - (c) protect the child from harm;
 - (d) listen to the voice of the child; and
 - (e) ensure that in the temporary absence of a parent or care-giver, the child is cared for by a competent person.

PART 2**ADMINISTRATION OF THE ACT****Responsibility of the Minister**

7. (1) The Minister shall promote a partnership approach between the government, non-government agencies, families, corporations, business agencies and the community in taking responsibility for and work on the frontline with children who are in need of care and protection.

(2) In giving effect to subsection (1) the Minister shall promote the development of procedures and protocols with government, non-government agencies, families, corporations,

business agencies and the community, to promote the care and suitable adoption of children and shall ensure that these procedures and protocols are implemented and reviewed regularly.

(3) The objects of the procedures and protocols referred to in subsection (2) are to promote the development of co-ordinated strategies for the care and protection of children and for the provision of support services directed towards strengthening and supporting families.

Mandate of Department of Social Development

8. The Department of Social Development shall—

- (a) be the legally mandated child protection agency in Anguilla;
- (b) assume lead responsibility for ensuring the Protocol enhances the well-being and protection of children and their families;
- (c) adopt a multi-disciplinary approach utilizing specific interagency guidelines and strategies;
- (d) enter into agreements with any relevant agency;
- (e) collaborate with and assist relevant agencies in all areas of child protection in Anguilla.

Commissioner and Department

9. (1) For the administration of this Act and the regulations made thereunder, there shall be established under the Ministry responsible for Social Development, a department to be known as the Department of Social Development.

(2) The Department shall be headed by a public officer to be known as the Commissioner of the Department of Social Development who shall be appointed by the Governor in accordance with section 19 of the Constitution.

(3) The public officer employed as the Commissioner of the Department of Social Development immediately before the commencement of this Act shall be deemed to have been appointed under this section.

(4) It shall be the responsibility of the Department to monitor the implementation of this Act and the regulations made thereunder and to take the necessary action to enforce its provisions.

(5) It shall be the responsibility of the Department to ensure that the Protocol enhances the well-being and protection of children and their families.

Functions of the Commissioner

10. (1) The principal function of the Commissioner under this Act shall be to provide services and promote the development, adoption and evaluation of policies and procedures that accord with the purposes of this Act.

(2) In addition to the function specified in subsection (1), the Commissioner shall have the following functions—

- (a) to promote and preserve the safety and welfare of a child;
- (b) to assess and investigate or to cause an assessment to be undertaken or reports to be assessed and investigated pursuant to Part 7;
- (c) to oversee the operation and delivery of child care services;
- (d) to establish, with the approval of the Minister, policies and procedures respecting all aspects of child care services;
- (e) to provide consultation and direction to relevant authorities respecting child care services in accordance with this Act;
- (f) to establish procedures for the delegation of his duties and to establish policies respecting the direction and supervision of such delegation;
- (g) to determine when a matter shall go before the Court;
- (h) to advise the Minister and other persons on matters relating to child care services, programmes, facilities and resources necessary to carry out the requirements under this Act;
- (i) to make arrangements for and in relation to the temporary and permanent placement, custody and transfer of a child;
- (j) to take appropriate measures to ensure confidentiality of the records of a child, the natural parents of a child, the legal guardian of a child and the adoptive parents of a child;
- (k) to issue guidelines to child care services in giving effect to this Act;
- (l) any other such functions as may be deemed necessary to carry out the provisions of this Act or as may be determined by the Minister; and
- (m) any other such functions as may be provided under any other Act.

Minister to approve and review multi-agency protocol

11. (1) The Minister shall from time to time approve a protocol to guide how Government departments and agencies are to work together to prevent, report and manage harm to children; and otherwise for the purposes of the Ordinance and these Regulations.

(2) The Minister shall review the Protocol—

- (a) as often as necessary; and
- (b) at least annually.

(3) The Protocol entitled Inter Agency Child Protection Protocol of 2015 approved by the Minister is deemed to have been duly approved by the Minister under subsection (1).

Commissioner to issue and review case management procedures

12. (1) The Commissioner shall from time to time issue procedures —

- (a) to direct staff members of the Department on how to manage cases of children in need of services or in need of care or protection; and
 - (b) otherwise for the purposes of this Act and any Regulations made hereunder.
- (2) The Commissioner shall review these procedures—
- (a) as often as necessary; and
 - (b) at least annually.

Protocol and Procedures to be publicly available

13. The Commissioner shall—
- (a) publish the Protocol and the Case Management Procedures in electronic format; and
 - (b) make the Protocol and the Case Management Procedures available for inspection on request by members of the public during normal working hours.

Commissioner's request for services from other agencies

14. (1) In deciding what action should be taken to promote the safety, welfare and well-being of a child, the Commissioner may request a Government department or agency in receipt of Government funding or any other person that promotes the care and protection of children, to provide services to a child or the family of the child.

(2) A Government department, an agency or any person to which a request is made under subsection (1), shall use its best endeavours to comply with the request if the request is consistent with its own responsibilities and does not prejudice the discharge of its functions.

Commissioner to ensure participation of child

15. (1) In order to ensure that a child is able to participate in decisions that are likely to have a significant impact on the life of that child, the Commissioner shall provide the child with the following—
- (a) adequate information, in a manner and language that he can understand, concerning the decisions to be made, the reasons for the intervention of the Commissioner, the ways in which the child may participate in the decision making and any relevant complaint mechanisms;
 - (b) the opportunity to express his views freely according to his abilities, age, maturity and developmental capacity;
 - (c) any assistance that is necessary for the child to express his views;
 - (d) information as to how the views of the child will be recorded and taken into account;

- (e) information with respect to the outcome of any decision concerning the child and an explanation of the reasons for the decision; and
- (f) an opportunity to respond to a decision made concerning the child.

(2) For the purposes of this section, decisions that are likely to have a significant impact on the life of a child include—

- (a) any plans for emergency or ongoing care, including placement of the child;
- (b) the development of a care plan concerning the child;
- (c) court applications concerning the child;
- (d) the review of a care plan concerning the child;
- (e) the provision of counselling or treatment services; or
- (f) any contact with a parent, family or other persons connected with the child.

Delegation

16. The Commissioner may delegate to a staff member of the Department or to any other person, his functions pursuant to this Act.

Support provided

17. (1) In the administration of this Act, every effort should be made to ensure that when disclosures of harm are made by children they are immediately provided with the necessary counseling, medical, legal and others forms of support necessary to protect their interests and rights and to facilitate their recovery.

(2) All actions and decisions taken by the relevant agencies which are signatories to the Protocol shall exercise sensitivity to the child's age, gender, stage of development, any disability, religion, culture, language, and rights.

Medical examination of child

18. Whenever there is a suspicion of harm to a child, the medical examination of the child should be performed by a health care provider with expertise in the area of detecting and diagnosing harm whenever possible.

Information sharing

19. (1) The access to and sharing of information under this Act shall be guided by the following principles—

- (a) the reasons for the sharing of data in relation to each case will always be communicated openly and honestly with the child and where appropriate with the child's family or legal guardian;
- (b) the information being shared must be directly relevant, necessary and proportionate to the circumstances of the child, and limited to those who need to know.

(2) Information will normally be shared with the consent of the child, depending on age and maturity, or from the parent except—

- (a) where the agencies need to share information in fulfilment of their duties under this Act or any other enactment; or
- (b) where there are concerns that seeking consent would increase the risk to a child or others or prejudice any subsequent investigation.

The Department of Social Development shall create protocols or procedures for the access and sharing of information for the administration of this Act.

Protected Health Information

20. A health care facility or provider, a health plan or medical practitioner shall be bound by any regulations made under this Act and any Protocol or Procedures made by the Department or Commissioner with respect to access to a minor's protected health information.

PART 3

CHILD SAFEGUARDING BOARD

Safeguarding Board

21. (1) There is established a Child Safeguarding Board for Anguilla (in this Act referred to as “the Safeguarding Board”).

(2) The Safeguarding Board shall include—

- (a) the Permanent Secretary of the Ministry with responsibility for Social Development and the Commissioner of Police who shall be Co-Chairs;
- (b) the Social Development Planner;
- (c) such representative or representatives of the persons or bodies specified in subsection (3) as may be prescribed; and
- (d) the designated child safeguarding officer from the Attorney General’s Chambers.

(3) The persons or bodies referred to in subsection (2) are—

- (a) The Department of Social Development;
- (b) The Department of Probation;
- (c) Her Majesty’s Prison;
- (d) The Royal Anguilla Police Force;
- (e) The Department of Education; and
- (g) The Health Authority.

(4) The Safeguarding Board may also include representatives of such relevant persons or bodies (other than the persons or bodies specified in subsection (3)) as the members of the Board consider should be represented on it.

Board to regulate own proceedings

22. (1) Subject to this Part, the Board shall regulate its own proceedings.

(2) Proceedings of the Safeguarding Board are not invalidated by any vacancy in membership or by any defect in a member's appointment or qualifications.

Objective of the Safeguarding Board

23. The objective of the Safeguarding Board is to—

- (a) safeguard and promote the welfare of children in Anguilla;
- (b) keep children safe from harm; and
- (c) co-ordinate and ensure the effectiveness of what is done by each person or body represented on the Board for the purposes of safeguarding and promoting the welfare of children.

Functions of the Board

24. (1) The functions of the Board include but are not limited to—

- (a) to review policies and procedures approved, issued or otherwise made and implemented by each Government department represented on the Board or the Police Force with respect to—
 - (i) actions to be taken in respect of safeguarding and promoting the welfare of children;
 - (ii) the training of persons who work with children;
 - (iii) the recruitment and supervision of persons who work with children;
 - (iv) the investigation of allegations concerning persons who work with children; and
 - (v) the safety and welfare of children who are fostered by a person otherwise than by the Commissioner placing the child with the person under the Act;
- (b) to monitor the effectiveness of practices and actions carried out to safeguard children by each Government department represented on the Board and the Police Force;
- (c) assess risk to children and the public posed by offenders;
- (d) make recommendations to the Criminal Justice Committee;

- (e) ensure that appropriate partners are continuously engaged in working group meetings, activities and information-sharing in keeping with the Inter Agency Child Protection Protocol;
- (f) make policy recommendations and provide policy advice;
- (g) to participate in the planning of services for children required by or under this Act or any other enactment;
- (h) to educate the public on, and increase public awareness of, the need to safeguard and promote the welfare of children;
- (i) to provide an annual report on child safeguarding to the Governor and the Minister, including any information and recommendations requested by either.

(2) The Board's function under sub-section (1) (a) includes reviewing the Protocol and the Case Management Procedures, if requested to do so by the Minister or the Commissioner respectively.

Meetings of Safeguarding Board

25. Meetings shall be held as often as required and chaired alternately by the Permanent Secretary of the Ministry responsible for Social Development and the Commissioner of Police.

PART 4

PARENTAL RESPONSIBILITY

Parental responsibility

26. (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 have parental responsibility for the child if he has acquired it (and has not ceased to have it) in accordance with the provisions of this Act or any other enactment.

(3) More than one person may have parental responsibility for the same child at the same time.

(4) 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.

(5) 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 section 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.

(6) 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 Act.

(7) 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.

(8) 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.

Meaning of parental responsibility

27. (1) 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.

(2) A person who—

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

may (subject to the provisions of this Act) 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

28. (1) Where a child's father and mother were not married to each other at the time of his birth, the father shall acquire parental responsibility for the child if—

- (a) he becomes registered as the child's father under any other enactment;
- (b) he and the child's mother make an agreement (a "parental responsibility agreement") providing for him to have parental responsibility for the child; or
- (c) the Court, on his application, orders that he shall have parental responsibility for the child.

PART 5

CARE AND PROTECTION OF CHILDREN

Child in need of care and protection

29. A child is in need of care and protection where the child is likely to suffer or is suffering harm.

Request for assistance from parent or child

30. (1) A parent or a child may seek assistance from the Commissioner—

- (a) if there is a serious or persistent conflict between the parent and the child of such a nature that the safety, welfare or well-being of the child is in jeopardy; or
- (b) if the parent is unable to provide adequate supervision for the child to such an extent that the safety, welfare or well-being of the child is in jeopardy.

(2) In responding to a request made under subsection (1), the Commissioner shall consider the appropriateness of providing or arranging for the provision of such assistance as is necessary—

- (a) to enable the parent and the child to resolve the conflict between them without recourse to legal proceedings;
- (b) to ensure that the child is adequately supervised; or
- (c) to enable the child and his parent to have access to appropriate services.

(3) In making provision for the receipt of any assistance under subsection (2), with a parent and a child, the Commissioner shall ensure that the child, if sufficiently mature, has been counselled about the assistance necessary to resolve the conflict with his parents and has given consent to such assistance.

(4) If the Commissioner is of the opinion that, despite the assistance provided under subsection (2), the safety, welfare or well-being of the child continues to be in jeopardy; he shall have the matter brought before the Court.

(5) Where the Court is satisfied that—

- (a) the child cannot be controlled by a parent;
- (b) it is in the best interests of the child; and
- (c) the parent understands the results which will follow from the order,

the Court may place the child under the supervision of the Commissioner or some other person appointed by the Court, for a period not exceeding three years, or may make an order under Part 10 for the care and protection of the child.

(6) A parent shall have responsibility for the child unless it is not in the best interests of the child that the parent has responsibility for that child.

PART 6

REPORTING

Mandatory reporting of harm to a child

31. (1) Any person over the age of 18 who has knowledge or reasonable grounds to suspect that a child is being harmed or is otherwise in need of care and protection shall, without delay, make a report to the Commissioner.

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

- (a) a physician, nurse, dentist, psychologist or other health care professional;
- (b) a school principal, teacher, guidance counsellor, youth or recreational leader or member of the clergy;
- (c) an owner, operator or employee of a child day care centre or other child care institution;
- (d) a law enforcement officer, probation officer or social worker; or
- (e) any other person who by virtue of his employment or occupation has responsibility to discharge a duty of care towards a child,

who in the course of that person's professional or official duties or services, has knowledge or has reasonable grounds to suspect that a child is in need of care and protection where the child is likely to suffer or is suffering harm that person shall—

- (i) without delay, report or cause to be reported, the circumstances to the Commissioner; and
- (ii) provide the Commissioner with such additional information as is known or available to the person.

(3) Subsections (1) and (2) shall apply notwithstanding the confidential nature of the information on which the report is based, but nothing in this section abrogates any attorney-client privilege.

(4) A person who fails to comply with subsection (2) commits an offence and is liable, on summary conviction, to a fine not exceeding \$5,000 or to imprisonment for three months.

Records of reports and subsequent action

32. (1) The Commissioner shall keep a record of—

- (a) all reports made to or by the Commissioner or Department of Social Development;
- (b) any action taken under this Act, as a consequence of a report received under section 31; and
- (c) any disposition of and interaction with a child to whom the report and action referred to in paragraph (b) relate.

(2) The record of reports to be kept under subsection (1) shall be kept as prescribed.

Protection of persons who make reports

33. (1) If a person makes a report under section 31, in good faith to the Commissioner—

- (a) the making of the report shall not constitute a breach of any professional etiquette or ethics or a departure from any accepted standards of professional conduct;
- (b) no liability shall be incurred for defamation as a consequence of the report; and
- (c) the making of the report shall not constitute a ground for civil proceeding for malicious prosecution or for conspiracy.

(2) A report made under section 31 that is certified by the Commissioner is admissible in any proceedings relating to the care and protection of a child.

(3) A report to which this section applies shall be taken to be an exempt document for the purposes of any law in force in Anguilla relating to the freedom of information.

(4) Subsection (1) shall not apply where a person knowingly makes a report or provides information which is false or misleading.

PART 7

INVESTIGATION AND ASSESSMENT

Conduct of initial investigation and assessment

34. (1) Where—

- (a) a report is made under section 31;
- (b) it appears to the Commissioner that a child may be in need of care and protection;
or
- (c) a parent or a child requests assistance under section 30,

the Commissioner shall conduct an initial investigation and assessment of the circumstances concerning the child, regardless of the consent of any person.

(2) After an initial investigation and an assessment has been undertaken under subsection (1), the Commissioner may determine that—

- (a) no further action is necessary;
- (b) a further investigation is necessary;
- (c) the removal of the child is necessary; or
- (d) an application for a care order is necessary to protect the child.

(3) An investigation by the Commissioner may include an analysis of the medical, health, social, residential, educational, economic and other factors affecting the life of the child.

(4) In conducting an investigation the Commissioner may—

- (a) visit the residence of the child, and other places frequented by the child;
- (b) transport the child to a place considered by the Commissioner to be appropriate;
- (c) interview and examine the child with or without the presence of a parent;
- (d) interview the parent of the child;
- (e) interview any person who cares for the child or any person who has had an opportunity to observe the child;
- (f) interview any person who provides health, social, educational and other services to the child or to the parent of the child;
- (g) require information to be provided to the Commissioner from medical, social, educational and other service records concerning the child, the parent of the child or both;
- (h) cause an examination to be made of the physical, mental and emotional health and development of the child;
- (i) request that the parent of the child undergo an examination of the parent's physical, mental or emotional health, or any other assessment; or
- (j) consult with such other persons and gather such other evidence as may be necessary to complete the investigation.

(5) A school principal shall allow the Commissioner direct access to a child for any interview under this section.

(6) On an application made by the Commissioner, the Court may order any person—

- (a) to provide such information under subsection (4) to the Commissioner;
- (b) to allow the Commissioner access to a person, place or record; or

(c) to co-operate with an investigation by the Commissioner.

(7) Subject to subsection (6), the Commissioner shall provide a report of the results of an investigation to—

- (a) the parent of the child who is the subject of the investigation; and
- (b) the child, if he is at least twelve years old and is capable of understanding the circumstances of the investigation.

(8) A report shall not be provided under subsection (7) if—

- (a) the Commissioner has reasonable grounds to believe that the report will endanger the safety of the child or any other person; or
- (b) a criminal investigation related to the matter has been initiated or is likely to occur.

(9) A person who intimidates, threatens or obstructs the Commissioner in the exercise of his functions under this section commits an offence and is liable on summary conviction to a fine not exceeding \$5,000 or to imprisonment for a term of six months; or to both.

Matters for consideration

35. In conducting an investigation or making an assessment under this Part, the Commissioner shall have regard to any known or expressed wish of the child, taking into account the age and maturity of the child and the extent to which the child appears to be in need of care and protection.

Action taken by Commissioner

36. (1) If after an investigation or an assessment is made under this Act, the Commissioner is of the opinion that a child is in need of care and protection, the Commissioner shall take whatever action is necessary to safeguard or promote the safety, welfare and well-being of the child.

(2) Without limiting subsection (1), the Commissioner may, following an investigation or an assessment, take the following actions—

- (a) provide or arrange for the provision of support services for the child or his family or both;
- (b) develop in consultation with the parents of the child, whether jointly or separately, a care plan to meet the needs of the child or his family which does not involve taking the matter before the Court;
- (c) ensure the protection of the child by exercising his powers to remove the child in accordance with this Act; or
- (d) seek an appropriate order from the Court.

Decision against taking action

37. (1) The Commissioner may decide not to take any action if he considers that proper arrangements exist for the care and protection of the child and the circumstances which led to the investigation or assessment have been or are being adequately dealt with.

(2) If the Commissioner decides not to take any action, he shall make a record of the reasons for his decision and no action shall be taken against the Commissioner for his decision not to take any action.

Principles of intervention

38. In deciding the appropriate response to a request for assistance or to a report concerning a child, the Commissioner shall have regard to the following principles—

- (a) the immediate safety, welfare and wellbeing of the child and of any other children in the usual residential setting of the child, shall be given paramount consideration;
- (b) subject to paragraph (a), any action shall be appropriate to the age or maturity of the child, any disability which the child, or a family member of the child may have and the existing circumstances of the family; and
- (c) the removal of the child from his parents shall only occur where it is necessary to protect the child from the risk of significant harm.

Alternative dispute resolution

39. (1) In responding to a request for assistance or a report, the Commissioner shall, prior to making an application to the Court under this Act, consider the appropriateness of using an alternative dispute resolution procedure that is designed—

- (a) to ensure intervention so as to resolve problems which may exist at an early stage;
- (b) to develop a care plan;
- (c) to reduce the likelihood that an application for an order will need to be made;
- (d) to reduce the incidence of breakdown in child-parent relationships; and
- (e) to work towards the making of decisions that are in the best interests of the child concerned where an application for a care order is made.

(2) The participation by the child or the parent of the child in any form of alternative dispute resolution procedure shall be voluntary.

Development and enforcement of care plans

40. A care plan developed during the course of alternative dispute resolution may be registered in the Court and may be used as evidence of an attempt to resolve the matter without making an application for a care order.

Application for certain orders

41. This Part shall not prevent the Commissioner from applying to the Court for a care order, at any time during or after the investigation and assessment of a request for assistance or a report, if in the opinion of the Commissioner, it is necessary or desirable to do so, having regard to the safety, welfare and well-being of the child concerned.

PART 8**EMERGENCY PROTECTION****Removal of child**

42. (1) If the Commissioner has reasonable grounds to believe that—

- (a) a child is in need of protection; and
- (b) the health or safety of the child is in immediate jeopardy,

the Commissioner may, with the assistance of a police officer, and without the need for any further authority other than that conferred by this subsection, enter any place or premises where the child is believed to be present or to reside, and search for, locate and take the child into custody.

(2) The Court or the Magistrate's Court may, on the application of the Commissioner without notice, issue a warrant to the Commissioner under this section when the Court or the Magistrate's Court is satisfied that—

- (a) there are reasonable grounds to believe that—
 - (i) a child is in need of care and protection; and
 - (ii) a less intrusive course of action will not adequately protect the health or safety of the child; and
- (b) the parent or guardian, or any other person caring for the child has refused to give up the child or to permit entry to the place or premises where the Commissioner has reason to believe that the child is present.

(3) It shall not be necessary that a child be identified by name for the purpose of any removal, search warrant or order issued under this Part.

Prompt application to Court for a care order

43. If a child is removed from a place or premises under this Act or the care responsibility of the child is assumed by the Commissioner, the Commissioner shall apply to the Court or to the Magistrate's Court, at the first available opportunity after the removal of the child or assumption of care responsibility by the Commissioner, for one or more of the following orders in respect of the child—

- (a) an emergency care and protection order;
- (b) an assessment order; or

- (c) any other care order.

Emergency protection order

44. (1) The Court or the Magistrate's Court may make an emergency protection order in relation to a child where a child is removed from a place in accordance with section 42 and it is satisfied that the child is suffering or is likely to suffer significant harm and is in urgent need of care and protection.

(2) An application for an emergency protection order shall be made by the Commissioner at the first available opportunity after the child had been removed in accordance with section 42 and such order, while in force places the child in the care responsibility of the Commissioner or the person specified in the order.

(3) The Court or the Magistrate's Court may, at any stage in the proceedings, make an order prohibiting any person, including the parent of the child, in accordance with the terms specified in the order, from doing anything that could be done by the parent in carrying out his parental responsibility.

(4) An order made under this section shall have effect for a maximum period of fourteen days, unless the order is extended in accordance with subsection (5).

(5) An order made under this section may, while the order remains in force, be extended once only for a maximum period of fourteen days.

Care responsibility of child removed from parents

45. (1) If a child is removed from the care of his parent under this Part—

- (a) the child shall be kept in an approved child care service or other alternative accommodation at the discretion of the Commissioner, or place of safety; and
- (b) subject to subsection (2), the Commissioner shall have the care responsibility for the child.

(2) The Court or the Magistrate's Court may, by order, vest the care responsibility of the child in a childcare service.

(3) The Commissioner or childcare service, having the care responsibility for the child, may delegate that responsibility to a relative of the child, or to any other person approved by the Commissioner.

(4) Notwithstanding subsection (3), the Commissioner may delegate the care responsibility for the child on an interim basis to a person other than a person specified in subsection (3) but the Commissioner shall delegate that responsibility to a person so specified as soon as is reasonably practicable.

(5) The exercise of the care responsibility by a person referred to in subsection (3) or (4) is subject to any direction given to the person by the Commissioner or the childcare service that made the delegation.

Care responsibility

46. The Commissioner or any other person authorised to provide care for a child shall exercise the following functions in relation to the child—

- (a) to consent to the medical treatment not involving surgery for the child on the advice of a medical practitioner;
- (b) to consent to the medical treatment involving surgery that a medical practitioner certifies in writing needs to be carried out as a matter of urgency and in the best interests of the child;
- (c) to correct and manage the behaviour of the child;
- (d) to give permission for the child to participate in activities; and
- (e) to make any other decisions that are required to be made with respect to the day-to-day care of the child.

Care responsibility by Commissioner

47. (1) If the Commissioner—

- (a) suspects on reasonable grounds that a child is in need of immediate care and protection; and
- (b) is satisfied that it is not in the best interest of the child that he be removed from the place or premises in which the child is currently located,

the Commissioner may, instead of removing the child from the place or premises in accordance with section 42, assume the care responsibility of the child by an order in writing, signed by the Commissioner and served on the person, whether or not a parent of the child, who in the opinion of the Commissioner appears to be in charge of the place or premises.

(2) An order made under subsection (1) does not cease to have effect merely because the child to whom it relates has been transferred to a different place or premises.

Discharge of child from care responsibility of Commissioner

48. (1) The Commissioner may, at any time, discharge a child from his care responsibility with or without an undertaking being given by the child or the parent of the child.

(2) An undertaking shall be in writing and shall be signed by the person who gives the undertaking.

(3) In determining whether or not to exercise the power under subsection (1), the Commissioner shall have regard to the following—

- (a) any views expressed by the child as to whether he wishes the power to be exercised;
- (b) any views expressed by the child as to whether he intends to return to the care and under the protection of his parents;

(c) whether the exercise by the Commissioner of that power is likely to protect the safety, welfare and well-being of the child; and

(d) whether the failure of the Commissioner to exercise that power is likely to endanger the safety, welfare and well-being of the child or any other person.

(4) If the Commissioner wishes to discharge the child from his care responsibility following an order of the Court placing the care responsibility of the child with the Commissioner, the Commissioner shall explain to the Court why his care responsibility with respect to the child was no longer required and the Court may make an order as it sees fit.

PART 9

ASSESSMENT ORDERS

Making of assessment order

49. (1) The Court may, on the application of the Commissioner, or if a care application has been made in respect of the child, a party to the application, make an order for—

(a) the physical, psychological, psychiatric or other medical examination of a child; and/or

(b) the assessment of a child.

(2) An assessment order shall require a person carrying out the assessment, or any part of the assessment, to do so in accordance with the terms of the order and to prepare a report of the assessment.

(3) The carrying out of a medical examination under an assessment order may include the taking and analysis of samples and the use of any machine or device that enables or assists in the examination of a person.

(4) An assessment order may be made by the Court on its own motion and whether or not an application has been made for a care order in respect of the child.

Matters for consideration in making assessment order

50. (1) In considering whether to make an assessment order, the Court shall have regard to the following—

(a) whether the proposed assessment is likely to provide relevant information that is unlikely to be obtained elsewhere;

(b) whether any distress the assessment is likely to cause the child will be outweighed by the value of the information that may be obtained;

(c) any distress already caused to the child by any previous assessment undertaken for the same or another purpose; and

(d) any other matter that the Court considers relevant.

(2) The Court may, for the purposes of an assessment order, appoint a person to assess the capacity of a person having parental or guardianship responsibility, or who is seeking parental responsibility for a child, to carry out that responsibility.

(3) In making an assessment order, the Court shall ensure that a child is not subjected to unnecessary assessment.

Information concerning assessment

51. A child shall be informed about the reasons for the assessment in a language and a manner that he understands, having regard to his age, maturity and circumstances.

Report of assessment

52. A report of the assessment made under section 34 (2) shall be submitted to the Court in the prescribed manner.

PART 10

ORDERS FOR THE CARE AND PROTECTION OF A CHILD

Application for care order

53. (1) An application for a care order shall be made by the Commissioner under this Part.

(2) The application for a care order shall specify the particular care order sought and the grounds on which it is sought.

(3) Except as provided by this Part, a care order may be made as an interim order or a final order.

(4) A care order may be varied, but only with the leave of the Court.

Evidence of prior alternative actions

54. (1) When making a care application to the Court under section 53, the Commissioner shall furnish details to the Court of—

(a) the support and assistance provided for the safety, welfare and well-being of the child; and

(b) any alternative actions to a care order that were considered prior to the making of the application for the care order and the reasons why the alternative action was rejected.

(2) The Court shall not—

(a) dismiss a care application in relation to a child; or

(b) discharge a child who is under the care responsibility of the Commissioner from that care responsibility.

by reason only that the Court is of the opinion that there is an appropriate alternative action that could have been taken in relation to the child and such alternative action is not considered or taken.

(3) Subsection (2) does not operate so as to prevent the Court from adjourning the proceedings.

Notification of care applications

55. (1) The Commissioner shall make all reasonable efforts to notify the parents of the child of the making of a care application by the Commissioner in relation to the child.

(2) The Commissioner shall notify the child who is the subject of a care application of the making of the application and such notification shall be made in a language and in a manner that the child can understand having regard to his age and maturity and the circumstances.

(3) The Commissioner shall, as soon as possible, after a care application is made in relation to a child, cause a copy of the application, together with copies of all supporting affidavits and other documentary evidence that accompanied the application, to be served on the parents of the child, where they can be reasonably located.

(4) The copy of the care application shall be written and arranged in such a form that there is reasonable likelihood that its contents will be understood by the person on whom it is served.

(5) If the Commissioner fails to comply with the requirements of this section in relation to a care application, that failure does not invalidate the application or any decision of the Court on the application.

Leave to withdraw application

56. (1) A care application may be withdrawn, with the leave of the Court, by the person who made the application.

(2) An application for leave to withdraw a care application shall be accompanied by—

(a) a statement that indicates how the issues that caused the application to be made have been resolved; or

(b) a care plan that specifies how those issues are proposed to be addressed.

Court not limited by terms of care application

57. If all the necessary prerequisites to the making of the order are satisfied, the making of a care application for a particular care order of the Court does not prevent the Court from making a care order, in addition to the order for which the application was made.

Interim care orders

58. (1) The Court may make an interim care order in relation to a child after a care application is made and before the application is finally determined.

(2) The Court may make any other interim care order as it considers appropriate for the welfare, safety, and well-being of the child in proceedings before it, pending the conclusion of the proceedings.

Consideration of necessity for interim care order

59. An interim care order shall not be made unless the Court is satisfied that the making of the order is necessary in the interests of the child, and is preferable to the making of a final order or an order dismissing the proceedings.

Supervision and care orders

60. If the Commissioner makes an application under section 53 for a care order, the Court may make—

- (a) a supervision or an interim supervision order placing the child under the supervision of the Commissioner while leaving the child in the custody of his parent;
- (b) a care order or an interim care order placing a child in the care of the Commissioner; or
- (c) an order placing the child in the custody of the Commissioner where the parents of the child are unable to care and maintain the child, and where no other alternative measures are available to protect the child.

Grounds for making a care order

61. (1) On the application of the Commissioner, the Court may make a care order in relation to a child—

- (a) placing the child in the care of the Commissioner (a “care order”); or
- (b) putting him under the supervision of the Commissioner.

(2) The Court shall not make a care order or a supervision order unless it is satisfied—

- (a) that the child is suffering, or 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 was not made, not being what would be reasonable to expect from a parent; or
 - (ii) the child being beyond parental control; or
 - (iii) the child is subject to a care and protection order of another country that is not being enforced, leaving the child exposed to risk of significant harm; or
 - (iv) the child has been harmed or is at risk of significant harm as a result of child sexual exploitation and is at risk of further significant harm.

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

(4) The court may—

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

(5) The Court shall not conclude that the basic needs of a child are not likely to be met solely on the grounds of the disability of a parent or on the grounds of poverty.

Duration of care order

62. (1) A care order shall, depending on the age of the child, be up to a maximum period of three years or until the child attains the age of eighteen years, whichever is the earlier.

(2) A care order shall be reviewed at least once every ninety days by the Commissioner or a person designated by the Commissioner who may make recommendations as to any action to be taken having regard to the outcome of the review.

(3) A care order may be renewed for further periods of up to three years each.

Purpose of the care order

63. The purpose of the care order shall be—

- (a) to remove a child from a situation where he has suffered, is suffering or is likely to suffer harm;
- (b) to assist the child and those with whom he is living or wishes to live, to examine the circumstances that have led to the making of the order; and
- (c) to take steps to resolve or ameliorate the problem so as to ensure the child's return to his family or community.

Care orders for child care service

64. (1) The Court may, on the application of the Commissioner, make a care order or an interim care order placing a child in the care of an appropriate childcare service.

(2) An application for a care order under subsection (1) may only be made—

- (a) after all possible alternative methods of assisting the child have been tried without success, and the harm from which the child is suffering or is likely to suffer requires his removal from where he is living; or
- (b) the danger to which the child is exposed requires his immediate removal from where he is living.

Duty to enforce care order

65. The Commissioner shall enforce a care order made under this Act.

Parental responsibility vested in person in charge of childcare service

66. (1) The person in charge of the child care service or the foster parent with whom the child is placed under a care order has the parental responsibility for the care of the child.

(2) The contact of the child with his parents, relatives and friends while he is in a childcare service shall be encouraged unless it is not in the best interests of the child.

(3) The person in charge of the child care service with whom the child is placed shall ensure that the development of the child while in their care, particularly his health and education, is given paramount attention.

Special duties of Commissioner in relation to care orders

67. (1) The Commissioner shall work with the parent of the child before and after the termination of the care order, so that the child can be returned to his family or community after the termination of the care order.

(2) The duties of the Commissioner, under this section shall include family and child counselling before, during and after the return of the child and seeking the assistance of persons in the family or community who can, as far as practicable, help the process of resolving the problems which caused the care order to be made.

(3) Where a child is placed with a foster family, the Commissioner shall communicate with the parent of the child, to inform the parent of the progress of the child and to arrange a trial period for the child to be reunited with the parent except where in the opinion of the Commissioner or Court, this course of action is not in the best interests of the child.

Application for supervision order

68. The Commissioner may apply to the Court for a supervision order, if the Commissioner is satisfied that there is need for continuous supervision enforced by the supervision order and before making that application the Commissioner shall identify a person to perform the duties of supervisor and to offer such services the Commissioner may consider to be appropriate.

Supervision order

69. (1) The Court may, after inquiry, make an order placing a child in relation to whom a care application has been made, under the supervision of the Commissioner, if the Court is satisfied that the child is in need of care and protection.

(2) The Court shall not make an order under subsection (1) unless the Court is satisfied that—

- (a) the child concerned is suffering or likely to suffer harm; and
- (b) that the harm, or probability of harm is attributable to—
 - (i) the care given to the child, or likely to be given to the child if the order were not made;
 - (ii) the fact that the child is beyond parental control; or
 - (iii) the neglect of the child.

(3) In making an order under this section, the Court shall specify—

- (a) the reasons for making the order;
- (b) the purpose of the order; and
- (c) the length of the order.

Duties of a supervisor while a supervision order is in force

70. The duties of a supervisor while a supervision order is in force with respect to a child shall be—

- (a) to mentor, advise and assist the child;
- (b) to advise the parent of the child;
- (c) to make plans for the future of the child in consultation with the child and his parent; and
- (d) to take such other reasonable steps as may be necessary to reduce any harm to the child.

Requirements of supervision order

71. Without limiting what may be included in a supervision order by the Court, a supervision order may—

- (a) require—
 - (i) the child; or
 - (ii) the parent of the child; or
 - (iii) both the child and his parent;

to report to the supervisor at a place and at intervals stated by the supervisor; and

- (b) require—
 - (i) the child;
 - (ii) the parent of the child; or
 - (iii) both the child and his parent,

to take part in discussions with the supervisor in relation to the welfare, safety and well-being of the child, in particular, whether the child should be engaged in some form of educational, vocational or recreational activity or undertake medical or therapeutic care or treatment.

Duration of supervision order

72. (1) The Court may, on its own motion or on an application of the Commissioner, make a supervision order for one year and that order may be extended for a period not exceeding one year at any time.

(2) An extension of a supervision order shall require a written report from the Commissioner.

(3) Notwithstanding subsection (2), the Court may, on its own motion or on an application made by the Commissioner, and after giving the parties an opportunity to be heard, extend the period of a supervision order for such further period, not exceeding six months as it considers necessary in the circumstances.

(4) The Court may require the presentation of—

(a) a report before the end of the supervision period which states—

(i) the outcome of the supervision;

(ii) whether the purpose of the supervision has been achieved;

(iii) whether there is need for an extension of the supervision period pursuant to subsection (2); and

(iv) whether any other order should be made for the care and protection of the child;

(b) one or more reports during the period of supervision which describes the progress of the report; or

(c) reports under both paragraphs (a) and (b).

Commissioner to enforce supervision order

73. (1) The Commissioner shall enforce a supervision order and inspect the place or premises in which the child resides.

(2) The Commissioner shall notify the Court of an alleged breach of a supervision order and the Court, on being notified of such alleged breach shall—

(a) give the parties an opportunity to be heard concerning the allegation; and

(b) determine whether the order has been breached; and

if the Court finds that the order has been breached, the Court may make any order as it considers appropriate in all the circumstances.

Care plans

74. (1) If the Commissioner makes an application to the Court for a care order, the Commissioner shall present a care plan to the Court in the prescribed form, before a final order is made.

(2) The care plan shall make provision for the following—

- (a) the allocation of parental responsibility for the duration of the period for which the child is removed from the care of his parent;
- (b) the kind of placement proposed to be sought for the child, including—
 - (i) how it relates to permanency planning for the child;
 - (ii) any interim arrangement that is proposed for the child pending permanent placement and the timetable proposed for achieving a permanent placement;
- (c) the arrangements for contact between the child and his parent, relatives, friends and other persons connected with the child;
- (d) the child care service designated to supervise the placement of the child; and
- (e) the services that need to be provided to the child.

(3) The care plan shall be made as far as possible with the agreement of the parent of the child concerned.

(4) Where the agreement of the parent of the child concerned is not possible, the care plan shall represent a set of proposals developed by the Commissioner.

Requirement to consider care plan

75. The Court shall not make a final order for the removal of a child from the care and protection of his parent or for the allocation of parental responsibility in respect of the child, unless the Court has considered a care plan presented to it by the Commissioner, pursuant to section 74.

Social inquiry report

76. (1) The Court shall require a written social inquiry report in respect of a child before it makes an order under this Part.

(2) The Commissioner shall prepare a social inquiry report and he shall comply with the request of the Court whenever required to produce a social inquiry report.

(3) The Commissioner shall interview the parent of the child concerned and carry out his investigations concerning the child before making a social inquiry report.

(4) here the child in respect of whom the social inquiry report is made is considered by the Commissioner to be of sufficient age and understanding, he shall be interviewed by the Commissioner.

(5) A social inquiry report shall contain matters relating to the welfare of the child and recommendations as to any action to be taken by the Court.

(6) The Court shall take the information contained in the social inquiry report into account in so far as it is relevant to the order being made.

(7) If the Court is not satisfied with any recommendation made by the Commissioner in the social inquiry report, the Court shall state and record its reasons for not complying with the recommendation.

Other orders which may be made by the Court

77. The Court may, in addition to the making of a supervision order or a care order, make any of the following orders—

- (a) an order—
 - (i) accepting undertakings;
 - (ii) for the provision of support services; or
 - (iii) to attend therapeutic or a treatment programme;
- (b) a compulsory assistance order; or
- (c) a contact order.

Order accepting undertakings

78. (1) The Court may, in considering a care application, make an order accepting such undertakings given by the parent of a child, as it thinks fit with respect to the care and protection of the child.

(2) An undertaking referred to in subsection (1)—

- (a) shall be in writing, signed by the person giving the undertaking; and
- (b) remains in force for such period, expiring on or before the day on which the child attains the age of eighteen years, or as may be specified in the undertaking.

(3) The Court shall cause a copy of an undertaking to be served on the person giving the undertaking.

(4) The Commissioner or a party to proceedings in which an order accepting an undertaking was made shall notify the Court of an alleged breach of the undertaking.

(5) The Court, on being notified of an alleged breach of an undertaking, shall give the parties to the undertaking, an opportunity to be heard concerning the allegation, and shall determine whether the undertaking has been breached.

(6) If the Court finds that the undertaking referred to in subsection (1) has been breached, it may make any order as it considers appropriate in all the circumstances.

Order for the provision of support services

79. (1) The Court may make an order directing a person or child care service named in the order to provide support for a child for a period not exceeding twelve months as shall be stipulated in the order.

(2) The Court shall not make an order under subsection (1) unless—

- (a) it gives notice of its intention to consider making the order to the person or child care service who would be required to provide support pursuant to the order;
- (b) the person or child care service is given an opportunity to appear and be heard by the Court before the Court makes the said order;
- (c) the person or child care service consents to the making of the order; and
- (d) the views of the child in relation to the proposed order have been taken into account.

(3) The Commissioner may be required to provide support pursuant to an order made under this section.

Order to attend therapeutic or treatment programme

80. (1) Subject to this section, the Court may make an order—

- (a) requiring a child to attend a therapeutic or treatment programme relating to an abusive behaviour; and
- (b) requiring the parent of the child to take whatever steps are necessary to enable the child to participate in a therapeutic or treatment programme;

in accordance with the terms specified in the order.

(2) The Court shall not make an order under this section unless the Court has been presented with and has considered the provisions of a plan that outlines the therapeutic programme proposed for the child.

Compulsory assistance order

81. (1) The Commissioner may make an application to the Court for an order for compulsory assistance if the Commissioner is of the opinion that—

- (a) a compulsory assistance order is necessary for the safety, welfare and well-being of the child; and
- (b) a less intensive means has been attempted, or if attempted, it would be insufficient for the protection of the child.

(2) The Court shall not make a compulsory assistance order unless it is satisfied that—

- (a) the child will receive treatment, therapy or other services that will assist the child to deal with the problems that have led the child to become a danger to himself or others;

- (b) the programme offered to the child is more likely than not to lead to a significant improvement in his circumstances; and
 - (c) the necessary resources have been allocated by the person or persons who will be required to provide intensive supervision of the child.
- (3) A compulsory assistance order shall make provision for all of the following matters—
- (a) the person who is to be responsible under the order for the child;
 - (b) the place at which the child is to reside;
 - (c) a description of the therapeutic programme and any other support to be provided to the child;
 - (d) the maintenance of twenty-four hour supervision of the child;
 - (e) the duration of the order; and
 - (f) such other matters as the Court may determine.
- (4) A compulsory assistance order shall not be for a period of more than three months.

(5) For the purposes of this section “compulsory assistance order” means assistance in the form of intensive care and support that is necessary to protect the child from suicide or any other life threatening or serious self-destructive behaviour.

Contact order

82. (1) If a child is the subject of proceedings before the Court, the Court may, on an application made by any party to the proceedings, make an order in respect of any one or more of the following—

- (a) stipulating minimum requirements concerning the frequency and duration of contact between the child and his parent, relatives or other persons of significance to the child;
 - (b) that contact with a specified person be supervised;
 - (c) denying contact with a specified person if contact with that person is not in the best interests of the child;
 - (d) that contact be supervised by the Commissioner.
- (2) An order referred to in—
- (a) subsection (1) (a) shall not prevent more frequent contact with a child with the consent of a person having parental responsibility for the child;
 - (b) subsection (1) (b) may be made only with the consent of the person specified in the order and the person who is required to supervise the contact.

(3) For the purposes of the section contact includes contact via electronic or other means.

Orders with significant impact on persons

83. (1) The Court shall not make an order which has a significant impact on a person who is not a party to the proceedings unless the person has been given an opportunity to be heard on the matter of significant impact.

(2) A person given an opportunity to be heard pursuant to subsection (1) shall not have the status or rights of a party to the proceedings.

Preparation and requirements of permanency plan

84. (1) If the Commissioner makes an application to the Court for a care order, not being an emergency care and protection order, the Commissioner shall assess whether there is a realistic possibility of the child being returned to his parents, having regard to—

- (a) the circumstances of the child; and
- (b) the evidence, if any, that the parent of the child or the child is likely to be able to satisfactorily address the issues which led to the removal of the child from the care of the parent.

(2) If the Commissioner assesses that there is a realistic possibility of restoration, the Commissioner shall prepare a permanency plan involving restoration and submit it to the Court for its consideration.

(3) A permanency plan involving restoration shall include the following—

- (a) a description of the minimum outcomes that the Commissioner believes must be achieved before it would be safe for the child to return to his parent;
- (b) methods to assist the child and his parent to examine the circumstances that have led to the making of the order of the Court and to take steps to resolve or ameliorate the problem so as to ensure the return of the child;
- (c) details of the services that the Commissioner is able to arrange, and the provision of such services to the child in order to facilitate his restoration;
- (d) details of other services that the Court may request from other Government departments or funded non-government agencies to provide to the child, or the family of the child or both, in order to facilitate restoration; and
- (e) a statement of the length of time during which restoration may be actively pursued.

(4) If the Commissioner assesses that there is not a realistic possibility of restoration, the Commissioner shall prepare a permanency plan for suitable adoption for the child and submit it to the Court for its consideration.

(5) In preparing a plan under subsection (4), the Commissioner may consider whether adoption is the preferred option for the child.

(6) The Court shall consider the permanency plan prepared by the Commissioner and if it does not accept it, the Court may direct the Commissioner to prepare a different permanency plan.

(7) The Court shall not make a final care order unless it expressly finds that permanency planning for the child has been appropriately and adequately addressed.

(8) A permanency plan shall only be enforceable to the extent to which its provisions are embodied in, or approved by, an order of the Court.

(9) In this section—

“legal guardian” in relation to the child concerned means any person other than the child’s natural or adoptive parent(s), who has the legal parental responsibility for, the physical possession of and the authority to make all decisions concerning the best interests of the child.

“permanency planning” means the making of a plan that aims to provide a child with a stable placement which offers long term security and that—

- (a) has regard, in particular, to the principles set out in section 4 (1) (e);
- (b) meets the needs of the child; and
- (c) avoids the instability and uncertainty arising through a succession of different placements or temporary care arrangements.

Provision of services to facilitate restoration

85. A Government department or agency or a funded non-government agency that is requested by the Court to provide services to a child or the parent of a child in order to facilitate restoration shall use its best efforts to provide those services.

Review of permanency plan

86. (1) A permanency plan involving restoration shall be reviewed by the Court within twelve months after the last occasion on which it was considered by the Court.

(2) A review under subsection (1) shall determine—

- (a) whether the provisions of the permanency plan should be changed, particularly with respect to the length of time during which restoration shall be actively pursued;
- (b) whether other arrangements should be made for the permanency placement of the child; and
- (c) whether a care order should be made, varied or revoked.

Costs

87. The Court shall not make an order for costs in any care proceedings unless it is in the interest of justice for doing so.

Final orders to be given to parties

88. The Court shall take such action as is reasonably practicable to ensure that each party to an application receives a copy of a final order of the Court concerning the application.

Variation and revocation of orders

89. (1) An application for the variation or revocation of a care order made under this Act may be made with the leave of the Court.

(2) The Court may grant leave pursuant to subsection (1) if it appears that there has been a significant change in any of the relevant circumstances since the care order was made or last varied by the Court.

(3) Before granting leave to vary or revoke the care order, the Court shall take the following matters into consideration—

- (a) the nature of the application;
 - (b) the age and maturity of the child;
 - (c) the length of time for which the child has been in the care of the person who has the present parental responsibility for the child; and
 - (d) the plans for the child.
- (4) An application referred to in subsection (1) may be made by—
- (a) the Commissioner;
 - (b) a person having parental responsibility for the child;
 - (c) a person from whom parental responsibility has been removed; or
 - (d) any person who considers himself to have sufficient interest in the welfare of the child.
- 5) If—
- (a) an application is made to the Court by a person, other than the Commissioner, for the variation or revocation of a care order, other than a contact order, in relation to a child;
 - (b) the application seeks to change the parental responsibility for the child, or those aspects of parental responsibility involved in having care and responsibility for the child; and
 - (c) the Commissioner is not a party to the proceedings, the applicant shall notify the Commissioner of the application and the Commissioner shall be entitled to be a party to the application.

(6) The Court is not required to hear or determine an application made to it with respect to a child by a person referred to under subsection (4) (c) or (d) unless it considers the person to have a sufficient interest in the welfare of the child.

(7) If—

- (a) an application for variation of a care order is made or opposed by the Commissioner; and
- (b) a ground on which the application is made is a ground that has not previously been considered by the Court, the ground shall be proved as if it were a ground of a fresh application for a care order.

(8) Before making an order to vary or revoke a care order that places a child under the parental responsibility of the Commissioner, or that allocates specific aspects of parental responsibility from the Commissioner to another person, the Court shall take the following matters into consideration—

- (a) the age and maturity of the child;
- (b) the wishes of the child and the weight to be given to those wishes;
- (c) the length of time the child has been in the care of the present person who has parental responsibility for the child;
- (d) the strength of the bond of the child to his parent or the present person who has parental responsibility for the child;
- (e) the capacity of the parent of the child to provide an adequate standard of care for the child; and
- (f) the risk to the child of psychological harm if the present care arrangements are varied or revoked.

(9) If the Court is satisfied, on an application made to it with respect to a child that it is appropriate to do so, the Court may, vary or revoke a care order for the care of the child.

(10) If the Court revokes an order under this Act, it may make any one of the orders that it could have made in relation to the child as if an application had been made to it with respect to the child.

(11) On the making of an order under subsection (10), the Court shall cause notice of the order to be served on the Commissioner.

PART 11

CHILD CARE SERVICES

Principles

90. A decision made under this Part shall be made in accordance with the following principles—

- (a) the best interests of the child shall be of paramount consideration;
- (b) a place of safety shall provide care that is safe, positive and nurturing;
- (c) a place of safety shall promote the educational, social and developmental wellbeing of a child; and
- (d) a child shall receive services that meet his individual needs, including the needs of a child with a disability, and enhance his physical, emotional, cognitive, social and cultural development.

Conditions for official foster care placements

91. (1) If an order has been made pursuant to Part 10, the Commissioner may place the child with a person who is willing to undertake the care and protection of the child.

(2) An application to become an official foster carer shall be made to the Commissioner, but a relative of a child without a parent may foster the child without first applying to the Commissioner and, in such a case, this Part shall not apply to the relative.

(3) Foster care placements shall be made in accordance with such regulations as may be prescribed.

Approved child care services

92. The Minister may approve or license child care services and places of safety for the purpose of this Act and in accordance with any regulations as may be prescribed.

Purpose of approved child care service

93. (1) An approved child care service shall provide substitute family care for a child until such time as the parent is able to provide adequate care to meet the basic needs of the child or the child can be reunited with his family or arrangements are made for the custody or other permanent placement of the child.

(2) The staff of the approved child care service and the Commissioner shall assist the child to become reunited with his parents.

(3) After a child has been returned from an approved child care service, the Commissioner shall keep in regular contact with the child and his family until the completion of any order made pursuant to Part VIII or until the discharge of the order.

(4) If a child is unable to return to his parent or to go to a foster parent, or has no parent or a foster parent, he shall, where possible, be cared for and assisted by an approved child care service and the Commissioner.

Parental responsibility at approved child care service

94. Where a child has been placed in an approved child care service under a care order, the manager and staff of the child care service shall have the responsibility for the day to day care and protection of the child.

Approved child care services (secure accommodation)

95. (1) Subject to the provisions of this section, a child who is placed in a child care service or foster care by the Commissioner through a care order under Part 10, shall not be kept in accommodation provided for the purpose of restricting liberty (“secure accommodation”)—

(a) unless it appears that—

(i) he has a history of absconding and is likely to abscond from any other description of accommodation;

(ii) if he absconds, he will suffer, or be likely to suffer, serious or significant harm; or

(b) that if he is kept in any other kind of accommodation he is likely to injure himself or other persons; and

(c) for a period of more than 72 hours.

(2) Any child shall not be kept in secure accommodation after the end of such period as may be prescribed, unless a court has by an order made on the application of the Commissioner authorised for him to be kept there.

(3) Subject to subsection (5), on an application under subsection (2) the Court—

(a) shall make the order applied for if (and only if) it is satisfied that—

(i) the condition specified in subsection (1) (a) or (b); and

(ii) such further conditions as may be prescribed, are fulfilled; and

(b) shall in the order specify the maximum period (which shall not exceed such period as may be prescribed) for which he may be kept in secure accommodation without a further order under subsection (2).

(4) If the court adjourns the hearing of an application under subsection (2), it may make an interim order permitting the child to be kept during the period of the adjournment in secure accommodation.

(5) The court shall not make an order under subsection (2) unless—

- (a) it is satisfied that the Department has taken all such steps as are deemed reasonable and practicable to notify any person who has parental responsibility for the child of the Department's intention to make the application; and
- (b) where the child is not legally represented in that Court, he has been informed of his rights and given an opportunity to express his wishes and feelings (subject to his age and maturity).

(6) The making of an order under this section does not prejudice any power of any Court to make any other order or to give directions relating to the child to whom the order relates.

Contact with parents and relatives

96. (1) The approved child care service and the Commissioner shall maintain—

- (a) contact with the parent or relatives of the child in the approved child care service; and
- (b) contact between the child and the parent or relatives of the child.

except by virtue of an order under section 82 (c) or where subsection (4) applies,

(2) A person shall not remove a child from an approved child care service without the consent of the manager.

(3) A person who contravenes subsection (2) commits an offence and is liable on conviction to a fine not exceeding \$5,000 or to a term of imprisonment for six months, or to both.

(4) The approved child care service and the Commissioner may refuse to allow the contact that would otherwise be required by virtue of subsection (1) or an order under section 82 if—

- (a) they are satisfied that it is necessary to do so in order to safeguard or promote the child's welfare; and
- (b) the refusal—
 - (i) is decided upon as a matter of urgency; and
 - (ii) does not last for more than seven days.

Abduction of children in care etc.

97. (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 designated officer, 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 six months, or to a fine not exceeding \$10,000, or to both.

Recovery of abducted children etc.

98. (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 97 applies and in this section “the responsible person” has the same meaning as in section 97.

(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 Court;
- (d) authorises a police officer to enter any premises specified in the order and search for the child using reasonable force if necessary.

(4) The Court may make a recovery order only on the application of—

- (a) any person who has parental responsibility for the child including by virtue of a care order or emergency protection order;
- (b) where the child is in police protection, the designated officer.

(5) A recovery order shall name the child and—

- (a) any person who has parental responsibility for the child by virtue of a care order or emergency protection order; or
- (b) where the child is in police protection, the designated officer.

(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 police officer;
- (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

“the designated officer” means a police officer designated for the purposes of this section.

(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 \$5000.

(11) No person shall be excused from complying with any request made under subsection (3) (c) on the ground that complying with it might incriminate his or her 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.

(12) Where a child is made the subject of a recovery order whilst being looked after by a local authority, any reasonable expenses incurred by an authorised person in giving effect to the order shall be recoverable from the authority.

Absconding from approved child care service

99. (1) Where a child is discovered missing from an approved child care service to which he has been placed or from a person in whose care he has been placed under an emergency protection order, or committed by the Court on an order under this Act, such person in charge of the child shall immediately make a report to the Commissioner.

(2) A child who runs away from an approved child care service to which he has been placed or from a person in whose care he has been placed under an emergency protection order, or committed by the Court on an order under this Act, may, pending investigation—

- (a) be brought back to the approved child care service or to the person from which or from whom he has run away; or
- (b) be put in another approved child care service or a place of safety to be determined by the Commissioner.

(3) As soon as possible, after the circumstance referred to in subsection (2) has occurred, the Commissioner shall interview the person in charge of the child care service or the person in whose care the child has been placed.

(4) The child referred to in subsection (2) may be returned to where he had been placed, or if that is not in the best interests of the child, he may be moved by the Commissioner under a care order or otherwise returned to the Court for an application by the Commissioner for a variation order.

Court's power to order parent to contribute

100. (1) Where a child who has a parent has been placed in an approved child care service, the Court may order the parent to contribute towards the maintenance of the child.

(2) The amount contributed pursuant to subsection (1) shall be reasonable and within the means of the parent and may be varied by the Court if there is a change in the circumstances of the parent of the child.

(3) An order for contribution made under subsection (1) shall remain in force as long as the child is in the child care service, but a person contributing may, at any time, apply to the Court for the order to be varied or discharged on the ground that the circumstances have changed since the order was made.

PART 12

COURT APPLICATIONS

Right to be heard and to counsel

101. (1) A parent of a child has the right to be heard and the right to counsel on applications under this Act, except applications that are made without notice by the Commissioner.

(2) In any proceedings under this Act, any other person who, in the opinion of the Court, has a genuine concern for the safety, welfare and well-being of the child or young person may, by leave of the Court, appear in person in the proceedings, or be legally represented, and may examine and cross-examine witnesses on matters relevant to the proceedings, except applications that are made without notice by the Commissioner.

Application for court date

102. Where an application is made pursuant to section 43, the Registrar of the Court and the Supreme Court shall fix a date for an interim hearing not later than 4 clear days from the date of filing of the application.

Evidence

103. The Commissioner shall, at the interim hearing, present evidence respecting—

- (a) where the child was not apprehended, the grounds for believing the child is in need of protection and an interim plan of care for the child; or
- (b) where the child was apprehended—
 - (i) the grounds for believing the child is in need of protection,
 - (ii) the circumstances respecting the apprehension, and
 - (iii) an interim plan of care for the child.

Child need not be present

104. It is not necessary that the child who is the subject of a hearing be present at the hearing, unless the Court otherwise orders, and the Court may exclude the child from the hearing or any part of it.

Hearing private

105. No person shall be present at a hearing pursuant to this Act except—

- (a) the parents of the child and persons having custody or guardianship rights respecting the child;
- (b) the Commissioner or delegates of the Commissioner;
- (c) the child who is the subject of the hearing, if the child is at least 12 years old and apparently capable of understanding the circumstances;
- (d) counsel; and
- (e) such other persons as the Court may consider appropriate.

Child evidence

106. The Court may accept the evidence of a child without an oath, in accordance with section 27 of the Evidence Act, where it is satisfied that the child has sufficient appreciation of the facts of his or her evidence and sufficient understanding of the duty to speak the truth.

Evidence that may be admissible

107. At a hearing pursuant to this Act the Court may admit as evidence one or more of the following—

- (a) hearsay evidence that the Court considers reliable;
- (b) an oral statement that has been video recorded and that the Court considers relevant;
- (c) a written statement or report that the Court considers reliable and relevant;

- (d) a transcript, report, exhibit or finding from an earlier civil or criminal Court proceeding that the Court considers relevant;
- (e) evidence taken at a previous hearing pursuant to this Act.

Live Link in criminal proceedings

108. (1) Where a child witness is required to give evidence in criminal proceedings, the Court may direct in accordance with section 27 of the Evidence Act that the child give evidence through a live link.

Video Recorded Evidence

109. (1) Where a child witness is required to give evidence in criminal proceedings and –

- (a) the child has previously given an account of the events giving rise to or closely connected to an offence; and
- (b) a video recording was made of the account referred to in subparagraph (a);

the Court may direct in accordance with section 13A of the Evidence Act that the recording is played in the proceedings in lieu of the child giving evidence in person.

PART 13**MISCELLANEOUS****Child from outside Anguilla**

110. Where a child protection agency, recognized pursuant to the law of another jurisdiction, wishes to place a child for adoption or other form of care to be provided in Anguilla, the Commissioner may make an agreement with the child protection agency to provide or supervise the care or placement of the child on behalf of the child protection agency.

Order or agreement from another jurisdiction

111. An agreement or court order made pursuant to the child protection legislation of another jurisdiction that—

- (a) corresponds to an agreement or order available under this Act; and
- (b) is confirmed to be valid by a Court or child protection authority of the other jurisdiction has, to the extent that it is consistent with this Act, the same effect in the province as if it had been made pursuant to this Act.

Child harm registry

112. The Minister may create a child harm registry in accordance with the regulations.

Appeals

113. (1) An appeal shall lie to the Court of Appeal from a judgement or order or decision of the Court.

(2) An appeal lies to the Court from any judgement, order or decision of the Magistrate's Court under this Act.

(3) Where an appeal is brought under subsection (2) a notice of appeal must be issued within 14 days after the judgement, order or decision appealed against was given or made.

Offences

114. A person who—

- (a) having responsibility for the care of a child, causes the child to be in need of protection;
- (b) fails to report or to provide information in accordance with sections 31 or 99;
- (c) with respect to section 31, knowingly makes a report or provides information which is false or misleading, or is reckless as to whether the information is true;
- (d) fails to comply with a court order related to the care, custody or guardianship of a child;
- (e) obstructs the Commissioner or other persons in the performance of their powers or duties under this Act;
- (f) without authority, induces or attempts to induce a child who is in the custody or under the supervision of the Commissioner to change the place of residence of the child;
- (g) unlawfully takes, detains or harbours a child who is in the custody of or under the supervision of the Commissioner or who is the subject of an apprehension;
- (h) has unlawful access to or contact or communication with a child who is in the custody of or under the supervision of the Commissioner;
- (i) interferes with the care of a child who is in the custody of or under the supervision of the Commissioner;
- (j) publishes information that identifies parties to an agreement or proceedings pursuant to this Act, other than information respecting the child of that person; or
- (k) violates any other provision of this Act or the regulations,

is guilty of an offence and is liable upon summary conviction to a fine not exceeding \$5,000.

Regulations

115. (1) The Minister may make regulations for giving effect to this Act.

(2) Without prejudice to the generality of subsection (1) the Minister may make regulations—

- (a) respecting procedures for, access to, the disclosure of and information obtained in the administration of this Act;

- (b) respecting reports of investigations;
- (c) respecting the establishment and maintenance of a child harm register;
- (d) providing for or respecting the temporary care arrangements pursuant to this Act;
- (e) prescribing forms for the purposes of this Act;
- (f) making guidelines for the carrying out of this Act;
- (g) approving protocols for the carrying out of this Act;
- (h) governing the payment of fees for applications made or other things done pursuant to this Act;
- (i) prescribing the procedures and the terms and conditions for placement arrangements made pursuant to this Act;
- (j) respecting the maintenance of records;
- (k) providing for the establishment and the operation of child care services;
- (l) prescribing requirements as to the accommodations and equipment to be provided in an approved child care service;
- (m) prescribing the medical arrangements to be made for protecting the health and wellbeing of the children in an approved child care service;
- (n) regulating the registration, management and discipline of an approved child care service;
- (o) respecting the regular inspection of an approved child care service;
- (p) to ensure the safety, welfare and well-being of children in child care services;
- (q) to promote certain standards for the delivery of child care services;
- (r) to ensure, as far as possible, that all persons working in child care services are suitable for such work;

- (s) respecting mandated parenting support programmes; and
- (t) respecting any other matter the Minister considers necessary or advisable to effectively carry out the purposes of this Act.

Amendments

116. The laws specified in the first column of the Schedule are hereby amended in the manner specified in the second column of that Schedule.

Transitional

117. The following transitional provisions shall have effect—

- (a) where an order has been made in respect of a child pursuant to a prior provision of an Act amended in the Schedule, before this Act comes into force, this Act applies where the order is brought before the Court for review; and
- (b) an application for an order made pursuant to the prior provision of an Act is continued pursuant to and in conformity with this Act; unless the Court otherwise orders, a hearing adjourned under the prior provision of an Act is continued pursuant to and in conformity with this Act.

Citation

118. This Act may be cited as the Child Protection Act, 2019.

SCHEDULE

Law to be amended

Amendments to be made

Magistrate’s Code of Procedure Act R.S.A. c. M5	
Section	
134 (1)	Insert after the words “for an order under this part” the words “and in the case of a maintenance order for children of the applicant, for an order under Part 5A”.
137	Insert after the words “for a maintenance order” the words “for the applicant under section 134”.

138, 139, 140, 141, 142, 143, 144, 145, 146	<p>Delete these sections and insert the following new Parts</p> <p style="text-align: center;">Part 5A</p> <p style="text-align: center;">Maintenance of Children</p> <p>Interpretation</p> <p>138. For the purposes of this part and Part 5B:</p> <p>“child” means—</p> <p style="margin-left: 40px;">(a) a person 18 years or younger;</p> <p style="margin-left: 40px;">(b) a person 18 years or older whose special circumstances are such that he is unable to reasonably provide for his daily requirements. Special circumstances means the person has—</p> <p style="margin-left: 80px;">(i) a serious illness; or</p> <p style="margin-left: 80px;">(ii) a physical or mental disability;</p> <p>“Maintenance Order” means an order made under this Act for the maintenance of a child;</p> <p>“parent” means a birth or adoptive parent;</p> <p>“paternity order” means an order of the Court declaring a man to be the father of a minor whether born or unborn;</p> <p>Obligation to maintain a child</p> <p>139. Each parent of a child has the obligation to provide reasonably for the child's maintenance, whether or not the child is in that parent's custody.</p> <p>Maintenance Order</p> <p>140. (1) The Magistrate may, on application by a parent, a child over the age of fourteen years on his own behalf or by a person on behalf of a</p>
---	--

	<p>child, make a Maintenance Order requiring a parent to maintain any and all children of the parent.</p> <p>(2)The Magistrate in considering an application under subsection (1) shall have regard to the matters referred to in section 142.</p> <p>Payments of Maintenance Orders</p> <p>141. (1) The Magistrate may make a Maintenance Order—</p> <ul style="list-style-type: none"> (a) that the respondent shall, for the benefit of a child, pay to a specified person periodic payments for a specified term; (b) giving the force of law to an agreement whereby the respondent shall, for the benefit of a specified child, make to a specified person periodic payments for a specified term; (c) for the payment of expenses in respect of a child's birth and the prenatal care of the child's mother to be made by the father; (d) that the respondent or applicant provide non-monetary maintenance and care of the child. <p>(2) In addition, a Maintenance Order may require the respondent to pay a specified lump sum to a specified person for the benefit of a specified child including a lump sum in respect of the expenses reasonably incurred in respect of that child before the Maintenance Order was made.</p> <p>(3)The Magistrate may make a</p>
--	---

	<p>Maintenance Order that—</p> <ul style="list-style-type: none"> (a) payment be made to a specified person; or (b) payment be made through the Court. <p>Matters to which the Magistrate is to have regard in making orders for maintenance</p> <p>142. The Magistrate, in deciding whether to exercise his powers under this Part and, if so, in what manner, shall have regard to all the circumstances of the case including the following matters—</p> <ul style="list-style-type: none"> (a) the income, earning capacity, property and other financial resources which each parent [or any other person having an obligation under subsection 4(2)] of the child has or is likely to have in the foreseeable future; (b) the financial needs, obligations and responsibilities which each parent [or any other person having an obligation under subsection 4(2)] of the child has or is likely to have in the foreseeable future; (c) the financial needs of the child and the standard of living of the child; (d) the income, earning capacity (if any), property and other financial resources of the child;
--	--

	<ul style="list-style-type: none"> (e) any physical or mental disability of the child; (f) the manner in which the child was educated or trained and the manner in which the parents expected him to be so educated or trained; (g) the standard of living enjoyed by the family while the parents and the child resided together, if applicable; and (h) any non-monetary contributions made to the child's care. <p>Duration of a Maintenance Order</p> <p>143. A Maintenance Order in respect of a child shall not, except for the purpose of recovering money previously due under the Maintenance Order, be of any force or validity after the child has ceased being a child, has married or has died.</p> <p>Interim Maintenance Order</p> <p>144. (1) Where the hearing of an application for a Maintenance Order or for the discharge, variation, extension or suspension of a Maintenance Order is adjourned for any period exceeding one week, the Magistrate may, if he thinks fit, having regard to all the circumstances of the case, make an Interim Maintenance Order under this section.</p> <p>(2) An Interim Maintenance Order under this section shall direct the respondent, or, as the case may be, the applicant, to pay such periodical sum as the Magistrate thinks reasonable for the maintenance of the child until the final determination of the case, but the Interim Maintenance Order directing the payment shall not remain in operation for more than six months from the date on which it was made.</p>
--	--

	<p>(3) An Interim Maintenance Order under this section may be enforced, varied, extended or discharged in the same manner as if it were a final Maintenance Order of the Magistrate and proceedings for the enforcement of any such Interim Maintenance Order may be taken immediately after default has been made in payment of any periodical sum.</p> <p>(4) An Interim Maintenance Order made under this section shall be treated as if it were a Maintenance Order made under section 5.</p> <p>Method of payment</p> <p>145. (1) Payments for maintenance shall be made by the respondent by the method specified by the Magistrate, including payment to the specified person—</p> <ul style="list-style-type: none"> (a) by an arrangement whereby one person gives his authority for payments to be made from an account of his, or on his behalf, to another person or to an account of that other person; (b) by cheque; or (c) in cash. <p style="text-align: center;">Part 5B</p> <p style="text-align: center;">Paternity Orders</p> <p>Application for Paternity Order in Court</p> <p>146. (1) This section applies to a father of a minor in respect of whom paternity is not presumed under any enactment.</p> <p>(2) An application for a paternity order may be made to a Court under this section—</p> <ul style="list-style-type: none"> (a) by the mother of the minor; (b) if the mother of the minor is under the age of sixteen years by any person having
--	---


	<p>custody of her;</p> <p>(c) by a guardian of the minor; or,</p> <p>(d) with the leave of the Court, by any other person.</p> <p>(3) Such application may be made before the birth of the minor or at any time after the birth of the minor and shall be by complaint to the Magistrate for a summons to be served on the man alleged to be the father of the minor, and the Magistrate shall thereupon issue his summons to the person alleged to be the father of the minor, to appear before a Magistrate on some day to be named in the summons.</p> <p>(4) After the birth of the minor and on the appearance of the person summoned under subsection (2), or on proof that the summons was duly served on the person or left at his last place of abode seven days or more before the hearing, the Magistrate shall hear the application and the Court shall, if it is satisfied that the defendant is the father of the minor, make a paternity order accordingly.</p> <p>(5) A paternity order made under this section shall for the purposes of any application for a maintenance order under this Act or of any proceedings in respect thereof, be evidence that the person against whom it is made is the father of the minor.</p> <p>(6) Where a paternity order is made pursuant to this section, the Court may, if it sees fit and having regard to all the circumstances of the case make a maintenance order in accordance with Part 5A.</p> <p>146A. The Court shall not make a finding of paternity under section 146 based upon evidence of one witness only unless that evidence is corroborated by some other material evidence.</p> <p>Genetic testing</p> <p>146B. (1) The Court may order genetic tests to establish paternity, to be performed on the child, the mother and a man who may be the father of the child, if the man requests the tests or if the Court otherwise deems it necessary.</p>
--	--

	<p>(2) If the tests, by virtue of the mentioned act, may be ordered to be performed on a person other than those referred to above, the Court may, if it deems this necessary, order the tests to be performed.</p> <p>Forms and procedure under this Part to apply 146C. The forms to be used and the proceedings to be had under this Part shall, as nearly as may be, be those used and had in the case of a person charged with having committed an offence punishable summarily by the Magistrate by fine or imprisonment.</p> <p>Service of summonses, notices and orders 146D. Every summons, notice or order to be served on any person under this Part may be served personally or may be served by leaving it at the last known place of abode of the person to be served, and the service shall be effected not less than 6 clear days before the day on which the person is required to appear before the Magistrate.</p> <p>Family Court 146E. Where under the provisions of this Act a family matter or matter relating to children is being heard before the court, then the court shall have in relation to that family matter or matter relating to children all the powers of a family court.</p>
Juvenile Act	
Section	
4	Delete this section
5	Delete the word “4” in subsection (1)
Maintenance of Children Act R.S.A. c. M10	
Section	2
	Delete the definitions of “child” and “parent” in this section and substitute the following:

	<p>“child” means—</p> <ul style="list-style-type: none"> (a) a person 18 years or younger; (b) a person 18 years or older whose special circumstances are such that he is unable to reasonably provide for his daily requirements. Special circumstances means the person has— <ul style="list-style-type: none"> (i) a serious illness; or (ii) a physical or mental disability; <p>“parent” means a birth or adoptive parent and includes a person adjudged to be the putative father of a child born out of wedlock;</p>
<p>Eastern Caribbean Supreme Court (Anguilla) Act R.S.A. c. M5</p>	
<p>Section</p>	<p>Insert new section 6A</p> <p>The High Court shall be the known as the Family Court Division when it exercises jurisdiction for family matters and matters relating to children under any enactment.</p>


 Terry T. C. Harrigan
Speaker

Passed by the House of Assembly this 12th day of February, 2019


 Lenox J. Proctor
Clerk of the House of Assembly

EXPLANATORY MEMORANDUM

The purpose of this Bill is to protect and promote the well-being of all children and to give effect to Anguilla's obligations concerning the well-being, development and protection of children in terms of the United Nations Convention on the Rights of the Child.

The Bill is based on the recognition of the need to take legislative action to safeguard and promote the welfare of children. The Bill will seek to provide that in all actions and decisions made pursuant to the provisions of the Bill concerning a child, the safety, welfare and well-being of the child shall be of paramount consideration, and the same principle shall apply where a child has been removed from his parents. As the first major piece of modern legislation to be enacted in Anguilla relating to the rights and protection of children, the Bill, via its provisions, will set the standard for the manner in which matters relating to children will be dealt with in future in the Courts.

Part 1, Preliminary, provides for the preliminary provisions and contains *Clauses 1-6*.

Part 2, Administration of the Act, *Clauses 7-20*, provides for the administrative procedures for the effective implementation of the Bill.

Part 3, Child Safeguarding Board, *Clauses 21-25*, provides for the establishment, proceedings, objectives, functions and meetings of the Child Safeguarding Board.

Part 4 Parental Responsibility, *Clauses 26-28*, provides for parental responsibility for children, the meaning of "parental responsibility" and acquisition of parental responsibility by father.

Part 5, Care and Protection of Children, *Clauses 29-30*, identifies circumstances in which a child may be considered to be in need of care and protection.

Part 6, Reporting, *Clauses 31 -33*, provides for mandatory reporting of child harm, records of reports and subsequent action and protection of persons who make reports.

Part 7, Investigation and Assessment, *Clauses 34-41*, provides for assessment and investigation of reports concerning a child.

Part 8, Emergency Protection, *Clauses 42-48*, provides for the emergency protection of a child in the stated circumstances.

Part 9, Assessment Orders, *Clauses 49-52*, provide for the making of assessment orders.

Part 10, Orders for the Care and Protection of a Child, *Clauses 53-89*, provides for the orders which may be applied for to secure the care and protection of a child.

Part 11, Child Care Services, *Clauses 90-100*, provides for principles, conditions, safety and parental responsibilities at child care services.

Part 12, Court Applications *Clauses 101-109*, provides for applications for orders, evidence and hearings.

Part 13, Miscellaneous, *Clauses 110-119*, provides for matters that are required for the administration of the Bill but do not fall under the other Parts of the Bill such as appeals and the making of regulations.

The Schedule makes amendments to various pieces of legislation, to repeal and amend a plethora of obsolete and derogatory provisions relating to children, such as referring to out of wedlock children as “the bastard”. The amendments create a more modern framework for the grant of paternity orders and maintenance orders by the magistrate, pending the enactment and implementation of full maintenance of children legislation. It also provides that the High Court shall be known as the Family Court Division when it exercises jurisdiction for all family matters and matters relating to children. Similarly when a family matter or matter relating to children is being heard before the Magistrate’s court, that court shall have in relation to that family matter or matter relating to children, all the powers of a family court.



ANGUILLA

**STATUS OF CHILDREN AND PARENTAGE TESTING ACT,
2019**

Published by Authority

STATUS OF CHILDREN AND PARENTAGE ACT, 2019

TABLE OF CONTENTS

SECTIONS

PART 1

PRELIMINARY PROVISIONS

1. Interpretation
2. Application
3. Equal Status of Children

PART 2

ESTABLISHING PARENTAGE

*Division 1**Presumptions of paternity*

4. Presumptions of paternity
5. Presumptions where child is born as a result of artificial conception procedures
6. Presumptions generally
7. Instruments filed in registry of the Court

*Division 2**Parentage declaration*

8. Application for parentage declaration
9. Parentage declaration
10. Refusal to hear application
11. Application of parentage declaration
12. Annulment of parentage declaration
13. Adjournment of hearing

Division 3

Parentage testing

14. Parentage testing procedure
15. Effects of failure to comply with parentage testing order
16. Parentage testing in relation to a child etc.
17. Matters to be taken into account by Court in making determination
18. Reports of medical procedure
19. Approved laboratory and nominated reporter

PART 3

DISPOSITION OF PROPERTY

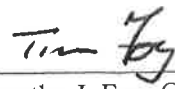
20. Transitional provisions relating to instruments
21. Persons dealing with property after the commencement of this Act
22. Protection of executors, administrators and trustees

PART 4

MISCELLANEOUS

23. Hearings
24. Existing rights
25. Regulations
26. Citation

I Assent



Timothy J. Foy, OBE
Governor

15 February 2019

Date

STATUS OF CHILDREN AND PARENTAGE ACT, 2019

No. 7/2019

AN ACT to provide for the equal status of all children and to determine the parentage of a person and to provide for connected and incidental matters.

[Gazette Dated: *15 February*, 2019][Commencement: Assent under section 57 of the Constitution]

ENACTED by the Legislature of Anguilla.

PART 1

PRELIMINARY PROVISIONS

Interpretation

1. In this Act—

“cohabiting” means a person who is living or has lived with a person as a husband or wife although not legally married to that person;

“Commissioner” means the Commissioner of Social Development;

“Court” means the Magistrate’s Court or the High Court;

“custodian” means a person granted custody of a child under law;

“custody” means the physical or legal control and responsibility for a child whether joint or individual, including providing for the normal daily requirements relating to the care and development of a child;

“guardianship” means the legal responsibility and authority for making decisions with respect to a child;

“Judicial Officer” means a magistrate or a judge;

“parentage testing procedure” includes:

- (a) the taking of tissue fluid or other bodily sample from a person and the scientific examination of the samples; and
- (b) any test carried out on a person involving the application of medical science;

for the purpose of obtaining evidence with respect to parentage;

“parent” means the biological or adoptive parent or someone else who is presumed under this Act to be the parent but a child cannot have more than 2 parents at any one time.

Application

2. This Act applies to a person, whether or not the—

- (a) person is a believer of Anguilla; or
- (b) person’s father or mother has ever been domiciled in Anguilla.

Equal status of children

3. (1) The legal distinction in the status of children born within or outside of marriage is abolished and all children shall from the date of commencement of this Act be of equal status.

(2) All references made to the word “child” shall, from the date of commencement of this Act, be interpreted to include a child whose father and mother were not married to each other when the child was conceived and have not later married each other.

PART 2

ESTABLISHING PARENTAGE

Division 1

Presumptions of paternity

Presumptions of paternity

4. (1) There is a presumption that a person is the father of a child where the person—

- (a) has acknowledged in the process of the registration of the child, in accordance with the law relating to the registration of births, that he is the father of the child;
- (b) has been adjudged or recognised in his lifetime or after his death by a court to be the father of the child;
- (c) has signed and filed in the Registry an instrument acknowledging that he is the father and that instrument was executed as a deed in the presence of an attorney, a Justice of the Peace, a registered medical practitioner, a minister of religion, a marriage officer, a notary public or a midwife;

- (d) marries the mother of the child after the birth of the child and acknowledges by word or conduct that he is the father of the child;
- (e) was married to the mother of the child at the birth of the child;
- (f) was married to the mother of the child and that marriage was terminated by—
 - (i) death,
 - (ii) judgement of nullity, or
 - (iii) divorce where the *decree nisi* was granted within 10 months before the birth of the child;
- (g) was a cohabitant with the mother of the child at the time of the birth of the child, or the child was born within 10 months after they ceased to be cohabitants;
- (h) who is alleged to be the father of the child has given written consent to that child adopting his name in accordance with the law relating to change of name; or
- (i) who is alleged to be the father of the child has by his conduct implicitly and consistently acknowledged that he is the father of the child.

(2) Where circumstances exist that give rise to the presumptions of paternity in respect of more than one father, no presumption shall be made as to paternity.

Presumptions where child is born as a result of artificial conception procedures

5. (1) Artificial conception procedures include—

- (a) artificial insemination;
- (b) the procedure of transferring into the uterus of a woman an embryo derived from an ovum fertilised outside her body; or
- (c) any other way (whether medically assisted or not) by which a woman can become pregnant other than by having sexual intercourse with a man.

(2) Where a child is born to a woman as a result of the carrying out of an artificial conception procedure while the woman was married to a man or while the woman cohabited with a man and whether or not the child is biologically a child of the woman and of the man, the child is their child for the purposes of this Act.

(3) Where a child is born to a woman as a result of the carrying out of an artificial conception procedure, whether or not the child is biologically a child of the woman, the child is her child for the purposes of this Act.

(4) Where a woman undergoes an artificial conception procedure with the consent of her husband or cohabiting partner at the time of the procedure, the husband or cohabiting partner is presumed to be the father of any child born as a result of the pregnancy.

(5) If the ovum used in the artificial conception procedure was produced by another woman, that other woman is conclusively presumed not to be the mother of any child born as a result of the pregnancy.

(6) If semen used in the artificial conception procedure was produced by a man other than the woman's husband or cohabiting partner at the time of the procedure, the man who produced the semen is conclusively presumed not to be the father of any child born as a result of the pregnancy.

(7) Where a woman carries a child as a result of any surrogacy arrangement that woman is conclusively presumed not to be the mother of that child whether or not the child is biologically a child of the woman and under such circumstances the intended mother or father shall be the parent of that child.

Presumptions generally

6. (1) The standard of proof for presumptions in this part is proof on a balance of probabilities and all presumptions except those made under section 5(5), (6) and (7) may be rebutted by proof on a balance of probabilities.

(2) A conclusive presumption is not rebuttable.

(3) Where 2 or more presumptions about the parentage of a child arise in proceedings and the presumptions conflict with each other the Court shall decide which presumption prevails having regard first to the best interest of the child and then to the interest of justice.

(4) A child shall not have more than 2 parents, one mother and one father, at any one time.

(5) For the purposes of section 5, a person is to be presumed to have consented to an artificial conception procedure being carried out unless it is proved, on the balance of probabilities, that the person did not consent.

Instruments filed in registry of the Court

7. (1) An instrument referred to in section 4 shall be filed in the Registry.

(2) The Registrar shall cause records of all instruments and copies filed under subsection (1) to be made and kept in the Registry and shall, on request made by any person who the Registrar is satisfied has a proper interest in the matter, cause a search of any record to be made and shall permit that person to inspect any instrument or copy.

(3) Where the Court makes a declaration under section 9 the Registrar shall—

(a) cause a copy of the declaration to be filed in the Registry; and

(b) on receipt of the declaration, amend the birth certificate by inserting the name of the natural father with words to the effect that parentage has been established by a declaration of the Court.

*Division 2**Parentage declaration***Application for parentage declaration**

8. An application for a parentage declaration may be made to the Court by—
- (a) a parent of a child who claims that another specified person is also a parent of the child;
 - (b) a person who claims that he or she is a parent of a particular child;
 - (c) a person who claims that a specified person is his or her parent;
 - (e) a person who demonstrates that he or she has a relevant interest in the matter where a decision is sought about whether a specified person is a parent of a particular child; or
 - (d) the Commissioner, a custodian or guardian of a child.

Parentage declaration

9. (1) On an application under section 8, the Court may declare that a specified person is a parent of a specified child.
- (2) A parentage declaration may be made about a child whether or not the child is born or the parent or child is alive.
- (3) A declaration made under this section shall be conclusive evidence of the matters contained in the declaration.

Refusal to hear application

10. The Court may refuse to hear an application under section 8 and 11 where the Court considers it may exercise discretion amongst all factors including where the Court considers it would not be in the best interests of the child to hear the application.

Application for annulment of parentage declaration

11. (1) An application for an order annulling a parentage declaration may only be made in the High Court.
- (2) An application for an order annulling a parentage declaration may be made to the Court by—
- (a) a person who applied for the declaration;
 - (b) a person named in the declaration; or
 - (c) a person who would, before the declaration was made, have been entitled to apply for a parentage declaration in relation to a person named in the declaration.

Annulment of parentage declaration

12. (1) The Court may, by order, annul a parentage declaration where—
- (a) the Court considers that facts exist, or circumstances have arisen, that—
 - (i) were not disclosed to the Court before the declaration was made,
 - (ii) could not, by the exercise of reasonable diligence, have been disclosed to the Court by the applicant when the application for the declaration was heard, and
 - (iii) are material to the question whether the relationship stated in the declaration exists; and
 - (b) after considering those facts or circumstances in paragraph (a) the Court is not satisfied that the relationship is established.
- (2) However, subsection (1)(a)(ii) does not apply where the applicant for the order is—
- (a) a person who was a child when the declaration was made; or
 - (b) the Commissioner.
- (3) Where the Court makes an order annulling a declaration the declaration ceases to have effect.
- (4) Where the Court makes an order annulling a declaration, it may make the ancillary orders including orders varying property rights that it considers just and equitable to place everyone affected by the annulment, as far as practicable, in the position he or she would have been in if the declaration had not been made but the Court shall not hold persons liable for any things done while relying on the validity of the declaration.

*Division 3**Parentage testing***Parentage testing procedure**

14. (1) In any proceedings in which the parentage of a child is required to be determined the Court may issue a direction requiring a parentage testing procedure to be carried out—
- (a) on the request of a party to the proceedings;
 - (b) on the request of a person representing the child;
 - (c) of its own initiative; or
 - (d) where the child is not a party, on the application of the child.

(2) The Court shall, before issuing a direction under subsection (1), ensure that it is in the best interest of the child to do so.

(3) A direction under subsection (1) may be issued in relation to—

- (a) a person believed by the Court to be a parent of the child;
- (b) the child; or
- (c) any other person that may assist in determining the parentage of the child.

(4) Where the Court issues a direction under subsection (1) the Court may—

- (a) issue such directions as it considers necessary or desirable—
 - (i) to enable the parentage testing procedure to be carried out, or
 - (ii) to make the parentage testing procedure more effective and reliable;

including but not limited to, directions requiring a person to submit to a medical procedure, to provide a bodily sample or to furnish information relevant to the medical or family history of a person; and

- (b) issue such directions as it considers necessary in relation to costs incurred with respect to—
 - (i) the carrying out of the parentage testing procedure or other directions issued by the Court in relation to the parentage testing procedure, or
 - (ii) the preparation of reports in relation to the information obtained as a result of the carrying out of the parentage testing procedure.

(5) The Court may at any time revoke or vary a direction previously given by it under this section.

Effects of failure to comply with parentage testing order

15. (1) Where, without reasonable excuse, a parentage testing direction is not complied with the Court may draw the inferences from the failure to comply that it considers appropriate.

(2) In particular, the Court may treat the failure as evidence—

- (a) corroborating the evidence of a party to the proceeding; or
- (b) rebutting the presumption where the stated person is a party to the proceeding and is relying on a rebuttable presumption.

(3) Without limiting subsection (1) or (2), where a parentage testing direction is not complied with the Court may—

- (a) dismiss the proceeding; or

- (b) allow the proceeding to continue on the conditions it considers appropriate.

Parentage testing in relation to a child etc.

16. (1) If a direction under section 14 is to a child who is under 18 years, a medical procedure or other act shall not be carried out unless a guardian, custodian or other person who has parental responsibility of the child consents to the medical procedure or act being carried out, but the Court may draw such inferences from a failure or refusal to consent as the Court considers fit.

(2) If a direction under section 14 is to a person who is suffering from a mental disorder and is incapable of understanding the nature and purposes of the parentage testing procedure or other act, that procedure or other act shall not be carried out unless the person who has the care and control of that person consents and the medical practitioner in whose care the person is, has certified that the parentage testing procedure will not be prejudicial to the person's proper care and treatment.

(3) A person who properly carries out, or assists in the proper carrying out of, the medical procedure or other act under section 14 is not liable in any civil or criminal action in relation to the medical procedure or other act unless negligence is proved.

Matters to be taken into account by Court in making determination

17. (1) Before making a determination under section 14, the Court may, if it is of the view that to do so would be in the best interest of the child, appoint a guardian *ad litem* for the child.

(2) In deciding whether to issue a direction under section 14 the Court shall—

- (a) consider and determine all objections made by a party to the proceedings on account of medical, religious or other grounds; and
- (b) if it determines that an objection is valid, take the objection into account in arriving at its decision.

Reports of medical procedure

18. (1) The person responsible for carrying out a parentage testing procedure for the purpose of giving effect to a direction under section 14 shall provide the Court with a report in the prescribed form in which the person shall state—

- (a) the results of the tests;
- (b) whether the person to whom the report relates is or is not excluded by the results from being the parent of the child; and
- (c) where that person is not so excluded, the value, if any, of the results in determining whether that person is the parent of the child.

(2) Where a report has been made to the Court under subsection (1), any party to the proceedings may, with the leave of the Court, or shall, if the Court so directs, obtain from the person who made the report a written statement explaining or amplifying any statement made in the report, and that statement shall form part of the report made to the Court.

(3) A report made under subsection (1) may be received in evidence in any proceedings under this Act.

(4) Where a report referred to under subsection (1) is received in evidence in proceedings under this Act, the Court may—

- (a) on the request of a party to the proceedings;
- (b) on the request of a person representing the child; or
- (c) of its own motion;

make an order requiring the person who made the report, or any person whose evidence may be relevant in relation to the report, to appear before the Court and give evidence in relation to the report.

Approved laboratory and nominated reporter

19. (1) The Minister shall determine the laboratories that shall be used to carry out parentage testing under this Act and may nominate a reporter for each laboratory.

(2) The Minister shall publish the name of each laboratory and each nominated reporter in the *Gazette*.

PART 3

DISPOSITION OF PROPERTY

Transitional provisions relating to instruments

20. (1) The following dispositions are to be construed as if this Act had not come into operation—

- (a) dispositions made *inter vivos* before the commencement of this Act; and
- (b) dispositions made by a will or codicil executed by a person who died before the commencement of this Act.

(2) Where a disposition referred to in subsection (1) contains a special power of appointment, this Act shall not—

- (a) cause the exercise of the power to be construed so as to include any person who is not a member of that class; or
- (b) extend the class of persons in whose favour the appointment may be made.

(3) The estate of a person who dies intestate as to the whole or any part of his estate before the commencement of this Act shall be distributed in accordance with the enactments and rules of law which would have applied to the estate if this Act had not come into operation.

Persons dealing with property after the commencement of this Act

21. For the purposes of the administration or distribution of any estate or property, an executor, administrator or a trustee shall, whenever it is material in the circumstances, make honest and reasonable inquiries as to the existence of any person who could claim an interest in the estate or property by reason of this Act, but shall not be obliged to pursue such inquiries further than he honestly and reasonably believes to be necessary.

Protection of executors, administrators and trustees

22. (1) An action shall not lie against an executor, an administrator, or the trustee under any instrument in relation to any estate or property, by any person who could claim an interest in the estate or the property by reason of this Act, to enforce any claim arising by reason of the executor, administrator or trustee having—

(a) made any distribution of the estate or of the property held on trust; or

(b) otherwise acted in the administration of the estate or property held on trust;

so as to disregard the claims where, at the time of making the distribution or otherwise so acting, the executor, administrator or trustee had no notice of the relationship on which the claim is based.

PART 4**MISCELLANEOUS****Hearings**

23. (1) Unless the Court otherwise orders, the hearing of an application made under this Act shall be in closed Court.

(2) A person shall not publish, whether by newspaper, or by radio or television or by electronic means, or on social media or otherwise, the name of or any particulars relating to the identity of any person by, or in relation to, whom proceedings are taken under this Act without the authority of the Court before which the proceedings are taken.

(3) A person who contravenes subsection (2) commits an offence and is liable on summary conviction to a fine of \$3,000 or to 3 months imprisonment or to both.

Existing rights

24. This Act does not affect rights which became vested before its commencement.

Regulations

25. (1) The Minister may make Regulations for giving effect to any of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations—

(a) giving directions for parentage testing procedures under section 14(1)

- (b) prescribing matters required or permitted to be prescribed by this Act
- (c) providing for all Rules required to be made under the Act;
- (d) providing for the service of all notices, forms or other documents;
- (e) providing for the preparation of reports in relation to the information obtained as the result of the carrying out of medical procedures or other acts under directions issued under section 14;
- (f) providing for all forms;
- (g) providing for matters as may be—
 - (i) contemplated by or necessary for giving full effect to this Act and for its administration, or
 - (ii) incidental to or consequential upon any provision of this Act; and
- (h) providing for fees and penalties.

(3) The Judicial Officer may make minor adjustments to all court forms to meet the justice of the case.

Citation

26. This Act may be cited as the Status of Children and Parentage Testing Act, 2019.



Terry T. C. Harrigan

Speaker

Passed by the House of Assembly this day of , 2019



Lenox J. Proctor

Clerk of the House of Assembly

Explanatory Memorandum

The purpose of this Act is clearly enunciated in its Long Title, that is:

“to provide for the equal status of children.”

Part 1 Preliminary, Clauses 1-3 of the Bill provide the preliminary and interpretation provisions and Clause (1) provides that all distinctions that exist as a result of the marital status of the parents of a child shall be abolished.

Part 2, Establishing Parentage, Bill provides for the determination of the relationship between a child and his or her parent. It also provides for instances in which a declaration of parentage may be made to the Court.

Part 3, Disposition of Property, provides for the disposition of property before and after the commencement of the Bill. It provides for transitional provisions relating to instruments that were executed and became effective prior to the commencement of the Bill.

Part 4, Miscellaneous, contain general provisions relating to hearings, existing rights, regulations and repeal.



ANGUILLA

MAINTENANCE OF CHILDREN ACT, 2019

Published by Authority

MAINTENANCE OF CHILDREN ACT, 2019

TABLE OF CONTENTS

SECTIONS

PART 1

PRILIMINARY PROVISIONS

1. Interpretation
2. Responsibility
3. Objects of Act
4. Conducting court proceedings for child maintenance matters

PART 2

MAINTENANCE ORDERS

5. Parent's obligation to maintain a child
6. Step-parents and others obligation to maintain a child
7. Access to a child
8. Application for a maintenance order
9. Referral to mediation by the Court
10. Court order for maintenance
11. Matters considered by the Court in making maintenance orders
12. When step-parents have a duty to maintain a child
13. Maintenance order for a child from 18 years or older but under 25 years
14. Court may hear the evidence of a child
15. Court may engage with persons
16. Court to be satisfied before making a maintenance order
17. Powers of the Court in making maintenance orders
18. Additional court orders
19. Methods of payment
20. Financial disclosure
21. Referral of matter by the Magistrate to a Judge
22. Interim maintenance order
23. Variation, suspension, discharge or revival of maintenance orders
24. Duration of a maintenance order
25. Costs and fees
26. Depletion of property

PART 3

ROLE OF THE COMMISSIONER, PARENTING AGREEMENTS, MEDIATION

27. The Commissioner and the Court
28. Commissioner facilitating a parenting agreement

29. Application of parenting agreement
30. Parents encouraged to enter into a parenting agreement
31. Parenting agreement
32. Registration of parenting agreement
33. Certified mediator for maintenance of children matters
34. Mediation
35. Assignment of work to a certified mediator for maintenance of children matters
36. Maintenance of list of certified mediators
37. Confidentiality
38. Fees regarding certified mediators
39. Delegation by the Commissioner

PART 4

ENFORCEMENT AND REPAYMENT

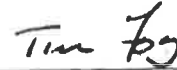
40. Designation of Collections Officer
41. Breach of maintenance order
42. Persistent breach of maintenance order
43. Intermittent custody
44. Repayment of money by biological parent
45. Contempt of Court
46. False statements
47. Change of address or employment of liable person

PART 5

MISCELLANEOUS

48. Payments under maintenance orders to be kept separate
49. Unclaimed amounts
50. Electronic documents
51. Electronic links
52. Registering of parenting agreements and maintenance orders
53. Closed Court hearings
54. Regulations
55. Repeal and transitional provisions
56. Consequential amendments
57. Commencement
58. Citation

I Assent



Timothy J. Foy, OBE
Governor

15 February 2019
Date

MAINTENANCE OF CHILDREN ACT, 2019

No. 8/2019

AN ACT to provide for the maintenance of children and to regularise the rights of parents in relation to their children and to provide the framework for the Court and the role of the Commissioner of Social Development in relation to the maintenance of children and to provide for connected and incidental matters.

[Gazette Dated: 15 February, 2019][Commencement: Assent under section 57 of the Constitution]

ENACTED by the Legislature of Anguilla.

PART 1

PRELIMINARY PROVISIONS

Interpretation

1. In this Act—

“access” means the opportunity to participate in the upbringing of a child and to regularly visit or have contact with the child with that child;

“attachment order” means an Order to have funds for the maintenance of a child deducted from the emoluments of a person so that they may be utilized according to the terms of a Maintenance Order;

“child” means—

- (a) a person under the age of 18 years; or
- (b) a person 18 years or older but under the age of 25 years who—
 - (i) is receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he is also, or will also be, in gainful employment; or

(ii) has a serious illness or physical or mental disability.

“child of the family” in relation to parties to a marriage, or to 2 people who are cohabiting means—

- (a) a child of both of them; or
- (b) any other child who has been treated by both of them as a child of their family but this does not include a child placed with them as foster parents by the Commissioner or a voluntary organisation;

“clear days” mean that in computing the number of days the following are not included—

- (a) the day on which the period begins and ends;
- (b) Saturdays and Sundays; and
- (c) public holidays;

“cohabiting” means a person who is living or has lived with a person as a husband or wife although not legally married to that person;

“Commissioner” means the Commissioner of Social Development;

“Court” means the Magistrate’s Court or the High Court;

“custodian” means a person granted custody of a child under law;

“custody” means the physical or legal control and responsibility for a child whether joint or individual, including providing for the normal daily requirements relating to the care and development of a child;

“guardianship” means the legal responsibility and authority for making decisions with respect to a child;

“joint” in relation to custody, means—

- (a) joint physical custody where the child spends time with both parents and both contribute to the provision for the normal daily requirements related to the care and development of the child;
- (b) joint legal custody where irrespective of where the child resides both parents are involved in making decisions regarding the welfare of the child;

“Judicial Officer” means a Magistrate or a Judge;

“liable person” means a person liable under a Maintenance Order;

“mediation” means a process in which a certified mediator facilitates communication between parties to assist them in reaching a voluntary parenting agreement regarding their responsibilities in maintaining their child;

“parent” means the biological, birth or adoptive parent or another person who is presumed under the Status of Children and Parentage Testing Act to be the parent but a child cannot have more than 2 parents at any one time;

“respondent” means a person who has an obligation to maintain a child; and

“step-parent” means a person who—

- (a) is not a parent of the child; and
- (b) is, or has been, married to a parent of the child or is or has been cohabiting with the parent of the child; and
- (c) treats, or at any time while married to, or cohabiting with the parent treated the child as a child of the family.

Responsibility

2. (1) Each of the parents of a child has parental responsibility for their child who is under 18 years.

(2) Subject to the direction of the Court, each parent of a child shall have the responsibility to pay maintenance for their child who is 18 years or older and under 25 years if the child—

- (a) is receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not he is also, or will also be, in gainful employment; or
- (b) has a serious illness or physical or mental disability.

(3) Subject to the direction of the Court, parental responsibility or the responsibility to pay maintenance does not change despite any changes in the nature of the relationship of the child’s parents, for example, by the parents becoming separated or by either or both of them marrying or re-marrying.

Objects of Act

3. (1) The principal objects of this Act are to—

- (a) ensure that children receive a proper level of financial support from their parents;
- (b) ensure that parents have proper and reasonable access to their children;
- (c) promote children’s welfare and best interests;
- (d) ensure that parents share equitably in the support of their children;
- (e) ensure that children receive adequate and proper parenting to help them achieve their full potential; and

- (f) ensure that parents fulfil their duties and meet their responsibilities concerning the care, welfare and development of their children.

(2) The welfare and best interests of the child, which include the child's right to care, support and development and also the right to be respected, shall be the first and paramount consideration in the administration and application of this Act.

Conducting Court proceedings for child maintenance matters

4. In determining the conduct of child maintenance proceedings, the Court shall—
- (a) consider the needs of the child concerned and the impact that the conduct of the proceedings may have on the child;
 - (b) consider how to promote co-operative and child focused parenting by the parties;
 - (c) use as little formality and legal technicality and form as possible and in this regard the court must not adhere strictly to the rules of evidence and must give such weight (if any) as it thinks fit to evidence admitted as a consequence of this;
 - (d) make appropriate use of technology such as email, fax, electronic meetings, teleconferences, and in this regard the Court must deal with the matter, where appropriate, without requiring the parties' physical attendance at court;
 - (e) deal with as many aspects of the matter as it can on a single occasion in order to reduce undue delay; and
 - (f) encourage the settlement of disputes between the parties through mediation and consensual agreement conducted and concluded in a manner that respects the objectives and principles of this Act.

PART 2

MAINTENANCE ORDERS

Parent's obligation to maintain a child

5. (1) Each parent of a child has the obligation to provide reasonably for the child's maintenance, whether or not the child is in that parent's custody.

(2) The duty of a parent to maintain a child is not affected by the duty of any other person to maintain the child.

Step-parents and others obligation to maintain a child

6. (1) The following persons may have an obligation to maintain a child if, and only if, a Court, by order under section 10, determines that it is proper for that person to have that obligation—

- (a) the step-parent of a child;
- (b) the person who has the custody of a child; or

- (c) the person who has guardianship of a child.
- (2) Any obligation of a person under subsection (1)—
 - (a) is a secondary obligation subject to the primary obligation of the parents of the child to maintain the child; and
 - (b) does not derogate from the primary obligation of the parents to maintain the child.

Access to a child

7. (1) Each parent of a child or each person named under section 6(1) is entitled to have access to that child unless it is not in the child's best interest.

(2) Where an application for an order for maintenance is being heard, the Court shall also deal with the issue of access to the child for whose benefit the application was made.

Application for a maintenance order

8. (1) The following persons may apply for a maintenance order requiring a parent or other person having an obligation to maintain a child to do so—

- (a) a child who is 14 years or more;
- (b) a parent, step-parent or grandparent of a child;
- (c) a person who has the custody or guardianship of a child;
- (d) a person who has accepted a child as a "child of the family"; or
- (e) the Commissioner.

(2) A person who makes an application for an order under subsection (1) shall file together with the application—

- (a) the birth certificate of the child for whose benefit the application is being made;
- (b) a statement of the expenses of that child with supporting documents;
- (c) where the applicant is not the Commissioner, a statement of his or her income and expenses with supporting documents;
- (d) any guardianship or custody order if applicable; and
- (e) any other existing orders with respect to the child.

Referral to mediation by the Court

9. (1) Subject to subsection (3), where an application has been filed for maintenance of a child and one or both of the parties is unrepresented by a legal practitioner and based on the information in the application form, the Court is of the view that the matter is not an emergency, then the Court shall refer the matter to the Commissioner for mediation.

(2) To avoid doubt in relation in to subsection (1), the Court may hear an application for maintenance without referring the matter to the Commissioner where the Court determines that—

- (a) it is an emergency; or
- (b) both parties are represented by a legal practitioner.

(3) Subsection (1) does not apply to a maintenance matter being adjudicated before the High Court as a part of divorce or judicial separation proceedings unless the Judge is of the view that the matter should be referred to the Commissioner for mediation.

(4) Where the Court proceeds to hear the application for maintenance without referring the matter to the Commissioner, the Court—

- (a) shall encourage parties to enter into a parenting agreement;
- (b) may on the request of both of the parties and, if it considers it reasonable to do so, suspend the proceedings and order mediation.

(5) Any parenting agreement entered into in accordance with subsection (4) shall be registered.

Court order for maintenance

10. (1) The Court may make a maintenance order requiring a parent, step-parent, custodian, or guardian to maintain a child.

(2) The Court in considering an application under subsection (1) shall have regard to the matters referred to in section 11.

Matters considered by the Court in making maintenance orders

11. The Court, in deciding whether to make a maintenance order and, if so, in what manner, shall have regard to all the circumstances of the case including the following matters—

- (a) the best interest of the child;
- (b) the income, earning capacity, property and other financial resources which each parent, custodian or guardian of the child has or is likely to have in the foreseeable future;
- (c) the financial needs, obligations and responsibilities which each parent, custodian or guardian of the child has or is likely to have in the foreseeable future;
- (d) the financial needs, obligations and responsibilities of the person who has accepted a child as a “child of the family” has or is likely to have in the foreseeable future;
- (e) the financial needs of the child and the standard of living of the child;
- (f) the income, earning capacity, property and other financial resources of the child;
- (g) any physical or mental disability of the child;

- (h) the manner in which the child was educated or trained and the manner in which the parents, custodian, guardian or the person who has accepted a child as a “child of the family” expected him or her to be educated or trained;
- (i) the standard of living enjoyed by the family while the parents and the child resided together, if applicable;
- (j) any non-monetary contributions made to the child’s care;
- (k) whether there are other children to be maintained by the applicant or the respondent;
- (l) the relationship between the parties to the application and the child for whose benefit the application is being made and the effect of that relationship on the child; and
- (m) any other matter that the Court considers just and equitable.

When step-parents have a duty to maintain a child

12. In making an order for a step-parent to pay maintenance the Court shall consider—

- (a) the matters referred to in section 11;
- (b) the length and circumstances of the marriage to, or relationship with, the parent of the child;
- (c) the relationship that has existed between the step-parent and the child;
- (d) the arrangements that have existed for the maintenance of the child;
- (e) the particular circumstances of the parent that does not have custody of the child; and
- (f) any special circumstances which, if not taken into account in the particular case, would result in injustice or undue hardship to any person.

Maintenance order for a child from 18 years or older but under 25 years

13. (1) A Court shall not make a child maintenance order in relation to a child that extends beyond the day on which the child will turn 25.

(2) A maintenance order stops being in force when the child turns 18 unless the order is expressed to continue in force after then.

(3) The Court may make a maintenance order in relation to a child who is 17, to take effect when or after the child turns 18.

(4) A Court shall not make a maintenance order in relation to a child who is 18 years or older but under 25 years unless the Court is satisfied that the provision of the maintenance is necessary—

- (a) to enable the child to complete his or her education; or

- (b) because of a mental or physical disability of the child.

Court may hear the evidence of a child

14. (1) Where the Court is requested to make an access order pertaining to a child who is 12 years of age or older and it appears necessary to the Court that it hears evidence from the child regarding his or her relationship with the parties in the matter, the Court shall adjourn the matter and hear the evidence of the child in chambers.

(2) It is a matter exclusively within the discretion of the Court to determine who may be in chambers during the taking of the child's evidence.

Court may engage with persons

15. (1) Where an application is made for maintenance, the Court may engage the Commissioner, government department or agency, family counsellor, family dispute resolution practitioner, a civic group or any person who in the opinion of the Court is capable of providing knowledge or expertise necessary to assist the Court in determining the matter.

(2) If it appears to the Court that the child's interests in the proceedings ought to be independently represented by a lawyer, the Court may—

- (a) order that the child's interests in the proceedings are to be independently represented by a lawyer; and
- (b) make such other orders as it considers necessary to secure that independent representation of the child's interests.

Court to be satisfied before making a maintenance order

16. (1) Before making a maintenance order the Court shall be satisfied that—

- (a) a child for whose benefit the application is being made is entitled pursuant to this Act to be maintained by the respondent; and
- (b) the respondent is able to maintain the child.

(2) Before making an order for access to a child, the Court shall be satisfied that the person in whose favour the order is to be made is entitled to have access to the child and that access to the child by that person would be in the best interest of the child.

Powers of the Court in making maintenance orders

17. (1) The Court may make a maintenance order—

- (a) that the respondent shall, for the benefit of a child, pay to a specified person periodic payments for a specified term;
- (b) which adopts or enforces a parenting agreement irrespective of whether that agreement was registered;
- (c) for the payment of expenses in respect of a child's birth and the prenatal care of the child's mother to be made by the father;

- (d) which includes payment for specified goods or services including but not limited to the provision of food, clothing, medical attention and medication, school attire, school fees, school texts, school stationery, child care services and insurance benefits;
 - (e) which includes access to the child;
 - (f) for a lump sum be paid or held in trust; and
 - (g) that allocates parental responsibility for a child including the provision of non-monetary maintenance and care of the child.
- (2) In proceedings for a maintenance order, a Court may do all or any of the following—
- (a) order payment of a lump sum, whether in one amount or by instalments;
 - (b) order payment of a weekly, monthly, yearly or other periodic amount;
 - (c) order that payment of an amount ordered to be paid be wholly or partly secured as the Court specifies;
 - (d) order that payment be made to the Commissioner, a specified person or into the Court; and
 - (e) make a permanent order, an interim order, an order pending the disposal of proceedings, an order for a fixed period, an order until a child attains a specified age or an order until further ordered.
- (3) An order made in accordance with subsections (1) and (2) does not prevent a Court from making a subsequent order in relation to the maintenance of the child.
- (4) In addition, a maintenance order may require the respondent to pay a specified lump sum to a specified person or to a specified person for the benefit of a specified child including a lump sum in respect of the expenses reasonably incurred in relation to or for that child before the maintenance order was made.
- (5) Unless the maintenance order specifies otherwise, all payments of money and all collection of money shall be facilitated by the Commissioner.

Additional Court orders

- 18.** (1) In addition to the powers under section 17, the Court, if it considers that it is necessary, may also order a person who has an obligation to maintain a child to—
- (a) attend family counselling, family dispute resolution sessions, substance abuse counselling, anger management counselling, financial management classes, life coaching classes;
 - (b) attend an appointment with the Commissioner; or
 - (c) participate in a course, programme or other service necessary for the benefit of the child or the wider family or both.

(2) The Commissioner shall assist the Court in facilitating any order made under subsection (1).

Methods of payment

19. Payments for maintenance shall be made by the respondent using the method specified by the Court, including payment to the specified person—

- (a) by an arrangement whereby one person gives his authority for payments to be made from an account of his, or on his behalf, to another person or to an account of that other person;
- (b) by cheque; or
- (c) in cash.

(2) The Court may make an Attachment Order in respect of any pension or income that is capable of being attached, directing the person paying the pension or income to periodically deduct a sum for maintenance and to pay that sum to the Collections Officer referred to in section 21.

(3) An Attachment Order made pursuant to subsection (2) must contain a penal notice notifying the person ordered to make the deduction and subsequent payment that he will be personally liable for the payment if he fails to make the deduction in compliance with the Attachment Order.

Financial disclosure

20. (1) A party whose financial information is necessary to determine an amount of maintenance, shall, on the request of the Magistrate present to the Magistrate any financial information and any person needed to give evidence of financial information may be summoned before the Magistrate.

(2) A person requested or summoned under subsection (1) who refuses to give the financial information requested or who gives false financial information commits an offence and is liable on summary conviction to a fine of five thousand dollars and a term of imprisonment of six months.

Referral of matters by the Magistrate to a Judge

21. Where a Magistrate, after reviewing the evidence, is of the view that the application for maintenance may be better handled before a Judge, the Magistrate may adjourn the proceedings and refer the file or an aspect of the file, to the Registrar for the direction or an order by a Judge.

Interim maintenance order

22. (1) Where the hearing of an application for a maintenance order or for the discharge, variation, extension or suspension of a maintenance order is adjourned for any period exceeding 7 days, the Court may make an interim maintenance order under this section.

(2) An interim maintenance order shall direct the respondent or the applicant to do anything in relation to maintenance in accordance with under section 17 or 18 until the final

determination of the case, but any interim maintenance order shall not remain in operation for more than 6 months from the date on which it was made.

(3) An interim maintenance order under this section may be enforced, varied, extended or discharged in the same manner as if it was a final maintenance order of the Court and proceedings for the enforcement of any such interim maintenance order may be taken immediately after default has been made in payment of any periodical sum.

(4) An interim maintenance order made under this section shall be treated as if it were a maintenance order and the same form may be used for an interim maintenance order and a final maintenance order.

Variation, suspension, discharge or revival of maintenance orders

23. (1) The Court may vary, suspend or discharge a maintenance order or revive a suspended maintenance order in such a manner as the Court thinks fit on application by—

- (a) any of the parties to the proceedings in which the maintenance order was made;
- (b) any person having actual custody of a child; or
- (c) the Commissioner.

(2) Where on an application under this section for the variation or discharge of a maintenance order for the making of periodical payments, the Court varies the payments required to be made under that maintenance order, the Court may provide that the payments as so varied shall be made from the date as the Court may specify, not being earlier than the date of the making of the application.

(3) The power of the Court to vary or discharge a maintenance order for the making of periodic payments includes the power to make a maintenance order for the payment of a lump sum.

(4) Where a maintenance order is made for the payment of a lump sum by instalments the Court may, on application made either by the person liable to pay or the person entitled to receive the sum, vary that maintenance order by varying the number and date on which an instalment is payable.

(5) Where the Court makes a maintenance order any previous maintenance orders for the same child made by the same Court shall cease to have effect.

(6) On an application for the enforcement, variation, revocation, discharge or revival of a maintenance order, the Court may only waive the obligation to pay part of any amount due under the maintenance order.

(7) Where a Court revives a suspended order then the reasons for the suspension and the revival and the date of the revival shall be noted on the maintenance order.

Duration of a maintenance order

24. (1) A maintenance order shall not, except for the purpose of recovering money previously due under the maintenance order, be of any force or validity where the—

- (a) child has died;
- (b) child has married;
- (c) child has attained an age specified in the order;
- (d) child ceases to have the disability;
- (e) child has completed their education; or
- (f) the period specified in the order has ended.

(2) Where there is money due and payable under a maintenance order, the child or the Commissioner may bring a claim for the payment of the outstanding sums up to 12 years after the maintenance order ended in accordance with subsection (1).

(3) Where a claim under subsection (2) is made, the child or the Commissioner may indicate how the sums should be disbursed including a disbursement to the Commissioner for any funds issued by his department for the maintenance of the child but the decision about disbursement remains with the Court.

(4) A person who was entitled to receive maintenance for a child under a maintenance order but did not receive some or all of the sums ordered to be paid may approach the Commissioner to make an application under subsection (2).

(5) The enforcement and repayment procedures under Part 4 apply to a claim under subsection (2).

(6) Where a maintenance order also deals with access to the child, the provisions pertaining to access shall not remain in force when the child turns 18 years.

Costs and fees

25. (1) The Court in making a maintenance order may also order that a party pay legal costs or Court fees or both in such amount as the Court may determine.

(2) The Minister may from time to time charge an application fee but the payment of the fee shall not be applicable to a child over 14 years but under 18 years.

(3) This section does not apply to the Commissioner.

Depletion of property

26. The High Court may, on application, make an interim or final order restraining the depletion of a person's property that would impair or defeat the making of a maintenance order.

PART 3

ROLE OF THE COMMISSIONER, PARENTING AGREEMENTS, MEDIATION

The Commissioner and the Court

27. (1) The Commissioner is responsible for assisting the Court in fulfilling its functions in ensuring that the best interest of the child is fostered, developed and protected.

(2) The Commissioner is responsible for overseeing and facilitating the development of parenting agreements.

(3) The Court may, before exercising a power, seek the advice of the Commissioner as to the services appropriate to satisfy the needs of the parties to an application for maintenance and the child and the most appropriate provider of those services.

(4) During maintenance proceedings, the Court may make an order directing one or more parties to the proceedings to—

- (a) attend an appointment with the Commissioner;
- (b) arrange for a child to attend an appointment with the Commissioner.

Commissioner facilitating a parenting agreement

28. (1) A person who has an obligation to maintain a child may approach the Commissioner for directions relating to the development of a parenting agreement.

(2) The following persons may also approach the Commissioner to facilitate the development of a parenting agreement relating to the maintenance of a child—

- (a) a child who is 14 years or more;
- (b) the grandparent of the child; or
- (c) the person who has accepted a child as a “child of the family”.

(3) The Commissioner may, of his own initiative, facilitate the development of a parenting agreement relating to the maintenance of a child.

(4) A person may approach the Commissioner under this section without making an application to the Court for maintenance.

(5) Any parenting agreement entered into under this section may be registered in accordance with section 32.

Application of parenting agreement

29. (1) A parenting agreement applies in proceedings under this Act if the care, welfare and development relates to a child who is under the age of 18 years.

(2) The application form for a maintenance order may be used to apply for a parenting agreement.

Parents encouraged to enter into a parenting agreement

- 30.** The parents of a child are encouraged—
- (a) to agree about matters concerning the child;
 - (b) to take responsibility for their parenting arrangements and for resolving parental conflict;
 - (c) to use the legal system as a last resort rather than a first resort;
 - (d) to minimise the possibility of present and future conflict by using or reaching a parenting agreement; and
 - (e) in reaching their parenting agreement, to regard the best interests of the child as the paramount consideration.

Parenting agreement

31. (1) A parenting agreement is a plan that is entered into with the assistance of a certified mediator and is—

- (a) in writing between—
 - (i) the parents,
 - (ii) the guardians,
 - (iii) those who have custody, or
 - (iv) any combination of the above;
 - (b) signed and dated by the persons named in paragraph (a); and
 - (c) witnessed by at least one of the following persons—
 - (i) a certified mediator, or
 - (ii) the Commissioner.
- (2) A parenting agreement may deal with any of the following—
- (a) the person with whom a child is to live;
 - (b) the time a child is to spend with a parent or another person;
 - (c) the allocation of parental responsibility for a child;
 - (d) where 2 or more persons are to share parental responsibility for a child, the form of consultations those persons are to have with one another about decisions to be made in the exercise of that responsibility;
 - (e) the communication a child is to have with another person or other persons;

- (f) maintenance of a child including the payment for specified goods or services such as the provision of food, clothing, medical attention and medication, school attire, school fees, school texts, school stationery, child care services, insurance benefits and other relevant maintenance matters;
- (g) the payment of expenses in respect of a child's birth and the prenatal care of the child's mother to be made by the father;
- (h) the process to be used for resolving disputes about the terms or operation of the agreement;
- (i) the process to be used for changing the agreement to take account of the changing needs or circumstances of the child or the parties to the agreement; and
- (j) any other aspect of the care, welfare or development of the child or any other aspect of parental responsibility for a child.

(3) A parenting agreement may provide for the payment of monies reasonably incurred in relation to the maintenance of the child before the parenting agreement is made.

(4) A parenting agreement may only be varied or revoked by agreement in writing between the parties to the parenting agreement and witnessed by a person named under subsection (1)(c).

(5) A parenting agreement is invalid unless it is made free from any threat, duress or coercion.

(6) The Commissioner may refer a matter to the Court for a maintenance order where the parties are unable within a reasonable time to enter into a parenting agreement.

Registration of parenting agreement

32. (1) The Commissioner shall register a parenting agreement where—

- (a) both parties agree that it should be registered; or
- (b) the Commissioner believes that one or both parties behaved unreasonably by breaching the terms of the parenting agreement and that the matter is such that the best interest of the child would be compromised if the parenting agreement is not registered.

(2) A parenting agreement that is registered is deemed to be a maintenance order.

Certified mediator for maintenance of children matters

33. (1) A certified mediator is a person whose name appears on the list of mediators as determined by the Eastern Caribbean Supreme Court.

(2) Notwithstanding subsection (1), for the purposes of mediating maintenance of children matters, the Commissioner and a social worker working in the Department of Social Development are certified mediators.

Mediation

34. (1) The purpose of mediation is for the certified mediator to assist parties who apply for maintenance of a child to resolve any parenting issues and to develop a parenting agreement.

(2) Where parties who were referred by the Court to attend mediation—

- (a) enter into a parenting agreement, the certified mediator shall immediately file a copy of that parenting agreement with the Court copied to the Commissioner;
- (b) do not reach a parenting agreement, the certified mediator shall immediately refer the matter back to the Court for a maintenance order and inform the Commissioner.

(3) Where mediation is facilitated by the Commissioner the certified mediator shall file a report of the mediation with the Commissioner and attach any resulting parenting agreement.

(4) A certified mediator who fails without reasonable excuse to file a parenting agreement with the Court or the Commissioner commits an offence and is liable on summary conviction to a fine of \$200.

(5) The Commissioner shall, from time to time, report to the Court and the Minister about the conduct of mediation.

Assignment of work to a certified mediator for maintenance of children matters

35. When an application has been received for the maintenance of a child, the Commissioner may—

- (a) assign a social worker to act as a mediator for a file;
- (b) on the request of the applicant, coordinate the assignment of a matter to a certified mediator working in the private sector; or
- (c) based on his own initiative, coordinate the assignment of a matter to a certified mediator working in the private sector.

Maintenance of list of certified mediators

36. (1) The Commissioner shall maintain in an electronic format a list of certified mediators.

(2) The list shall show the first and last name, date of birth, the identification of the other profession of the certified mediator, their professional address and academic title.

Confidentiality

37. (1) A certified mediator is obliged to secrecy about the facts which he has become aware of in the course of the mediation or which have otherwise become known to him.

(2) A certified mediator shall deal with documents attained in the course of the mediation in a confidential manner.

(3) Subsections (1) and (2) apply to the supporting staff of a certified mediator as well as to persons who act for the mediator under his direction in the course of mediation.

(4) A person who breaches this section commits an offence and is liable on summary conviction to a fine of \$5,000.

Fees regarding certified mediators

38. (1) Certified mediators who are not public officers working as social workers may charge fees for their services.

(2) The Commissioner and social workers working in the Department of Social Development shall not charge fees for providing mediation services in accordance with this Act.

Delegation by the Commissioner

39. The Commissioner may delegate administrative duties under this Act to members of his department as he sees fit.

PART 4

ENFORCEMENT AND PAYMENT

Designation of Collections Officer

40. (1) The Commissioner shall designate a member of his staff to be the Collections Officer for maintenance files.

(2) The Collections Officer shall be responsible for making a record of all payments directed to be collected and paid by the Commissioner or the Court.

(3) The respondent shall be responsible for ensuring that payment is made at the Department of Social Development during regular office hours and must sign a receipt in the presence of the Collections Officer, who shall then pay out the amount.

Breach of maintenance order

41. (1) Where the respondent has breached a maintenance order without providing a reasonable explanation for the breach or neglects or refuses to provide a reasonable explanation for the breach, the Court may in writing—

- (a) inform the Commissioner of Inland Revenue or any relevant permanent secretary of the breach; and
- (b) order that the respondent, from the date of the order, be denied a Certificate of Good Standing or any licence, permit or benefit issued or offered by Government until the Court is satisfied that the respondent is abiding by the non-monetary terms of the maintenance order and—
 - (i) full payment of the outstanding sum has been made, or
 - (ii) that satisfactory arrangements have been made by the respondent to pay the outstanding sums and at least part payment has been made.

Persistent breach of maintenance order

42. (1) It is a matter for the Court to determine, based on arguments presented by the applicant, the child who is 14 years and over and on whose behalf the maintenance order was made or the Commissioner, whether the respondent is persistently in breach of a maintenance order.

(2) Where the respondent is persistently in breach of a maintenance order and where monies ordered under a maintenance order to be paid is 14 clear days in arrears, the Court may on the application of the—

- (a) person to whom payment is ordered to be made;
- (b) Commissioner; or
- (c) child who is 14 years and over and on whose behalf the maintenance order was made;

issue a warrant in the form prescribed ordering the liable person to be brought before the Court to explain the reason for the arrears.

(2) The Court may—

- (a) order the immediate payment of the sums due including the costs in relation to service of the warrant; and
- (b) vary the maintenance order.

(3) Where the liable person further neglects or refuses without reasonable cause to pay the sum due under the maintenance order and the costs in relation to the warrant, the Court may commit the person to prison, including the option of intermittent prison custody, for a period not exceeding 3 months.

(4) Where on the date of sentencing or at any time during custody in prison, full payment of the maintenance order and the cost in relation to the warrant is made, the Court shall extinguish the remaining sentence and shall immediately order the release of the liable person from prison.

(5) Where an application for the enforcement of the payment under a maintenance order is made and no warrant of commitment to prison is issued, the application may be renewed on the ground that the circumstances of the respondent have changed but any payment made shall not relate to an amount waived.

(6) Where an amount under a maintenance order is payable to a person other than the Commissioner, a warrant shall not be issued unless the person has sworn or affirmed to the fact of non-payment.

(7) Where a person is committed to prison for breach of a maintenance order the committal shall not operate to discharge the liability of the person to pay the sum for which he is so committed, but at any subsequent hearing relating to the enforcement, revocation, revival, variation or discharge of the order, the Court may waive the obligation to pay part of the amount due under the order.

(8) Section 90 of the Magistrate's Code of Procedure Act or the equivalent section limiting to 6 months the time within which summary proceedings are to be taken shall not apply to proceedings for enforcing a maintenance order.

Intermittent custody

43. (1) The Court may, when passing a sentence of imprisonment specify—

- (a) periods during which the offender is to be released temporarily on licence until he has served the term of imprisonment; or
- (b) the number of days that the offender must serve in prison under the sentence before being released on licence for the remainder of the term.

(2) If a person who has been temporarily released under subsection (1) without reasonable explanation remains at large after the expiry of the period for which he was temporarily released that person commits an offence and is liable on summary conviction to a fine of \$3,000 or to imprisonment for 3 months or to both.

Repayment of money by biological parent

44. (1) Where a man has paid money to the mother of a child for maintenance and at the time of payment he believed that he was the biological father of the child but subsequent evidence proves that he is not the biological father of the child the Court may order the mother to repay a reasonable portion of the money paid.

(2) Where a person has maintained a child as a "child of the family" or as the custodian or guardian of the child and the biological parent has assumed custody of the child then the Court may order the biological parent to repay a reasonable portion of the maintenance money.

(3) Notwithstanding subsections (1) and (2), the Court shall not make an order for payment by the biological parent if—

- (a) the order would result in the biological parent being unable to maintain the child or their family; or
- (b) the financial resources of the applicant is such that he was able to afford to maintain the child and is not in financial jeopardy.

(4) Where a person has maintained a child as a "child of the family" or as the custodian or guardian of the child and it is demonstrated that the biological parent has the financial resources to maintain that child the Court may order the biological parent to—

- (a) repay a reasonable portion of the amount paid towards of the maintenance money;
- (b) financially maintain the child; or
- (c) do both (a) and (b).

Contempt of Court

45. (1) The Court has jurisdiction under this section to find a person guilty of contempt of Court if that person—

- (a) breaches any term of a maintenance order, a registered parenting agreement or any other order or direction of the Court
 - (b) having been summoned by the Court refuses or neglects without sufficient cause to attend;
 - (c) being examined as a witness or being present in Court and required to give evidence, the person refuses to be sworn or to answer any lawful question or, without sufficient excuse, to produce any documents or things that the person has been or is required to produce;
 - (d) immediately prior to, during or within a reasonable time after Court proceedings wilfully insults the Magistrate, the Judge, the Commissioner, a certified mediator, any witness or any other officer of the Court; or
 - (e) wilfully interrupts the proceedings of the Court or otherwise misbehaves in Court.
- (2) Where the Court finds that a person is in contempt of Court, the Court may—
- (a) order a police officer to arrest the offender and bring him before the Court;
 - (b) issue a warrant for the arrest of the offender and bring him before the Court; or
 - (c) where the issue of contempt occurs in the precincts of the Court, proceed to deal with the matter immediately.
- (3) When a person is before the Court for the offence of contempt of Court, the Court shall cause the person to be informed of the contempt with which the person is charged and provide that person with an opportunity to be heard.
- (4) Where the Court finds that a person is guilty of contempt of Court, the Court may order that the person be sentenced to a fine not exceeding \$2,000 or to a term of imprisonment not exceeding one month or to both.
- (5) If a person found guilty of contempt of Court is ordered to be imprisoned and that person makes an apology to the Court and the Court accepts that apology then the Court shall—
- (a) order the discharge of the person before the end of the term; or
 - (b) reduce the term of imprisonment as the Court sees fit.
- (6) To avoid doubt, a finding of guilty of contempt of Court does not suspend, terminate or in any other way interfere with a maintenance order or any other order made by the Court.

False statements

46. (1) A person shall not submit false information in support of any application made pursuant to this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$1,000 or to one week imprisonment or to both.

(3) Where on hearing an application the Court determines that any information submitted in support of an application or order is false, the Court may—

- (a) dismiss the application; or
- (b) order a person to resubmit the information with supporting documentation.

Change of address or employment of liable person

47. (1) A person who is under an obligation to make periodic payments under a maintenance order shall give notice of any change of address to the applicant and the Commissioner.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$500.

PART 5 MISCELLANEOUS

Payments under maintenance orders to be kept separate

48. The Commissioner shall ensure that the amounts received under maintenance orders are kept separate from any other amounts under the control of the Commissioner or in the Consolidated Fund.

Unclaimed amounts

49. (1) The Collections Officer shall forward any amounts received under the Act which remain unclaimed after 6 months of their receipt together with a copy of the relevant accounting records and deposit voucher to the Accountant-General.

(2) A person who is entitled to receive an amount under a maintenance order that has been forwarded under sub-section (1) may claim that amount by making a request to the Collections Officer.

(3) On receipt of a request under subsection (2), the Collections Officer shall issue a voucher headed "Unclaimed Amount", setting out the particulars of the unclaimed amount and forward to the Accountant General.

(4) Every year the Commissioner shall publish a list of any unclaimed amounts that have remained unclaimed for one year.

Electronic documents

50. (1) Where a written document, record or information is required under this Act that requirement may be met by information in electronic form.

(2) A legal requirement under this Act that a person provides information in a prescribed paper format or other non-electronic form to another person is satisfied by providing the information in an electronic form that—

- (a) contains the same or substantially the same information as the prescribed paper format or other non-electronic form;
- (b) is accessible to the other person so as to be usable or retrievable for subsequent reference; and
- (c) is capable of being retained.

Electronic links

51. (1) The Court may, for the purposes of any proceedings, direct or allow a person to make a submission to the Court by way of video link, audio link, email or any other appropriate technological means.

(2) The Court shall only exercise the power under subsection (1) if it is satisfied—

- (a) of the standard of transmission; and
- (b) the quality of communication and the security of the electronic link; and

in relation to video link the parties must be able to clearly see and hear each other and in relation to audio link the parties must be able to clearly hear each other.

(3) The power conferred on the court under subsection (1) may be exercised on the application of a party to the proceedings concerned or on the court's own initiative.

(4) Any testimony done in accordance with subsection (1) must be given on oath or affirmation unless the Court is satisfied that it is appropriate for the testimony to be given otherwise than on oath or affirmation.

(5) Where the testimony is given otherwise than on oath or affirmation, the Court shall give the testimony such weight as the Court thinks fit in the circumstances.

Registering of parenting agreements and maintenance orders

52. (1) The Court shall maintain a manual or electronic system or both for filing and tracking of maintenance orders including parenting agreements that have been registered.

(2) The Commissioner shall maintain a manual or electronic system or both for the filing and tracking of maintenance orders and parenting agreements.

Closed Court hearings

53. (1) Unless the Court otherwise orders, the hearing of an application made under this Act shall be in closed Court.

(2) A person shall not publish, whether by newspaper, or by radio or television or social media or electronic means or otherwise, the name of or any particulars relating to the identity of any person by, or in relation to, whom proceedings are taken under this Act without the authority of the Court before which such proceedings are taken.

(3) A person who contravenes subsection (2) commits an offence and is liable on summary conviction, to a fine not exceeding \$3,000 or to a term of 3 months imprisonment or to both.

Regulations

54. (1) The Minister may make Regulations for giving effect to any of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), the Minister may make regulations—

- (a) providing for all forms;
- (b) providing for all Rules required to be made under the Act;
- (c) providing for the service of all notices, forms or other documents;
- (d) prescribing matters required or permitted to be prescribed by this Act;
- (e) providing for matters as may be—
 - (i) contemplated by or necessary for giving full effect to this Act and for its administration, or
 - (ii) incidental to or consequential upon any provision of this Act;
- (f) providing for fees and penalties; and
- (g) guiding the selection of lawyer and the payment of legal fees when a lawyer is requested by the Court to independently represent a child.

(3) The Judicial Officer or the Commissioner may make minor adjustments to all forms to meet the justice of the case.

Repeal and transitional provisions

55. (1) Sections: 138, 139, 140, 141, 144, 145, 146 in the Magistrate's Code of Procedure Act, are repealed.

(2) An application made under the enactment repealed by this Act and pending immediately before the commencement of this Act shall be continued to conclusion as if the written law under which it was brought had not been repealed.

Consequential amendments

56. (1) The Maintenance of Children Act, is amended by repealing and replacing its name as follows, "Maintenance of Children (Parents about to leave the Jurisdiction) Act.

(2) The Maintenance Orders (Collection) Act, is amended in section 1(a) by inserting the following sub-paragraph—

“(iia) the Maintenance of Children Act.”

(3) Section 5 of the Inland Revenue Act is amended by inserting after subsection (3) the following subsection—

“(3A) The Commissioner of Inland Revenue shall assist the Court in the enforcement of Maintenance Orders and in this regard the Commissioner shall withhold a Certificate of Good Standing, licence, permit or benefit issued or offered by Government in accordance with the instructions of the Court.”

Commencement

57. This Act comes into force on a day the Minister appoints by notice published in the *Gazette*.

Citation

58. This Act may be cited as the Maintenance of Children Act, 2019.



Terry T. C. Harrigan

Speaker

Passed by the House of Assembly this 12th day of February, 2019



Lenox J. Proctor

Clerk of the House of Assembly

Clause 15 makes provision who the Court may engage in determining the matter of maintenance of a child.

Clause 16 provides that the Court to be satisfied in whose favour the order is to made before making a maintenance order

Clause 17 provides powers of the Court in making maintenance orders.

Clause 18 provides for additional Court order for attending counselling, financial management classes or life coaching classes or participate in any other service necessary for the benefit of a child or the wider family or both.

Clause 19 provides for the methods of payment.

Clause 20 provides for financial disclosure. Refusing to give financial information when requested to do so is an offence.

Clause 21 provides for referral of matters by the Magistrate to a Judge in the matter of maintenance.

Clause 22 makes provision for interim maintenance order which shall not remain in operation for more than 6 months from the date on which it was made.

Clause 23 makes provision for variation, suspension, discharge or revival of maintenance orders.

Clause 24 provides for the duration of a maintenance order.

Clause 25 makes provision for costs and fees.

Clause 26 provides that the High Court may on application make an interim or final order restraining the depletion of a person's proper that would impair or defeat the making of a maintenance order.

Part III, Clauses 27 to 39, provides for the Role of the Commissioner, Parenting Agreements and Mediation.

Part IV, Clauses 21 to 27 contains provisions dealing with enforcement and payment. Clause 40 deals with the designation of collections officers. Clause 41 provides for the breach of maintenance order. Clause 42 deals with persistent breach of maintenance order. Clause 43 allows the Magistrate to order intermittent sentencing under the Ordinance. Clause 44 provides for the repayment of money by biological parent if it proven that the man is not the biological father of the child. Clause 45 sets out where a person may be guilty of contempt of Court. Clause 46 states that a person who submit false information commits an offence. Clause 47 states that any person who is under an obligation to make periodic payments under a maintenance order and did not notify the Commissioner of any change of address, commits an offence.

Part VI, Clauses 48 to 58, contains miscellaneous provisions relating to payments under maintenance orders to be kept separate, unclaimed amounts, electronic documents and links, registering of parenting agreements and maintenance orders, Closed Court hearings, the