ANGUILLA

REVISED STATUTES OF ANGUILLA

CHAPTER C34

CHILD PROTECTION ACT

Showing the Law as at 31 December 2022

This Edition was prepared under the authority of the Revised Statutes and Regulations Act, R.S.A. c. R55 by the Attorney General as Law Revision Commissioner.

This Edition revises Act 6/2019, in force 15 February 2019

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CHILD PROTECTION ACT

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CHILD PROTECTION ACT

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—

(i) the 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;

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(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 a child is persuaded, coerced or forced into sexual activity in exchange for, amongst other things, money, drugs or alcohol, gifts, affection, status or any other type of reward or gratification, and is a form of harm to a child;

"Commissioner" means the Commissioner of the Department of Social Development;

"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;

"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

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(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;

that the parent of a child has in relation to that child, by virtue of any law in force in Anguilla;

"permanency plan" means a plan referred to in section 84 that makes provision with respect to permanency planning;

"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;

"police officer" means a member of the Royal Anguilla Police Force;

"Protocol" means the protocol from time to time approved by the Minister under section 11, and includes any amendments to the protocol from time to time approved by the Minister;

"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;

"Safeguarding Board" means the Child Safeguarding Board for Anguilla established by section 21;

"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 20 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

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(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 child's 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;

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(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 shall 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 they relate 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;

(f) education; and

(g) play and leisure.

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(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;

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(c) adopt a multi-disciplinary approach utilising 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, 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 15 February 2019 is 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 and to take the necessary action to enforce their 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;

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(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—

(a) to guide how Government departments and agencies are to work together to prevent, report and manage harm to children; and

(b) otherwise for the purposes of the Act and 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 the Regulations.

(2) The Commissioner shall review these procedures—

(a) as often as necessary; and

(b) at least annually.

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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 the child 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;

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(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 his functions pursuant to this Act to a staff member of the Department or to any other person.

Support provided

17. (1) In the administration of this Act, every effort shall be made to ensure that when disclosures of harm are made by children they are immediately provided with the necessary counselling, medical, legal and other 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, disability (if any), 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 whenever possible by a health care provider with expertise in the area of detecting and diagnosing harm.

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 of 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.

(3) The Department shall create protocols or procedures for the access and sharing of information for the administration of this Act.

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Protected Health Information

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

PART 3

CHILD SAFEGUARDING BOARD

Safeguarding Board

21. (1) There is established a Child Safeguarding Board for Anguilla.

(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

(f) 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.

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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) reviewing 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) monitoring the effectiveness of practices and actions carried out to safeguard children by each Government department represented on the Board and the Police Force;

(c) assessing risk to children and the public posed by offenders;

(d) making recommendations to the Criminal Justice Committee;

(e) ensuring that appropriate partners are continuously engaged in working group meetings, activities and information-sharing in keeping with the Inter Agency Child Protection Protocol;

(f) making policy recommendations and providing policy advice;

(g) participating in the planning of services for children required under this Act or any other enactment;

(h) educating the public on, and increasing public awareness of, the need to safeguard and promote the welfare of children;

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(i) providing 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 subsection (1)(a) includes reviewing the Protocol and the Case Management Procedures, if requested to do so by the Minister or the Commissioner.

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 the child (and has not ceased to have it) in accordance with 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 affects 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 the person 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.

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(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 does 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 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. 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 a parental responsibility agreement providing for him to have parental responsibility for the child; or

(c) the Court, on application by the father, 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.

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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 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 with a parent and a child for any assistance under subsection (2), 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.

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

(a) without delay, report or cause to be reported, the circumstances to the Commissioner; and

(b) 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 of $5,000 or to imprisonment for three months.

(5) In this section, a "person who performs professional or official duties or services with respect to a child" includes—

(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; and

(e) any other person who by virtue of his employment or occupation has responsibility to discharge a duty of care towards a child.

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;

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(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) relates.

(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) does 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.

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(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 any information under subsection (4) to the Commissioner;

(b) to allow the Commissioner access to a person, place or record; or

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(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 of $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.

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(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 well-being 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.

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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

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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 for 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 in a 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 for the child in a child care service.

(3) The Commissioner or child care service, having the care responsibility for the child, may delegate that responsibility to a relative of the child or 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 child care 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;

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(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 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.

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(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 of a party to the application, if a care application has been made in respect of the child, make an order for—

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

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(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 language and in 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 49(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.

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(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 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 a 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 to 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 that it considers appropriate for the welfare, safety, and well-being of the child in proceedings before it, pending the conclusion of the proceedings.

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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 for 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 ("a supervision order").

(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,

(ii) the child being beyond parental control,

(iii) the child being 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 having been harmed or being at risk of significant harm as a result of child sexual exploitation and being 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

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(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 for 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 90 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 is—

(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 the problem or ameliorate the situation 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 child care 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) where 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 child care 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 child care service shall be encouraged unless it is not in the best interests of the child.

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(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. (1) 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.

(2) Before making an application under subsection (1), 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

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(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,

(ii) the parent of the child,

(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, and 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 application by 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.

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(3) Notwithstanding subsection (2), the Court may, on its own motion or on an application 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 describe 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.

(3) If the Court finds that the supervision 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, and

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(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 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) Where 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.

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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 as may be specified in the undertaking and expires on or before the day on which the child attains the age of eighteen years.

(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 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 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;

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(b) the person or child care service is given an opportunity to appear and be heard by the Court before it 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 in accordance with the terms specified in the order; or

(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 it 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;

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(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 subsection (1)(a) shall not prevent more frequent contact with a child with the consent of a person having parental responsibility for the child.

(3) An order referred to in 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.

(4) 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.

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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 the problem or ameliorate the situation 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.

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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.

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(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) An applicant shall notify the Commissioner of his application, and the Commissioner shall be entitled to be a party to the application where—

(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.

(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;

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(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 well-being 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 does not apply to the relative.

(3) Foster care placements shall be made in accordance with any regulations prescribed.

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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 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—

(a) the parent is able to provide adequate care to meet the basic needs of the child;

(b) the child can be reunited with his family; or

(c) 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 8 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 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 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 secure accommodation unless it appears—

(a) that—

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

(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

shall not be kept in secure accommodation for a period of more than 72 hours.

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(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 only make the order applied for 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.

(7) In this section, "secure accommodation" means accommodation provided for the purpose of restricting liberty.

Contact with parents and relatives

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

(a) with the parent or relatives of the child in the approved child care service; and

(b) between the child and the parent or relatives of the child;

except by virtue of an order under section 82(1)(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.

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(3) A person who contravenes subsection (2) commits an offence and is liable on conviction to a fine of $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 commits 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.

(3) A person who commits an offence under this section is liable on summary conviction to imprisonment for a term of six months, or to a fine of $10,000, or to both.

(4) In this section and section 98, "responsible person" means any person who for the time being has care of the child by virtue of a care order or an emergency protection order, or the designated officer, as the case may be.

Recovery of abducted children etc.

98. (1) Where it appears to the Court that there is reason to believe that a child referred to in section 97(2)—

(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

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(c) is missing;

the Court may make a a recovery order under this section in relation to that child.

(2) 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; or

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

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

(a) a person who has parental responsibility for the child, including by virtue of a care order or emergency protection order; or

(b) where the child is in police protection, the designated officer.

(4) 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.

(5) In this section, section 99 and section 100—

"authorised person" means—

(a) any person specified by the Court;

(b) any police officer;

(c) any person who is authorised—

(i) after a 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 the recovery order; and

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

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Provisions respecting recovery orders

99. (1) Premises may only be specified under subsection 98(2)(d) if it appears to the Court that there are reasonable grounds for believing the child to be on them.

(2) Where a person is an authorised person, as defined in section 98(5)—

(a) the authorisation shall identify the recovery order; and

(b) any person claiming to be an authorised person shall, if asked to do so, produce some duly authenticated document showing that he is so authorised.

(3) No person is excused from complying with a request made under section 98(2)(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.

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

Obstructing an authorised person

100. (1) A person commits an offence if he intentionally obstructs an authorised person exercising the power under section 98(2)(b) to remove a child.

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

Absconding from approved child care service

101. (1) Where a child is discovered missing from an approved child care service in 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, the person in charge of the child shall immediately make a report to the Commissioner.

(2) Where a child 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, the child 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.

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(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

102. (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) remains 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

103. (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

104. 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 four clear days from the date of filing of the application.

Evidence

105. 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

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(iii) an interim plan of care for the child.

Child need not be present

106. 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

107. 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 delegate 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

108. 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

109. 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

110. 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.

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Video Recorded Evidence

111. 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 be played in the proceedings *in lieu* of the child giving evidence in person.

PART 13

MISCELLANEOUS[1]

Child from outside Anguilla

112. Where a child protection agency, recognised 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

113. 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 Anguilla as if it had been made pursuant to this Act.

Child harm registry

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

Appeals

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

[1] The Child Protection Act, 2019 included a transitional provision in section 117 providing that this Act applies where an order made in respect of a child before 15 February 2019 under an Act referred to in the Schedule to the Act is brought before the Court for review. Section 117 also provided for the continuation under the Child Protection Act of an application for an order under an Act referred to in the Schedule to the Child Protection Act 2019 and the continuation of a hearing adjourned under such an Act, unless the Court otherwise orders. Section 117 was omitted from the 2022 Revision of the Act.

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(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

116. 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 101;

(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 his residence;

(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;

commits an offence and is liable upon summary conviction to a fine of $5,000.

Regulations

117. (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, and the disclosure of information obtained in the administration of this Act;

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(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 well-being 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.

Citation

118. This Act may be cited as the Child Protection Act, Revised Statutes of Anguilla, Chapter C34.

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