

---

**CHILDREN ACT 2009**
**Principal Act**

<b>Act. No. 2009-24</b>	<i>Commencement except s.8 (LN.2010/004)</i>	14.1.2010
	<i>Assent</i>	6.7.2009

Amending enactments	Relevant current provisions	Commencement date
Act. 2010-25	ss. 2, 3(1), (7) & (11), 4(4)(b), 52(2) & (4), 99(11), 142, 147(6), 148(1), (2)(a), (7) & (8), 157(2)(d), (f), (g), (h), (i) & (j), & 158(12) & (13)	11.11.2010
“	ss. 93A–93P & Sch.	18.4.2013 <sup>1</sup>
2014-10	ss. 2, 14(1), 16(4A), 27(5)(aa), 49(6)(c), 60(2) & 63(2)	28.3.2014

**English sources:**

Children Act 1989 (1989 Chapter 41).

**EU Legislation/International Agreements involved:**

Council Regulation (EC) No. 2201/2003

*Convention on jurisdiction, applicable law, recognition, enforcement and co-operation in respect of parental responsibility and measures for the protection of children, signed at the Hague on the 19th day of October, 1996.*

---

<sup>1</sup> *Commencement notice see LN. 2013/067*

**ARRANGEMENT OF SECTIONS****PART I***Preliminary***Section.**

1. Title and commencement.
2. Interpretation.

**PART II***Jurisdiction of courts and pre-hearing procedure*

3. Jurisdiction of courts.
4. Paramount consideration for court.
5. Pre-hearing information and Family Support Courses.
6. Duty of the court before the first hearing.
7. The first hearing in the court.
8. **Legal assistance.**
9. Post-settlement follow-up.

**PART III***Parental rights and responsibilities*

10. Equality of parental rights.
11. Parental responsibility for children.
12. Parental responsibility: Meaning.
13. Parental responsibility of the father who was not married.
14. Parental responsibility of step-parent.

**PART IV***Guardianship*

15. Procedure for appointment of guardians and special guardians.
16. Revocation and disclaimer of guardians.
17. Welfare reports.

*Special guardianship*

18. Special guardianship orders.
19. Special guardianship orders: making.
20. Special guardianship orders: effect.
21. Variation and discharge of special guardianship orders.
22. Supplementary provisions for making, varying or discharging special guardianship orders.
23. Special guardianship support services.

24. Representations with respect to special guardianship support services.

#### **PART V**

##### *Orders with respect to children in family proceedings*

25. Residence, contact and other orders with respect to children.
26. Restrictions on making orders under section 25.
27. Power of court to make orders under section 25.
28. General principles and supplementary provisions.
29. Residence orders and parental responsibility.
30. Change of child's name or removal from jurisdiction.
31. Enforcement of residence orders.

#### **PART VI**

##### *Contact with children*

32. Contact activity directions.
33. Contact activity conditions.
34. Contact activity directions and conditions: making.
35. Contact activity directions and conditions: financial assistance.
36. Contact activity directions and conditions: monitoring.
37. Monitoring contact.
38. Contact orders: warning notices, enforcement and parental alienation.
39. Other enforcement orders.
40. Enforcement orders: making.
41. Enforcement orders: monitoring.
42. Enforcement orders: warning notices.
43. Power to revoke an enforcement order.
44. Amendment of hours specified under unpaid work requirement.
45. Warning and report following breach.
46. Breach of an enforcement order.
47. Compensation for financial loss.

#### **PART VII**

##### *Financial provisions for children*

48. Orders for financial relief against parents.
49. Orders for financial relief for persons over eighteen.
50. Duration of orders for financial relief.
51. Matters to which the court is to have regard in making orders for financial relief.
52. Provisions relating to lump sums.
53. Variation etc. of orders for periodical payments.
54. Variation of orders for secured periodical payments after death of parent.

- 55. Financial relief under other enactments
- 56. Interim orders.
- 57. Alteration of maintenance agreements.
- 58. Change of address and enforcement of orders for payment of money.
- 59. Financial provision for child resident in country outside Gibraltar.
- 60. Care Agency contribution to child's maintenance.
- 61. Family assistance orders.
- 62. Risk Assessment order.
- 63. Interpretations for Part V.

### **PART VIII**

#### *Protection of children: General*

- 64. Care and supervision orders.
- 65. Care orders: care plans.
- 66. Period within which application for order under this Part must be disposed of.

#### *Care orders*

- 67. Effect of care order.
- 68. Parental contact etc. with children in care.

#### *Supervision orders*

- 69. Supervision orders.
- 70. Power of supervisor to give directions to supervised child.
- 71. Imposition of obligations on responsible person.
- 72. Psychiatric and medical examinations.
- 73. Psychiatric and medical treatment.
- 74. Life of supervision order.
- 75. Information to be given to supervisor etc.
- 76. Effect of supervision order on earlier orders.
- 77. Functions and expenditure of the Agency.
- 78. Education supervision orders.
- 79. Making of education supervision orders.
- 80. Duration of education supervision orders.
- 81. Discharge of orders.
- 82. Offences with respect to education supervision orders.
- 83. Persistent failure of child to comply with directions.

#### *Powers of court*

- 84. Powers of court in certain family proceedings.
- 85. Interim orders.
- 86. Power to include exclusion requirement in interim care order.

87. Undertakings relating to interim care orders.
88. Discharge and variation etc. of care orders and supervision orders.
89. Orders pending appeals in cases about care or supervision orders.
90. Child assessment orders.

*Guardian ad litem*

91. Representation of child and of his interests in certain proceedings.
92. Right of guardian ad litem to have access to the Agency records.
93. Child Protection Committee.

**PART VIIIA**

*Protection of children: 1996 Hague Convention*

- 93A. Interpretation for Part VIIIA.
- 93B. Application of the Convention.
- 93C. Exercise of jurisdiction of the Supreme Court.
- 93D. Power of the Court to remove stay under Article 8.
- 93E. Agency: application to Court to make request under Article 9.
- 93F. Agency: application for interim care order or supervision order.
- 93G. Application of Article 15.
- 93H. Provision of certain court documents.
- 93I. Evidence in proceedings.
- 93J. Letters of request.
- 93K. Central Authority.
- 93L. Provision of reports and information.
- 93M. Agency's requirement to provide a report.
- 93N. Rules of Court.
- 93O. Services under Article 35.
- 93P. Regulations in relation to the Convention.

**PART IX**

*Emergency Protection of children*

94. Orders for emergency protection of children.
95. Power to include exclusion requirement in emergency protection order.
96. Undertakings relating to emergency protection orders.
97. Duration of emergency protection orders and other supplemental provisions.
98. Removal and accommodation of children by police in cases of emergency.
99. Care Agency's duty to investigate.
100. Powers to assist in discovery of children who may be in need of emergency protection.
101. Abduction of children in care, etc.
102. Recovery of abducted children etc.

103. Refuges for children at risk.

**PART X**

*Services for children in need*

104. Services for children in need, their families and others.  
105. Welfare of children being looked after by the Agency.  
106. Accommodation for children.  
107. Accommodation and maintenance by the Agency for children whom it looks after.  
108. Advice and assistance for certain children.  
109. Provision of information  
110. Assessment of children's needs.  
111. Prevention of neglect and abuse.  
112. Provision to reduce need for care, proceedings, etc.  
113. Provision for children living with their families.  
114. Provision of community homes by the Agency.  
115. Family centres.  
116. Promotion and maintenance of contact between the child and the family.  
117. Provision for disabled children.  
118. Maintenance of register for disabled children.  
119. Appointment of visitors for children.

*Fostering*

120. Fostering of children.  
121. Effect of exceeding fostering limit.  
122. Complaints, etc.  
123. General duties of the Agency in relation to fostering.  
124. Continuation of fostering.  
125. Privately fostered children.  
126. Duty to notify the Agency about private fostering.  
127. Power of the Agency to impose requirements.  
128. Welfare of privately fostered children.  
129. Persons disqualified from being private foster carers.  
130. Power to prohibit private fostering.  
131. Advertisements relating to fostering.

**PART XI**

*Enforcement, other procedure, etc*

132. Liability to contribute towards the maintenance.  
133. Agreed contributions.  
134. Contribution orders.  
135. Enforcement of contribution orders, etc.  
136. Inquiries and review of cases.  
137. Recovery of cost of services, etc.

138. Procedure to make decision with respect to a child.
139. Protection of public from injury.
140. Death of children being looked after by the Agency.
141. Limitation.
142. Appeals.
143. Offences and penalties.
144. Contracts by a child.
145. Effect and duration of orders, etc.
146. Attendance of child at hearing under this Act .
147. Evidence given by, or with respect to children.
148. Privacy for children involved in certain proceedings.
149. Self-incrimination.
150. Powers to search for children or inspect premises.
151. Financial resources.

## **PART XII**

### *List of individuals unsuitable to work with children*

152. Duty to maintain a list of individuals unsuitable to work with children.
153. Inclusion in list on reference to the Minister.
154. Appeals against inclusion in list.
155. Effect of inclusion in the list.

## **PART XIII**

### *Miscellaneous provisions*

156. Offences by corporations.
157. Rules of court.
158. Powers to make Regulations.
159. Repeals and savings.

## **SCHEDULE**

*Text of the Hague Convention of 19 October, 1996, on jurisdiction, applicable law, recognition, enforcement and co-operation in respect of parental responsibility and measures for the protection of children*



AN ACT TO MAKE PROVISION WITH RESPECT TO CHILDREN IN GENERAL, PARENTAL RESPONSIBILITY, GUARDIANSHIP AND FOSTERING; TO SAFEGUARD THE WELL-BEING OF CHILDREN; TO PRESERVE THE INTEGRITY OF AND TO SAFEGUARD MEANINGFUL FAMILY RELATIONSHIPS; TO PROMOTE THE AMICABLE SETTLEMENT OF DISPUTES THAT ARISE BETWEEN PARTIES TO MARRIAGE AND TO MITIGATE POTENTIAL HARM TO PARENTS AND THEIR CHILDREN CAUSED BY THE PROCESS OF LEGAL DISSOLUTION OF MARRIAGE OR SEPARATION; TO PROVIDE FOR DIFFERENT SERVICES BY THE CARE AGENCY FOR CHILDREN IN NEED AND OTHERS; AND FOR CONNECTED PURPOSES.

## **PART I**

### *Preliminary*

#### **Title and commencement.**

1.(1) This Act may be cited as the Children Act 2009.

(2) It shall come into operation on the day appointed by the Government by notice in the Gazette and different days may be appointed for different provisions.

#### **Interpretation.**

2.(1) In this Act, unless the context otherwise requires—

“accommodation” means a suitable accommodation provided for a person under this Act for a period of not less 24 hours;

“Agency” means the Care Agency established under section 3 of the Care Agency Act, 2009;

“care order” has the meaning given by section 64(11) and also includes any order which by or under any enactment has the effect of, or is deemed to be, a care order for the purposes of this Act; and any reference to a child who is in the care of the Agency is a reference to a child who is in its care by virtue of a care order;

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

“child care organisation” for the purposes of Part XII of this Act means an organisation—

- (a) which is concerned with the provision of accommodation, social services or health care services to children or the supervision of children;
- (b) whose activities are regulated by any enactment specified by this Act or any Regulations made under it; or
- (c) which fulfils such other conditions as may be prescribed by any Regulations made under this Act;

“child care position” for the purposes of Part XII of this Act means a position which—

- (a) is concerned with the provision of accommodation, social services or health care services to children or the supervision of children; or
- (b) is such as to enable the holder to have regular contact with children in the course of his duties;

“child of the family”, in relation to parties to a marriage, or to two people who are civil partners of each other, means—

- (a) a child of both of them, and
- (b) any other child, not being a child who is placed with those parties as foster carer by the Agency, who has been treated by both of those parties as a child of their family.

“Council Regulation (EC) No. 2201/2003” means the Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000;

“court” means, subject to section 3(10), a court established under section 3 of the Magistrates’ Court Act or the Supreme Court of Gibraltar;

“development” means physical, intellectual, emotional, social or behavioural development;

“Director of Education” means the Director as defined in section 2(1) of the Education Act ;

“disabled child” means a child who—

- (a) is blind, deaf or dumb;
- (b) suffers from mental disorder of any kind;
- (c) is substantially and permanently handicapped by illness, injury or congenital deformity; or
- (d) suffers from such other disability as may be prescribed;

“dwelling-house” includes–

- (a) any building or part of a building which is occupied as a dwelling; or
- (b) any caravan, house-boat or structure which is occupied as a dwelling;

and any yard, garden, garage or outhouse belonging to it and occupied with it;

“employment” for the purposes of Part X of this Act–

- (a) means any employment, whether paid or unpaid and whether under a contract of service or apprenticeship, under a contract for services, or otherwise than under a contract; and
- (b) includes an office established by or by virtue of an enactment specified by this Act or any Regulations made under it,

and references to an individual being employed shall be construed accordingly;

“family”, in relation to a child in need, includes any person who has parental responsibility for the child and any other person with whom the child lives;

“Family Law Protocol” means a Code of Good Practice in family law drawn up by the Minister for Justice after consulting the judiciary, Bar Council, Care Agency and such other persons or body as he may deem appropriate;

“Family Judge” means a judge of the Supreme Court as referred to in section 12A(2) of the Supreme Court Act;

“foster carer” means a person approved by the Agency for the purposes of fostering;

“fostering” means looking after a child in need of care by a person who is not a parent, adoptive parent or relative or a person who otherwise has parental responsibility in respect of that child;

“functions” includes powers and duties;

“harm” has the same meaning as in section 64(9) and the question of whether harm is significant shall be determined in accordance with section 64(10);

“health” means physical or mental health;

“ill-treatment” has the same meaning as in section 64(9);

“looking after a child” means caring for a child as if the child were part of the family on a continuous basis, but it does not include occasional visits to friends or relatives or making arrangements for the care of the child with a member of the family;

“maintenance” includes education;

“mental impairment” means a state of arrested or incomplete development of mind which includes a significant impairment of intelligence and social functioning;

“Minister” means the Minister with responsibility for families and children;

“Minister for Justice” means Minister with responsibility for Justice;

“minority” means the period during which a person remains a child;

“organisation” means an organisation appointed by the Minister under section 109(2), or for the purposes of Part XII of this Act, it means a body corporate or unincorporated body or an individual who employs others in the course of a business;

“prescribed” means prescribed by Regulations;

“Regulations” means the Regulations made under the provisions of this Act;

“relative”, in relation to a child, means a grandparent, brother, sister, uncle or aunt (whether of the full blood or half blood or by marriage or civil partnership) or step-parent;

“responsible person”, in relation to a supervised child, means—

- (a) any person who has parental responsibility for the child; and
- (b) any other person with whom the child is living.

“signed”, in relation to any person, includes the making by that person of his mark;

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

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

“voted funds” means the funds appropriated by the Parliament under the relevant Appropriation Act.

(2) References in this Act to-

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

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

(3) Any notice or other document required under this Act to be served on any person may be served on him by being delivered personally to him, or being sent by post to him in a registered letter or by the recorded delivery service at his proper address.

(4) Any such notice or other document required to be served on a body corporate or a firm shall be duly served if it is served on the secretary or clerk of that body or a partner of that firm.

(5) In this Act, any reference to a child who is looked after by the Agency is a reference to a child who is-

- (a) in the care of the Agency; or
- (b) provided with accommodation by the Agency under this Act.

(6) For the purposes of this Act, a child shall be deemed to be in need if-

- (a) that child is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision of services by the Agency under this Act;
- (b) the health or development of that child is likely to be significantly impaired, or further impaired, without the provision of such services; or
- (c) the child is a disabled child.

(7) In this Act “person qualifying for advice and assistance” means a person who is under the age of twenty-one and who, at any time after reaching the age of sixteen was, as a child—

- (a) looked after by the Agency;
- (b) accommodated by or on behalf of an organisation;
- (c) accommodated in a community home; or
- (d) privately fostered,

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

(8) Where, for the purposes of Part XII of this Act, any part of an organization that fulfils the condition in paragraph (b) of the definition of “child care organisation” and the other part of it does not, this Act shall have effect as if the two parts were separate organisations.

## **PART II**

### *Jurisdiction of courts and pre-trial procedure*

#### **Jurisdiction of courts and restrictions on use of wardship jurisdiction.**

3.(1) Subject to Council Regulation (EC) No. 2201/ 2003, a court shall have jurisdiction under this Act if the applicant or the respondent or any of the respondents or the child to whom the application relates resides in Gibraltar.

(2) A magistrates’ court shall not be competent to entertain any application, or make any order, involving the administration or application of any property belonging to or held in trust for a child, or the income of any such property.

(3) No court other than the Supreme Court shall exercise the Supreme Court’s inherent jurisdiction with respect to children—

- (a) so as to require a child to be placed in the care, or put under the supervision, of the Agency;
- (b) so as to require a child to be accommodated by or on behalf of the Agency;
- (c) so as to make a child, who is the subject of a care order, a ward of court; or
- (d) for the purpose of conferring on the Agency power to determine any question which has arisen, or which may arise, in connection with any aspect of parental responsibility for a child.

(4) No application for any exercise of the Supreme Court's inherent jurisdiction with respect to children may be made by the Agency unless it has obtained the leave of the Supreme Court.

(5) The Supreme Court may only grant leave if it is satisfied that—

- (a) the result which the Agency wishes to achieve could not be achieved through the making of any order under this Act; and
- (b) there is reasonable cause to believe that if the Supreme Court's inherent jurisdiction is not exercised with respect to the child he is likely to suffer significant harm.

(6) Nothing in this Act shall restrict or affect the jurisdiction of the Supreme Court to appoint or remove guardians or otherwise in respect of children.

*(7) Repealed.*

*(8) Repealed.*

(9) Save as otherwise expressly stated, the Chief Justice may by order specify proceedings under this Act which may only be commenced in a particular court determined in accordance with, or specified in, the order.

(10) For the purposes of subsection (9)—

- (a) the commencement of proceedings under this Act includes the making of any application under this Act in the course of proceedings;
- (b) “specified” means specified by an order made under that subsection.

(11) Subject to section 12A of the Supreme Court Act, the Family Judge shall have jurisdiction to entertain any application, make any order, try and dispose of any matter in relation to a child under the provisions of this Act.

**Paramount consideration for court.**

4.(1) When a court determines any question with respect to—

- (a) upbringing of a child; or
- (b) the administration of a child's property or the application of any income arising from it,

the child's welfare shall be the court's first and paramount consideration.

(2) In any proceedings in which any question with respect to the upbringing of a child arises, the court shall have regard to the general principle that any delay in determining the question is likely to prejudice the welfare of the child, and a child's welfare is best promoted by a continuing relationship with both parents, as long as it is safe to do so.

(3) In the circumstances mentioned in subsection (4), a court shall have regard in particular to—

- (a) the ascertainable wishes and feelings of the child concerned (considered in the light of his age and understanding);
- (b) his physical, emotional and educational needs;
- (c) the likely effect on him of any change in his circumstances;
- (d) his age, sex, background and any characteristics of his which the court considers relevant;
- (e) any harm which he has suffered or is at risk of suffering;
- (f) how capable each of his parents, and any other person in relation to whom the court considers the question to be relevant, is of meeting his needs; and
- (g) the range of powers available to the court under this Act in the proceedings in question.

(4) The circumstances are that—

- (a) the court is considering whether to make, vary or discharge a an order made under section 25, and the making, variation or discharge of the order is opposed by any party to the proceedings; or
- (b) the court is considering whether to make, vary or discharge an order under Part VIII.

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

**Pre-hearing information and Family Support Courses.**

5.(1) The Agency, in consultation with the Minister for Justice, shall design and approve—

- (a) appropriate literature;
- (b) if it considers necessary, audio visual information; and
- (c) family support courses designed to educate and assist divorcing or separating parents with regard to the consequence of divorce and separation on parents and children.

(2) The courses referred to in subsection (1) shall be—

- (a) called Family Support Courses;
- (b) educational in nature;
- (c) a minimum of two hours in total, though not necessarily in one session;
- (d) held at a family centre in accordance with section 115 or any location designed by the Agency for that purpose; and
- (e) provided by anyone designated for that purpose by the Agency.

(3) Any literature, audio visual information and Family Support Courses referred to in subsection (1) may include, but need not be limited to, the following topics—

- (a) the legal aspects of deciding child-related issues between parents or those with parental responsibility;

- (b) the emotional experiences and problems of separation and divorce on adults;
  - (c) the emotional experiences of separation and divorce on children;
  - (d) family relationships and family dynamics;
  - (e) financial responsibilities to a child or children;
  - (f) issues regarding spousal or child abuse and neglect; and
  - (g) any other issue which the Minister may determine.
- (4) Course providers for Family Support Courses shall not–
- (a) provide individual medical, mental or legal advice; or
  - (b) solicit participants from the sessions they conduct to become private clients or patients.

**Duty of the court before the first hearing.**

6. Where in proceedings for divorce or judicial separation under section 4 of the Matrimonial Causes Act the parties to the proceedings have children, or where there are no proceedings for divorce or judicial separation an application is made in respect of a child for an order under section 25, the court shall, within 7 days of the filing of those proceedings or the application, as the case may be–

- (a) notify the court welfare officer that such proceedings or an application has been made; and
- (b) unless it has already done so send the parties to the proceedings or the application as the case may be–
  - (i) any literature, and
  - (ii) if it considers necessary, audio visual information,

approved by the Agency under section 5(1).

**The first hearing in the court.**

7.(1) The first court hearing of any application with respect to a child for an order under section 25, or any proceedings for divorce or judicial separation where any issue relating to a child needs to be considered by the court, shall

take place within 31 days of the filing of the proceedings or the application which ever is the earliest.

(2) At the first hearing of the proceedings or the application, the court may, subject to section 4, make any order that it deems just, including—

- (a) an order that the parties attend a Family Support Course;
- (b) an order for mediation;
- (c) an order for in-court conciliation; and
- (d) with the consent of the parties, any order for any other form of alternative dispute resolution, including collaborative law.

(3) Where the court has made an order under subsection (2)(a) that the parties attend a Family Support Course, the court welfare officer shall be notified immediately.

(4) The court welfare officer shall, within 14 days of receiving the notification under subsection (3), arrange for the parties to attend a Family Support Course in accordance with section 5(2).

(5) In doing so under subsection (4), the court welfare officer shall as far as possible, take into account the times, if any, at which the parties normally work or attend an educational establishment.

(6) The parties shall be required to complete the Family Support Course but the court may excuse a party from attending the course, or from completing the course within the required time, for any good cause.

(7) The court may make whatever order it is empowered to make under this Act as a sanction against non-attendance at a Family Support Course.

(8) Nothing in this section shall be construed to compel the parties to attend a Family Support Course together.

#### **Legal assistance.**

8.(1) There shall be no public funding of any lawyer in any proceedings and any application under this Act, unless that lawyer signs an undertaking to the Registrar or any authority designated to administer any Legal Assistance or public funding of such cases, that he will comply with any Family Law Protocols on good practice in family law.

(2) The undertaking referred to in subsection (1) shall be in a form prescribed by Regulations made by the Minister for Justice.

**Post-settlement follow-up.**

9. Subject to section 4(5) if any agreement or settlement is reached following mediation, in-court conciliation, collaborative law process or any other form of alternative dispute resolution approved by the court, that agreement or settlement must be presented before the court for consideration.

**PART III***Parental rights and responsibilities***Equality of parental rights.**

10.(1) Subject to any court order or agreement between parties, a parent, in order to enable him to fulfil his parental responsibilities in relation to his child, has the right—

- (a) to have the child living with him or otherwise to regulate the child's residence;
- (b) to control, direct or guide, in a manner appropriate to the stage of development of the child, the child's upbringing;
- (c) if the child is not living with him, to maintain personal relations and direct contact with the child on a regular basis; and
- (d) to act as the child's legal representative.

(2) The rights mentioned in paragraphs (a) to (d) of subsection (1) shall be known as "parental rights"; and a parent, or any person acting on his behalf, shall have right to sue, or to defend, in any proceedings as respects those rights.

(3) Subject to subsection (4), where two or more persons have a parental right as respects a child, they may not exercise that right without the consent of the other or, as the case may be, of any of the others, unless any order of the court, deed or agreement conferring the right, or regulating its exercise, otherwise provides.

(4) Without prejudice to any court order or section 30, no person shall be entitled to remove a child habitually resident in Gibraltar from, or to retain any such child outwith, Gibraltar without the consent of a person described in subsection (6).

(5) The parental rights supersede any analogous rights enjoyed by a parent at common law; but this section is without prejudice to any other right so enjoyed by him or to any right enjoyed by him by, under or by virtue of any other provision of this Act or of any other enactment.

(6) The description of a person referred to in subsection (4) is a person (whether or not a parent of the child) who for the time being has and is exercising in relation to him a right mentioned in paragraph (a) or (c) of subsection (1); except that, where both the child's parents are persons so described, the consent required for his removal or retention shall be that of them both.

### **Parental responsibility for children.**

11.(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) Subject to section 13, where a child's father and mother were not married to each other at the time of his birth, the mother shall have parental responsibility for the child.

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

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

(5) A person who has parental responsibility for a child at any time shall not cease to have that responsibility solely because some other person subsequently acquires parental responsibility for the child.

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

(7) The fact that a person has parental responsibility for a child shall not entitle him to act in any way that would be incompatible with any order made with respect to the child under this Act.

(8) A person who has parental responsibility for a child may not surrender or transfer any part of that responsibility to another but may arrange for some or all of it to be met by one or more persons acting on his behalf.

(9) The person with whom any such arrangement is made may himself be a person who already has parental responsibility for the child concerned.

(10) The making of any arrangement referred to in this section 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.

**Parental responsibility: Meaning.**

12.(1) In this Act “parental responsibility”–

- (a) means all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property; and
- (b) includes–
  - (i) the rights, powers and duties which a guardian of the child’s estate (appointed, before the commencement of this Act, to act generally) would have had in relation to the child and his property; and
  - (ii) the right of the guardian to receive or recover in his own name, for the benefit of the child, property of whatever description and wherever situated which the child is entitled to receive or recover.

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

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

(3) A person who does not have parental responsibility for a particular child, but has care of the child, may, subject to the provisions of this Act, do what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting the child’s welfare.

**Parental responsibility of the father who was not married.**

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

- (a) he becomes registered as the child's father under section 15(1)(a) or (b) of the Births and Deaths Registration Act;

- (b) he and the child's mother make an agreement (a “parental responsibility agreement”) providing for him to have parental responsibility for the child;
- (c) the court, on application of either the child’s mother or the father, orders that he shall have parental responsibility for the child; or
- (d) the child becomes legitimate as a result of section 3 of the Legitimacy Act.

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

- (a) it is made in the form prescribed by the Minister by Regulations; and
- (b) where Regulations are made prescribing the manner in which such agreements must be recorded, it is recorded in the prescribed manner.

(3) A person who has acquired parental responsibility under subsection (1) shall cease to have that responsibility only if the court so orders.

(4) The court may make an order under subsection (3) on the application—

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

subject, in the case of parental responsibility acquired under subsection (1)(c) above, to section 29(4).

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

#### **Parental responsibility of step-parents.**

14.(1) Where a child’s parent (“parent A”) who has parental responsibility for the child is married to, or a civil partner of, a person who is not the child's parent (“the step-parent”)—

- (a) parent A or, if the other parent of the child also has parental responsibility for the child, both parents may by agreement with the step-parent provide for the step-parent to have parental responsibility for the child; or

- (b) the court may, on the application of the step-parent, order that the step-parent shall have parental responsibility for the child.

(2) An agreement under subsection (1)(a) is also a “parental responsibility agreement”, and section 13(2) applies in relation to such agreements as it applies in relation to parental responsibility agreements under section 13.

(3) A parental responsibility agreement under subsection (1)(a), or an order under subsection (1)(b), may only be brought to an end by an order of the court made on the application—

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

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

#### **PART IV** *Guardianship*

##### **Procedure for appointment of guardians and special guardians.**

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

- (a) the child has no parent with parental responsibility for him;  
(b) a residence order has been made with respect to the child in favour of a parent or guardian or special guardian of his who has died while the order was in force;  
(c) paragraph (b) does not apply, and the child’s only or last surviving special guardian dies.

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

(3) A parent who has parental responsibility for his or her child may appoint another individual to be the child’s guardian in the event of his or her death.

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

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

- (a) in the case of an appointment made by a will which is not signed by the testator, is signed at the direction of the testator in accordance with the requirements of section 9 of the Wills Act 2009; or
- (b) in any other case, is signed at the direction of the person making the appointment, in his presence and in the presence of two witnesses who each attest the signature.

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

(7) Where—

- (a) on the death of any person making an appointment under subsection (3) or (4) the child concerned has no parent with parental responsibility for him; or
- (b) immediately before the death of any person making such an appointment, a residence order in his favour was in force with respect to the child,

the appointment shall take effect on the death of that person.

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

- (a) the child concerned has a parent with parental responsibility for him; and
- (b) subsection (7)(b) does not apply,

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

(9) Subsections (1) and (7) do not apply if the residence order referred to in paragraph (b) of those subsections was also made in favour of a surviving parent of the child.

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

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

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

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

**Revocation and disclaimer of guardians.**

16.(1) An appointment of guardian under section 15(3),(4) or (5) revokes an earlier such appointment (including one made in a will or codicil that is not revoked) made by the same person in respect of the same child, unless it is clear (whether as the result of an express provision in the later appointment or by any necessary implication) that the purpose of the later appointment is to appoint an additional guardian.

(2) An appointment of guardian under section 15(3),(4) or (5) (including one made in a will or codicil that is not revoked ) is revoked if the person who made the appointment revokes it by a written and dated instrument which is signed—

- (a) by him; or
- (b) at his direction, in his presence and in the presence of two witnesses who each attest the signature.

(3) An appointment of guardian under section 15(3),(4) or (5) (other than one made in a will or codicil) is revoked if, with the intention of revoking the appointment, the person who made it—

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

(4) An appointment of guardian under section 15(3),(4) or (5) (including one made in a will or codicil that is not revoked) is revoked if the person appointed is the spouse of the person who made the appointment and either-

- (a) the court by order dissolves, or by decree annuls, a marriage; or
- (b) the marriage is dissolved or annulled and the divorce or annulment is entitled to recognition in Gibraltar by virtue of the Matrimonial Causes Act,

unless a contrary intention appears by the appointment.

(4A) An appointment under section 15(3),(4) or (5) (including one made in an unrevoked will or codicil) is revoked if the person appointed is the civil partner of the person who made the appointment and either—

- (a) the court by order dissolves, or by decree annuls, the civil partnership; or
- (b) the civil partnership is dissolved or annulled and the dissolution or annulment is entitled to recognition in Gibraltar by virtue of the Matrimonial Causes Act,

unless a contrary intention appears by the appointment.

(5) For the avoidance of doubt, an appointment of guardian under section 15(3),(4) or (5) made in a will or codicil is revoked if the will or codicil is revoked.

(6) A person who is appointed as a guardian under section 15(3),(4) or (5) may disclaim his appointment by an instrument in writing signed by him and made within a reasonable time of his first knowing that the appointment has taken effect.

(7) Where Regulations are made prescribing the manner in which such disclaimers must be recorded, no such disclaimer shall have effect unless it is recorded in the prescribed manner.

(8) Any appointment of a guardian under section 15 may be brought to an end at any time by order of the court—

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

**Welfare reports.**

17. (1) A court considering any question with respect to a child under this Act may—

- (a) ask a person designated by the Minister or the court welfare officer; or
- (b) ask the Agency to arrange for an officer of it

to report to the court on such matters relating to the welfare of that child as are required to be dealt with in the report.

(2) The Minister may—

- (a) make Regulations specifying matters which, unless the court orders otherwise, must be dealt with in any report under this section; or
- (b) add to the list of persons under subsection(1) whom the court could ask to produce a report.

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

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

- (a) any statement contained in the report; and
- (b) any evidence given in respect of the matters referred to in the report,

in so far as the statement or evidence is, in the opinion of the court, relevant to the question which it is considering.

(5) It shall be the duty of the Agency or probation officer to comply with any request for a report under this section.

*Special guardianship***Special guardianship orders.**

18.(1) A “special guardianship order” is an order appointing one or more individuals to be a child’s “special guardian” or “special guardians”.

(2) A special guardian shall—

- (a) be aged eighteen or over; and
- (b) not be a parent of the child in question.

(3) Subsections (4) to (7) shall be subject to subsection (2).

(4) The court may make a special guardianship order with respect to any child on the application of an individual who is entitled to make such an application with respect to the child, or who has obtained the leave of the court to make the application, or on the joint application of more than one such individual.

(5) Section 26 (3) applies in relation to an application for leave to apply for a special guardianship order as it applies in relation to an application for leave to apply for an order under section 25.

(6) The individuals who are entitled to apply for a special guardianship order with respect to a child are—

- (a) any guardian of the child;
- (b) any individual in whose favour a residence order is in force with respect to the child;
- (c) any individual listed in subsection (5)(b) or (c) of section 27 (as read with subsection (10) of that section); or
- (d) an Agency foster carer with whom the child has lived for a period of at least one year immediately preceding the application.

(7) The court may also make a special guardianship order with respect to a child in any family proceedings in which a question arises with respect to the welfare of the child if—

- (a) an application for the order has been made by an individual who falls within subsection (4) (or more than one such individual jointly); or
- (b) the court considers that a special guardianship order should be made even though no such application has been made.

(8) No individual may make an application under subsection (4) or (7)(a) unless, before the beginning of the period of three months ending with the date of the application, he has given written notice of his intention to make the application, if the child in question is being looked after by the Agency, to the Agency.

(9) On receipt of a notice referred to in subsection (8), the Agency shall investigate the matter and prepare a report for the court dealing with—

- (a) the suitability of the applicant to be a special guardian;
- (b) such matters, if any, as may be prescribed by Regulations; and
- (c) any other matter which the Agency considers to be relevant.

(10) The court may itself ask the Agency to conduct an investigation and prepare a report as referred to in subsection (9) and in that case, the Agency shall do so.

(11) The Agency may make such arrangements as it deems fit for any person to act on its behalf in connection with conducting an investigation or preparing a report referred to in subsection (9) or (10).

(12) The court may not make a special guardianship order unless it has received a report dealing with the matters referred to in subsection (9).

(13) Subsections (9) and (10) of section 27 apply in relation to special guardianship orders as they apply in relation to orders made under section 25.

**Special guardianship orders: making.**

19.(1) The court shall, before making a special guardianship order, consider whether, if the order were made—

- (a) a contact order should also be made with respect to the child;
- (b) any order made under section 25, in force with respect to the child should be varied or discharged;
- (c) where a contact order made with respect to the child is not discharged, any enforcement order relating to that contact order should be revoked; and
- (d) where a contact activity direction has been made as regards contact with the child and is in force, that contact activity direction should be discharged.

(2) On making a special guardianship order, the court may also—

- (a) give leave for the child to be known by a new surname; and

- (b) grant the leave required by section 20(3)(b), either generally or for specified purposes.

**Special guardianship orders: effect.**

20.(1) The effect of a special guardianship order is that while the order remains in force—

- (a) a special guardian appointed by the order has parental responsibility for the child in respect of whom it is made; and
- (b) subject to any other order in force with respect to the child under this Act, a special guardian is entitled to exercise parental responsibility to the exclusion of any other person with parental responsibility for the child, apart from another special guardian.

(2) Subsection (1) does not affect—

- (a) the operation of any enactment or rule of law which requires the consent of more than one person with parental responsibility in a matter affecting the child; or
- (b) any rights which a parent of the child has in relation to the child's adoption or placement for adoption.

(3) While a special guardianship order is in force with respect to a child, no person may—

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

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

(4) Subsection (3)(b) does not prevent the removal of a child, for a period of less than three months, by a special guardian of his.

(5) If the child with respect to whom a special guardianship order is in force dies, his special guardian must take reasonable steps to give notice of that fact to—

- (a) each parent of the child with parental responsibility; and
- (b) each guardian of the child,

but if the child has more than one special guardian, and one of them has taken such steps in relation to a particular parent or guardian, any other special guardian need not do so as respects that parent or guardian.

**Variation and discharge of special guardianship orders.**

21.(1) The court may vary or discharge a special guardianship order on the application of—

- (a) the special guardian or any of them, if there are more than one;
- (b) any parent or guardian of the child concerned;
- (c) any individual in whose favour a residence order is in force with respect to the child;
- (d) any individual not falling within any of paragraphs (a) to (c) who has, or immediately before the making of the special guardianship order had, parental responsibility for the child;
- (e) the child himself; or
- (f) the Agency.

(2) In any family proceedings in which a question arises with respect to the welfare of a child with respect to whom a special guardianship order is in force, the court may also vary or discharge the special guardianship order if it considers that the order should be varied or discharged, even though no application has been made under subsection (1).

(3) The following must obtain the leave of the court before making an application under subsection (1)—

- (a) the child;
- (b) any parent or guardian of his;
- (c) any step-parent of his who has acquired, and has not lost, parental responsibility for him by virtue of section 14; and
- (d) any individual falling within subsection (1)(d) who immediately before the making of the special guardianship order had, but no longer has, parental responsibility for him.

(4) Where the person applying for leave to make an application under subsection (1) is the child, the court may only grant leave if it is satisfied that

he has sufficient understanding to make the proposed application under subsection (1).

(5) The court may not grant leave to a person falling within subsection (3)(b)(c) or (d) unless it is satisfied that there has been a significant change in circumstances since the making of the special guardianship order.

**Supplementary provisions for making, varying or discharging special guardianship orders.**

22.(1) In proceedings in which any question of making, varying or discharging a special guardianship order arises, the court shall, in the light of any rules made by virtue of subsection (3)–

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

(2) Subsection (1) applies also in relation to proceedings in which any other question with respect to a special guardianship order arises.

(3) The power to make rules in subsection (2) of section 28 applies for the purposes of this section as it applies for the purposes of that section.

(4) A special guardianship order, or an order varying one, may contain provisions which are to have effect for a specified period.

(5) Section 28(7) (apart from paragraph (c)) applies in relation to special guardianship orders and orders varying them as it applies in relation to orders made under section 25.

**Special guardianship support services.**

23.(1) The Agency may make arrangements for the provision of special guardianship support services, which means–

- (a) counselling, advice and information; and
- (b) such other services as are prescribed with the consent of the Minister with responsibility for Finance,

in relation to special guardianship.

(2) At the request of any of the following persons–

- (a) a child with respect to whom a special guardianship order is in force;
- (b) a special guardian;
- (c) a parent; or
- (d) any other person who falls within a prescribed description,

the Agency may carry out an assessment of that person's needs for special guardianship support services.

(3) The Agency may, at the request of any other person, carry out an assessment of that person's needs for special guardianship support services.

(4) If—

- (a) the Agency decides to provide any special guardianship support services to a person; and
- (b) the circumstances fall within a prescribed description,

the Agency may prepare a plan in accordance with which special guardianship support services are to be provided to him, and keep the plan under review.

(5) The Minister may by Regulations make provision about assessments, preparing and reviewing plans, the provision of special guardianship support services in accordance with plans and reviewing the provision of special guardianship support services.

(6) The Regulations may in particular make provisions—

- (a) about the type of assessment which is to be carried out, or the way in which an assessment is to be carried out;
- (b) about the way in which a plan is to be prepared;
- (c) about the way in which, and the time at which, a plan or the provision of special guardianship support services is to be reviewed;
- (d) about the considerations to which the Agency is to have regard in carrying out an assessment or review or preparing a plan;

- (e) as to the circumstances in which the Agency may provide special guardianship support services subject to conditions; and
- (f) as to the consequences of conditions imposed by virtue of paragraph (e) not being met.

(7) The Agency may provide special guardianship support services or any part of them by securing their provision by a person within a description prescribed in Regulations of persons who may provide special guardianship support services.

(8) The Agency may carry out an assessment of the needs of any person for the purposes of this section at the same time as an assessment of his needs is made under any other provision of this Act or under any other enactment.

#### **Representations with respect to special guardianship support services.**

24.(1) The Agency shall establish a procedure for considering representations, including complaints, made to it by any person to whom it may provide special guardianship support services about the discharge of its functions under section 23 in relation to him.

(2) Regulations may be made by the Minister imposing time limits on the making of representations under subsection (1).

(3) In considering representations under subsection (1), the Agency shall comply with Regulations, if any, made by the Minister for the purposes of this subsection.

### **PART V**

#### *Orders with respect to children in family proceedings*

#### **Residence, contact and other orders with respect to children.**

25.(1) Under this section, the court may in any family proceedings make the following orders—

- (a) contact order;
- (b) prohibited steps order;
- (c) residence order; and
- (d) specific issue order.

(2) In this Act—

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

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

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

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

(3) For the purposes of this Act “family proceedings” means any proceedings under—

- (a) the inherent jurisdiction of the Supreme Court in relation to children;
- (b) the provisions of Parts I, II, III, IV, V, VI, VII and VIII of this Act; and
- (c) the enactment mentioned in subsection (4),

but does not include proceedings on an application for leave under section 3(3).

(4) The enactments referred to in subsection (3)(c) are—

- (a) the Matrimonial Causes Act;
- (b) the Adoption Act;
- (c) Maintenance Act; and
- (d) Domestic Violence and Matrimonial Proceedings Act, 1998.

**Restrictions on making orders under section 25.**

26.(1) No court shall make any order under section 25, other than a residence order, with respect to a child who is already in the care of the Agency.

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

(3) A person who is, or was at any time within the last six months, an Agency foster carer of a child may not apply for leave to apply for an order under section 25 with respect to the child unless—

- (a) that person has the consent of the Agency;
- (b) that person is a relative of the child; or
- (c) the child has lived with that person for at least one year preceding the application.

(4) No court shall exercise its powers to make a specific issue order or prohibited steps order pursuant to section 25—

- (a) with a view to achieving a result which could be achieved by making a residence or contact order; or
- (b) in any way which is denied to the Supreme Court (by section 3(3)) in the exercise of its inherent jurisdiction with respect to children.

(5) Subject to section 29(5), no court shall make any order under section 25 which is to have effect for a period which will end after the child has reached the age of sixteen unless it is satisfied that the circumstances of the case are exceptional.

(6) No court shall make any order under section 25, other than one varying or discharging such an order, with respect to a child who has reached the age of sixteen unless it is satisfied that the circumstances of the case are exceptional.

#### **Power of court to make orders under section 25.**

27.(1) In any family proceedings in which a question arises with respect to the welfare of any child, the court may make an order under section 25 with respect to the child if—

- (a) an application for the order has been made by a person who—

- (i) is entitled to apply for an order under section 25 with respect to the child; or
    - (ii) has obtained the leave of the court to make the application; or
  - (b) the court considers that the order should be made even though no such application has been made.
- (2) The court may also make an order under section 25 with respect to any child on the application of a person who—
- (a) is entitled to apply for an order under section 25 with respect to the child; or
  - (b) has obtained the leave of the court to make the application.
- (3) This section is subject to the restrictions imposed by section 26.
- (4) The following persons are entitled to apply to the court for any order under section 25 with respect to a child—
- (a) any parent or guardian or special guardian of the child;
  - (b) any person in whose favour a residence order is in force with respect to the child.
- (5) The following persons are entitled to apply for a residence or contact order with respect to a child—
- (a) any party to a marriage, whether or not subsisting, in relation to whom the child is a child of the family;
  - (aa) any civil partner in a civil partnership (whether or not subsisting) in relation to whom the child is a child of the family;
  - (b) any person with whom the child has lived for a period of at least three years;
  - (c) any person who—
    - (i) in any case where a residence order is in force with respect to the child, has the consent of each of the persons in whose favour the order was made;
    - (ii) in any case where the child is in the care of the Agency, has the consent of the Agency;

(iii) in any other case, has the consent of each of those, if any, who have parental responsibility for the child; or

(d) in respect of a contact order only, the grandparents.”.

(6) A person who would not otherwise be entitled to apply for the variation or discharge of an order under section 25 shall be entitled to do so if—

(a) the order was made on his application; or

(b) in the case of a contact order, he is named in the order.

(7) Any person who falls within a category of person prescribed by rules of court is entitled to apply for any such order under section 25 as may be prescribed in the rules of court in relation to that category of person.

(8) Where the person applying for leave to make an application for an order under section 25 is the child concerned, the court may only grant leave if it is satisfied that he has sufficient understanding to make the proposed application for an order under section 25.

(9) Where the person applying for leave to make an application for an order under section 25 is not the child concerned, the court shall, in deciding whether or not to grant leave, have particular regard to—

(a) the nature of the proposed application for an order under section 25;

(b) the applicant's connection with the child;

(c) any risk there might be of that proposed application disrupting the child's life to such an extent that he would be harmed by it; and

(d) where the child is being looked after by the Agency—

(i) the Agency's plans for the child's future; and

(ii) the wishes and feelings of the child's parents.

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

### **General principles and supplementary provisions.**

28.(1) In proceedings in which any question of making an order under section 25, or any other question with respect to such an order, arises, the court shall (in the light of any rules made by virtue of subsection (2))–

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

(2) Rules of court may–

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

(3) Where a court has power to make an order under section 25, it may do so at any time during the course of the proceedings in question even though it is not in a position to dispose finally of those proceedings.

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

(5) Where–

- (a) a residence order has been made with respect to a child; and
- (b) as a result of the order the child lives, or is to live, with one of two parents who each have parental responsibility for him,

the residence order shall cease to have effect if the parents live together for a continuous period of more than six months.

(6) A contact order which requires the parent with whom a child lives to allow the child to visit, or otherwise have contact with, his other parent shall cease to have effect if the parents live together for a continuous period of more than six months.

(7) An order under section 25 may–

- (a) contain directions about how it is to be carried into effect;

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

**Residence orders and parental responsibility.**

29.(1) Where the court makes a residence order in favour of the father of a child it shall, if the father would not otherwise have parental responsibility for the child, also make an order under section 13 giving him that responsibility.

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

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

- (a) to consent, or refuse to consent, to the making of an application with respect to the adoption of the child under the provisions of the Adoption Act; or
- (b) to appoint a guardian for the child.

(4) Where subsection (1) requires the court to make an order under section 13 in respect of the father of a child, the court shall not bring that order to an end at any time while the residence order concerned remains in force.

(5) The power of a court to make a residence order in favour of any person who is not the parent or guardian of the child concerned includes power to

direct, at the request of that person, that the order continue in force until the child reaches the age of eighteen unless the order is brought to an end earlier; and any power to vary a residence order is exercisable accordingly.

(6) Where a residence order includes such a direction, an application to vary or discharge the order may only be made, if apart from this subsection the leave of the court is not required, with such leave.

**Change of child's name or removal from jurisdiction.**

30.(1) Where a residence order is in force with respect to a child, no person may—

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

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

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

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

(4) A child may be removed from Gibraltar by a person in whose favour a contact order is made during the period stipulated in that order, unless the child is a ward of court subject to a care order, supervision order or an emergency protection order in which case leave of the court must be taken before such removal of the child.

**Enforcement of residence orders.**

31.(1) Where—

- (a) a residence order is in force with respect to a child in favour of any person; and
- (b) any other person is in breach of the arrangements settled by that order, including one in whose favour the order is in force,

the person mentioned in paragraph (a) may, as soon as the requirement in subsection (3) is complied with, apply to the court to enforce the order under subsection (7).

(2) Where—

- (a) a residence order is in force with respect to a child in favour of any person;
- (b) the child refuses to allow compliance with the residence order or rejects or exhibits hatred towards a person mentioned in paragraph (a); and
- (c) that refusal, hatred or rejection is caused by the actions or behaviour of any other person, including one in whose favour the order is in force,

the person referred to in paragraph (a) may, as soon as the requirement of subsection (3) is complied with, apply to the court for any of the orders listed in subsection (8).

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

(4) The court may only make an order under subsections (7) and (8) if it is satisfied beyond reasonable doubt that a person has failed to comply with a residence order or is responsible for the circumstances set out in subsection (2)(b) and (c).

(5) But the court may not make an order under subsection (7) if it is satisfied that the person had a reasonable excuse for failing to comply with the residence order.

(6) The burden of proof as to the matter mentioned in subsection (5) lies on the person claiming to have had a reasonable excuse, and the standard of proof is the balance of probabilities.

(7) Where a person disobeys a residence order, the court may—

- (a) order him to pay a sum not exceeding £50 for every day during which he is in default; or
- (b) commit him to custody until he has remedied his default,

but a person shall not by virtue of this subsection be ordered to pay more than £10,000 or to be committed for more than two months in all for disobeying one or more orders at that time.

(8) The court may—

- (a) in cases where there is a residence order in place in favour of more than one person, revoke the order as against the person responsible for the circumstances set out in subsection (2)(b) and (c);
- (b) make an order restraining (for any period it deems fit) any person responsible for the circumstance set out in subsection (2)(b) and (c) from having any contact or dealing with the child;
- (c) make an order ordering any person responsible for those circumstances who is in a position of parental responsibility in relation to the child to attend a Family Support Course;
- (d) make a residence order for a specified period of time in favour of a member of the child's family (who is not in a position of parental responsibility in respect of that child) or anyone who is in a position of parental responsibility for the child until the court is satisfied that there will be no further breaches of the residence order; and
- (e) make a care order for a specified period of time provided the Agency consents to that order until the court is satisfied that there will be no further breaches of the residence order.

(9) Where the court makes or varies a residence order, it shall attach to the residence order or the order varying the residence order a notice warning of the consequences of failing to comply with the residence order.

(10) This section is without prejudice to any other remedy open to the person in whose favour the residence order is in force either under this Act or any other law.

## **Part VI**

### *Contact with children*

#### **Contact activity directions.**

32.(1) Where in proceedings in which the court is considering whether to make provision about contact with a child by making—

- (a) a contact order with respect to the child; or
- (b) an order varying or discharging a contact order with respect to the child,

the court may make a contact activity direction in connection with that provision about contact.

(2) A contact activity direction is a direction requiring an individual who is a party to the proceedings to take part in an activity that promotes contact with the child concerned.

(3) A direction made under this section shall specify the activity and the person providing the activity.

(4) The activities that may be so required include, in particular—

(a) programmes, classes and counselling or guidance sessions of a kind that—

(i) may assist a person as regards establishing, maintaining or improving contact with a child;

(ii) may, by addressing a person's violent behaviour, enable or facilitate contact with a child; and

(b) sessions in which information or advice is given as regards making or operating arrangements for contact with a child, including making arrangements by means of mediation.

(5) No individual may be required by a contact activity direction—

(a) to undergo medical or psychiatric examination, assessment or treatment; or

(b) to take part in mediation.

(6) A court may not on the same occasion—

(a) make a contact activity direction; and

(b) dispose finally of the proceedings as they relate to contact with the child concerned.

(7) Subsection (1) has effect subject to the restrictions in subsections (9) to (12) and section 34.

(8) In considering whether to make a contact activity direction, the welfare of the child concerned is to be the court's paramount consideration.

(9) A court may not make a contact activity direction in any proceedings unless there is a dispute as regards the provision about contact that the court is considering whether to make in the proceedings.

(10) A court may not make a contact activity direction requiring an individual who is a child to take part in an activity unless the individual is a parent of the child in relation to whom the court is considering provision about contact.

(11) A court may not make a contact activity direction in connection with the making, variation or discharge of a contact order, if the contact order is, or would if made be, an excepted order.

(12) A contact order with respect to a child is an excepted order if—

- (a) it is made in proceedings that include proceedings on an application for a relevant adoption order in respect of the child; or
- (b) it makes provision as regards contact between the child and a person who would be a parent or relative of the child but for the child's adoption.

**Contact activity conditions.**

33.(1) This section applies if in any family proceedings the court makes—

- (a) a contact order with respect to a child; or
- (b) an order varying a contact order with respect to a child.

(2) The contact order may impose, or the contact order may be varied so as to impose, a condition (a “contact activity condition”) requiring an individual falling within subsection (3) to take part in an activity that promotes contact with the child concerned.

(3) An individual falls within this subsection if he is—

- (a) for the purposes of the contact order so made or varied, the person with whom the child concerned lives or is to live;
- (b) the person whose contact with the child concerned is provided for in that order; or
- (c) a person upon whom that order imposes a condition under section 28(7)(b).

(4) The condition made under this section shall specify the activity and the person providing the activity.

(5) Subsections (4) and (5) of section 32 have effect as regards the activities that may be required by a contact activity condition as they have effect as regards the activities that may be required by a contact activity direction.

(6) Subsection (2) has effect subject to the restrictions in subsections (7) to (8) and section 34.

(7) A contact order may not impose a contact activity condition on an individual who is a child unless the individual is a parent of the child concerned.

(8) If a contact order is an excepted order (within the meaning given by section 32(12)), it may not impose and it may not be varied so as to impose a contact activity condition.

**Contact activity directions and conditions: making.**

34.(1) The court shall, before making a contact activity direction or imposing a contact activity condition by means of a contact order, satisfy itself as to the following matters that—

- (a) the activity proposed to be specified is appropriate in the circumstances of the case;
- (b) the person proposed to be specified as the provider of the activity is suitable to provide the activity; and
- (c) the activity proposed to be specified is provided in a place to which the individual who would be subject to the direction or the condition can reasonably be expected to travel.

(2) The court shall, before making a direction or an order as referred to in subsection (1), obtain and consider information about the individual who would be subject to the direction or the condition and the likely effect of the direction or the condition on him.

(3) Information about the likely effect of the direction or the condition may, in particular, include information as to—

- (a) any conflict with the individual's religious beliefs; and
- (b) any interference with the times, if any, at which he normally works or attends an educational establishment.

(4) The court may ask an officer of the Agency to provide the court with information as to the matters in subsections (1) and (2); and it shall be the duty of the officer of the Agency to comply with any such request.

(5) In this section “specified” means specified in a contact activity direction or in a contact activity condition.

**Contact activity directions and conditions: financial assistance.**

35.(1) The Government may by Regulations make provision authorising the Minister to make payments from the voted funds to assist individuals falling within subsection (2) in paying relevant charges or fees.

(2) An individual falls within this subsection if he is required by a contact activity direction or condition to take part in an activity that promotes contact with a child, not being a child ordinarily resident in Gibraltar.

(3) A relevant charge or fee, in relation to an activity required by a contact activity direction or condition, is a charge or fee in respect of the activity payable to the person providing the activity.

(4) Regulations under this section may provide that no assistance is available to an individual unless—

- (a) the individual satisfies such conditions as regards his financial resources as may be set out in the Regulations;
- (b) the activity in which the individual is required by a contact activity direction or condition to take part is provided to him in Gibraltar; or
- (c) it is provided by a person who is for the time being approved by the Minister as a provider of activities required by a contact activity direction or condition.

(7) Regulations under this section may make provision—

- (a) as to the maximum amount of assistance that may be paid to or in respect of an individual as regards an activity in which he is required by a contact activity direction or condition to take part;
- (b) where the amount may vary according to an individual’s financial resources, as to the method by which the amount is to be determined; and

- (c) authorising payments by way of assistance to be made directly to persons providing activities required by a contact activity direction or condition.

**Contact activity directions and conditions: monitoring.**

36.(1) This section applies if in any family proceedings the court—

- (a) makes a contact activity direction in relation to an individual; or
- (b) makes a contact order that imposes, or varies a contact order so as to impose, a contact activity condition on an individual.

(2) The court may on making the direction or imposing the condition by means of a contact order ask an officer of the Agency—

- (a) to monitor, or arrange for the monitoring of, the individual's compliance with the direction or the condition; and
- (b) to report to the court on any failure by the individual to comply with the direction or the condition.

(3) It shall be the duty of the officer of the Agency to comply with any request under subsection (2).

**Monitoring contact.**

37.(1) This section applies if in any family proceedings the court makes—

- (a) a contact order with respect to a child in favour of a person; or
- (b) an order varying such a contact order.

(2) The court may ask an officer of the Agency—

- (a) to monitor whether an individual falling within subsection (3) complies with the contact order or the contact order as varied; and
- (b) to report to the court on such matters relating to the individual's compliance as the court may specify in the request.

(3) An individual falls within this subsection if the contact order so made or the contact order as so varied—

- (a) requires the individual to allow contact with the child concerned;

(b) names the individual as having contact with the child concerned;  
or

(c) imposes a condition under section 28(7)(b) on the individual.

(4) If the contact order or the contact order as varied includes a contact activity condition, a request under subsection (2) is to be treated as relating to the provisions of the order other than the contact activity condition.

(5) The court may make a request under subsection (2)–

(a) on making the contact order or the order varying the contact order; or

(b) at any time during the subsequent course of the proceedings as they relate to contact with the child concerned.

(6) In making a request under subsection (2), the court is to specify the period for which the officer of the Agency is to monitor compliance with the order; and the period specified may not exceed twelve months.

(7) It shall be the duty of the officer of the Agency to comply with any request under subsection (2).

(8) The court may order any individual falling within subsection (3) to take such steps as may be specified in the order with a view to enabling the officer of the Agency to comply with the court's request under subsection (2).

(9) But the court may not make an order under subsection (8) with respect to an individual who is a child unless he is a parent of the child with respect to whom the order falling within subsection (1) was made.

(10) A court may not make a request under subsection (2) in relation to a contact order that is an excepted order (within the meaning given by section 32(12)).

**Contact orders: warning notices, enforcement and parental alienation.**

38.(1) Where the court makes or varies a contact order, it shall attach to the contact order or the order varying the contact order a notice warning of the consequences of failing to comply with the contact order.

(2) Where–

(a) a contact order is in force with respect to a child in favour of any person;

- (b) the child refuses to allow compliance with the contact order or rejects or exhibits hatred towards a person mentioned in paragraph (a); and
- (c) that refusal, hatred or rejection is caused by the actions or behaviour of any other person,

the person referred to in paragraph (a) may, as soon as the requirement of subsection (3) is complied with, apply to the court for any of the orders listed in subsection (4).

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

(4) The court may make one or more of the following orders—

- (a) where a residence order is in force with respect to a child in favour of a person who is responsible for the circumstances set out in subsection (2)(b) and (c), revoke the residence order;
- (b) make a residence order in favour of the person referred to in subsection (2)(a) with or without a contact order in favour of the person referred to in paragraph (a) of this subsection;
- (c) make an order restraining (for any period it deems fit) any person responsible for the circumstance set out in subsection (2)(b) and (c) from having any contact or dealing with the child;
- (d) make an order ordering any person responsible for those circumstances who is in a position of parental responsibility in relation to the child to attend a Family Support Course;
- (e) make a residence order for a specified period of time in favour of a member of the child's family (who is not in a position of parental responsibility in respect of that child) or anyone who is in a position of parental responsibility for the child until the court is satisfied that there will be no further breaches of the contact order; and
- (f) make a care order for a specified period of time provided the Agency consents to that order until the court is satisfied that there will be no further breaches of the residence order.

(5) The court may only make an order under subsection (4) if it is satisfied beyond reasonable doubt that a person is responsible for the circumstances set out in subsection (2)(b) and (c).

(6) This section is without prejudice to any other remedy open to the person in whose favour the contact order is in force either under this Act or any other law.

**Other enforcement orders.**

39.(1) This section applies if a contact order with respect to a child has been made.

(2) If the court is satisfied beyond reasonable doubt that a person has failed to comply with the contact order, it may make an order (an “enforcement order”) imposing on the person an unpaid work requirement.

(3) But the court may not make an enforcement order if it is satisfied that the person had a reasonable excuse for failing to comply with the contact order.

(4) The burden of proof as to the matter mentioned in subsection (3) lies on the person claiming to have had a reasonable excuse, and the standard of proof is the balance of probabilities.

(5) The court may make an enforcement order in relation to the contact order only on the application of—

- (a) the person who is, for the purposes of the contact order, the person with whom the child concerned lives or is to live;
- (b) the person whose contact with the child concerned is provided for in the contact order;
- (c) any individual subject to a condition under section 28(7)(b) or a contact activity condition imposed by the contact order; or
- (d) the child concerned.

(6) Where the person proposing to apply for an enforcement order in relation to a contact order is the child concerned, the child must obtain the leave of the court before making such an application.

(7) The court may grant leave to the child concerned only if it is satisfied that he has sufficient understanding to make the proposed application.

(8) Subsection (2) has effect subject to the restrictions in subsections (12) to (14) and section 40.

(9) The court may suspend an enforcement order for such period as it thinks fit.

(10) Nothing in this section prevents a court from making more than one enforcement order in relation to the same person on the same occasion.

(11) Proceedings in which any question of making an enforcement order, or any other question with respect to such an order, arises are to be regarded for the purposes of section 28(1) and (2) as proceedings in which a question arises with respect to an order made under section 25.

(12) A court may not make an enforcement order against a person in respect of a failure to comply with a contact order unless it is satisfied that before the failure occurred the person had been given (in accordance with rules of court) a copy of, or otherwise informed of the terms of—

- (a) in the case of a failure to comply with a contact order that was varied before the failure occurred, a notice under section 33 relating to the order varying the contact order or, where more than one such order has been made, the last order preceding the failure in question; and
- (b) in any other case, a notice under section 38(1) relating to the contact order.

(13) A court may not make an enforcement order against a person in respect of any failure to comply with a contact order occurring before the person attained the age of 18.

(14) A court may not make an enforcement order against a person in respect of a failure to comply with a contact order that is an excepted order (within the meaning given by section 32(12)).

**Enforcement orders: making.**

40.(1) The court shall be satisfied, before making an enforcement order as regards a person in breach of a contact order, that—

- (a) making the enforcement order proposed is necessary to secure the person's compliance with the contact order or any contact order that has effect in its place; and
- (b) the likely effect on the person of the enforcement order proposed to be made is proportionate to the seriousness of the breach of the contact order.

(2) The court shall, before making an enforcement order as regards a person in breach of a contact order, obtain and consider information about the person and the likely effect of the enforcement order on him.

(3) Information about the likely effect of the enforcement order may, in particular, include information as to—

- (a) any conflict with the person's religious beliefs; and
- (b) any interference with the times, if any, at which he normally works or attends an educational establishment.

(4) A court that proposes to make an enforcement order may ask an officer of the Agency to provide the court with information as to the matters in subsection (3).

(5) It shall be the duty of the officer of the Agency to comply with any request under this section.

(6) In making an enforcement order in relation to a contact order, a court must take into account the welfare of the child who is the subject of the contact order.

**Enforcement orders: monitoring.**

41.(1) On making an enforcement order in relation to a person, the court may ask an officer of the Agency—

- (a) to monitor, or arrange for the monitoring of, the person's compliance with the unpaid work requirement imposed by the order;
- (b) to report to the court if a report under section 45 is made in relation to the person;
- (c) to report to the court on such other matters relating to the person's compliance as may be specified in the request; and
- (d) to report to the court if the person is, or becomes, unsuitable to perform work under the requirement.

(2) It shall be the duty of the officer of the Agency to comply with any request under this section.

**Enforcement orders: warning notices.**

42. Where the court makes an enforcement order, it is to attach to the order a notice warning of the consequences of failing to comply with the order.

**Power to revoke an enforcement order.**

43.(1) Where a court has made an enforcement order in respect of a person's failure to comply with a contact order and the enforcement order is in force, the court may revoke the enforcement order if it appears to the court that—

- (a) in all the circumstances no enforcement order should have been made;
- (b) having regard to circumstances which have arisen since the enforcement order was made, it would be appropriate for the enforcement order to be revoked; or
- (c) having regard to the person's satisfactory compliance with the contact order or any contact order that has effect in its place, it would be appropriate for the enforcement order to be revoked.

(2) The enforcement order may be revoked by the court under subsection (1) of its own motion or on an application by the person subject to the enforcement order.

(3) In deciding whether to revoke the enforcement order under subsection (1)(b), the court is to take into account—

- (a) the extent to which the person subject to the enforcement order has complied with it; and
- (b) the likelihood that the person will comply with the contact order or any contact order that has effect in its place in the absence of an enforcement order.

(4) In deciding whether to revoke the enforcement order under subsection (1)(c), the court is to take into account the likelihood that the person will comply with the contact order or any contact order that has effect in its place in the absence of an enforcement order.

**Amendment of hours specified under unpaid work requirement.**

44.(1) This section applies where a court has made an enforcement order in respect of a person's failure to comply with a contact order and the enforcement order is in force.

(2) If it appears to the court that, having regard to circumstances that have arisen since the enforcement order was made, it would be appropriate to do so, the court may reduce the number of hours specified in the order.

(3) In amending the enforcement order under subsection (2), the court must be satisfied that the effect on the person of the enforcement order as proposed to be amended is no more than is required to secure his compliance with the contact order or any contact order that has effect in its place.

(4) The enforcement order may be amended by the court under subsection (2) of its own motion or on an application by the person subject to the enforcement order.

**Warning and report following breach.**

45.(1) This section applies where a court has made an enforcement order in respect of a person's failure to comply with a contact order.

(2) If the responsible officer is of the opinion that the person has failed without reasonable excuse to comply with the unpaid work requirement imposed by the enforcement order, the officer must give the person a warning under this section unless—

- (a) the person has within the previous twelve months been given a warning under this section in relation to a failure to comply with the unpaid work requirement; or
- (b) the responsible officer reports the failure to the appropriate person.

(3) A warning under this section must—

- (a) describe the circumstances of the failure;
- (b) state that the failure is unacceptable; and
- (c) inform the person that, if within the next twelve months he again fails to comply with the unpaid work requirement, the warning and the subsequent failure will be reported to the appropriate person.

(4) The responsible officer must, as soon as practicable after the warning has been given, record that fact.

(5) If—

- (a) the responsible officer has given a warning under this section to a person subject to an enforcement order; and
- (b) at any time within the twelve months beginning with the date on which the warning was given, the responsible officer is of the opinion that the person has since that date failed without reasonable excuse to comply with the unpaid work requirement imposed by the enforcement order, the officer must report the failure to the appropriate person.

(6) A report under subsection (5) must include a report of the warning given to the person subject to the enforcement order.

(7) “Responsible officer”, in relation to a person subject to an enforcement order, means an officer of the Agency designated as such for the purposes of this Part.

**Breach of an enforcement order.**

46.(1) This section applies where a court has made an enforcement order (“the first order”) in respect of a person’s failure to comply with a contact order.

(2) If the court is satisfied beyond reasonable doubt that the person has failed to comply with the first order, the court may—

- (a) amend the first order so as to make the requirement more onerous;
- (b) make an enforcement order (“the second order”) in relation to the person and (if the first order is still in force) provide for the second order to have effect either in addition to or in substitution for the first order;
- (c) order him to pay a sum not exceeding £50 for every day during which he is in default; or
- (b) commit him to custody until he has remedied his default—

but a person shall not by virtue of this subsection be ordered to pay more than £10,000 or to be committed for more than two months in all for disobeying one or more orders at that time.

(3) But the court may not exercise its powers under subsection (2) if it is satisfied that the person had a reasonable excuse for failing to comply with the first order.

(4) The burden of proof as to the matter mentioned in subsection (3) lies on the person claiming to have had a reasonable excuse, and the standard of proof is the balance of probabilities.

(5) The court may exercise its powers under subsection (2) in relation to the first order only on the application of a person who would be able to apply under sections 38 and 39 for an enforcement order if the failure to comply with the first order were a failure to comply with the contact order to which the first order relates.

(6) Where the person proposing to apply to the court is the child with respect to whom the contact order was made, subsections (6) and (7) of section 39 have effect in relation to the application as they have effect in relation to an application for an enforcement order.

(7) An application to the court to exercise its powers under subsection (2) may only be made while the first order is in force.

(8) The court may not exercise its powers under subsection (2) in respect of a failure by the person to comply with the first order unless it is satisfied that before the failure occurred the person had been given (in accordance with rules of court) a copy of, or otherwise informed of the terms of, a notice under section 42 relating to the first order.

(9) In exercising its powers under subsection (2), the court must be satisfied that, taking into account the extent to which the person has complied with the first order, the effect on the person of the proposed exercise of those powers—

- (a) is no more than is required to secure his compliance with the contact order or any contact order that has effect in its place; and
- (b) is no more than is proportionate to the seriousness of his failures to comply with the contact order and the first order.

(10) Where the court exercises its powers under subsection (2) by making an enforcement order in relation to a person who has failed to comply with another enforcement order—

- (a) sections 40(2) to (6), 41 and 42 have effect as regards the making of the order in relation to the person as they have effect as regards the making of an enforcement order in relation to a person who has failed to comply with a contact order; and

- (b) sections 43 to 46 have effect in relation to the order so made as if it were an enforcement order made in respect of the failure for which the other order was made.

**Compensation for financial loss.**

47.(1) This section applies if a contact order with respect to a child has been made.

(2) If the court is satisfied that—

- (a) an individual has failed to comply with the contact order; and
- (b) a person falling within subsection (6) has suffered financial loss by reason of the breach,

it may make an order requiring the individual in breach to pay the person compensation in respect of his financial loss.

(3) But the court may not make an order under subsection (2) if it is satisfied that the individual in breach had a reasonable excuse for failing to comply with the contact order.

(4) The burden of proof as to the matter mentioned in subsection (3) lies on the individual claiming to have had a reasonable excuse.

(5) An order under subsection (2) may be made only on an application by the person who claims to have suffered financial loss.

(6) A person falls within this subsection if he is—

- (a) the person who is, for the purposes of the contact order, the person with whom the child concerned lives or is to live;
- (b) the person whose contact with the child concerned is provided for in the contact order;
- (c) an individual subject to a condition under section 28(7)(b) or a contact activity condition imposed by the contact order; or
- (d) the child concerned.

(7) Where the person proposing to apply for an order under subsection (2) is the child concerned, the child must obtain the leave of the court before making such an application.

(8) The court may grant leave to the child concerned only if it is satisfied that he has sufficient understanding to make the proposed application.

(9) The amount of compensation is to be determined by the court, but may not exceed the amount of the applicant's financial loss.

(10) In determining the amount of compensation payable by the individual in breach, the court must take into account the individual's financial circumstances.

(11) An amount ordered to be paid as compensation may be recovered by the applicant as a civil debt due to him.

(12) Subsection (2) has effect subject to the restrictions in subsection (15).

(13) Proceedings in which any question of making an order under subsection (2) arises are to be regarded for the purposes of section 28(1) and (2) as proceedings in which a question arises with respect to an order made under section 25.

(14) In exercising its powers under this section, a court is to take into account the welfare of the child concerned.

(15) A court may not make an order under subsection (2) requiring an individual to pay compensation in respect of a failure by him to comply with a contact order—

- (a) unless it is satisfied that before the failure occurred the individual had been given (in accordance with rules of court) a copy of, or otherwise informed of the terms of—
  - (i) in the case of a failure to comply with a contact order that was varied before the failure occurred, a notice under section 38 relating to the order varying the contact order or, where more than one such order has been made, the last order preceding the failure in question; and
  - (ii) in any other case, a notice under section 38 relating to the contact order;
- (b) where the failure occurred before the individual attained the age of 18; and
- (c) that is an excepted order (within the meaning given by section 32(12)).

**PART VII***Financial provisions for children***Orders for financial relief against parents.**

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

(2) The orders referred to in subsection (1) are—

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

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

(ii) to make to the child himself,

such periodical payments, for such term, as may be specified in the order;

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

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

(ii) to secure to the child himself,

such periodical payments, for such term, as may be so specified;

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

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

(ii) to pay to the child himself,

such lump sum as may be so specified;

(d) an order requiring a settlement to be made for the benefit of the child, and to the satisfaction of the court, of property—

(i) to which either parent is entitled, either in possession or in reversion; and

(ii) which is specified in the order; and

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

- (i) to transfer to the applicant, for the benefit of the child; or
- (ii) to transfer to the child himself,

such property to which the parent is, or the parents are, entitled, either in possession or in reversion, as may be specified in the order.

(3) The powers conferred by this section may be exercised at any time.

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

(5) Where a court makes an order under this section—

- (a) it may at any time make a further such order under subsection (2)(a), (b) or (c) with respect to the child concerned if he has not reached the age of eighteen; and
- (b) it may not make more than one order under subsection (2)(d) or (e) against the same person in respect of the same child.

(6) On making, varying or discharging a residence order the court may exercise any of its powers under this Part even though no application has been made to it under this Part.

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

### **Orders for financial relief for persons over eighteen.**

49.(1) If, on an application by a person who has reached the age of eighteen, it appears to the court—

- (a) that the applicant is, will be or (if an order were made under this section) would be receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not while in gainful employment; or
- (b) that there are special circumstances which justify the making of an order under this section,

the court may make one or both of the orders mentioned in subsection (2).

(2) The orders are—

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

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

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

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

(6) In subsection (3) “periodical payments order” means an order made under—

- (a) this Part; or
- (b) section 47(2) of the Matrimonial Causes Act;
- (c) 65 or 74 of the Civil Partnership Act 2014,

for the making or securing of periodical payments.

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

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

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

50.(1) The term to be specified in an order for periodical payments made under section 48(2)(a) or (b) in favour of a child may begin with the date of the making of an application for the order in question or any later date but—

- (a) shall not in the first instance extend beyond the child's seventeenth birthday unless the court thinks it right in the circumstances of the case to specify a later date; and
- (b) shall not in any event extend beyond the child's eighteenth birthday.

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

- (a) the child is, or will be or (if an order were made without complying with that paragraph) would be receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not while in gainful employment; or
- (b) there are special circumstances which justify the making of an order without complying with that paragraph.

(3) An order for periodical payments made under section 48(2)(a) or 49(2)(a) shall, notwithstanding anything in the order, cease to have effect on the death of the person liable to make payments under the order.

(4) Where an order is made under section 48(2)(a) or (b) requiring periodical payments to be made or secured to the parent of a child, the order shall cease to have effect if—

- (a) any parent making or securing the payments; and
- (b) any parent to whom the payments are made or secured,

live together for a period of more than six months.

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

51.(1) In deciding whether to exercise its powers under section 48 or 49, and if so in what manner, the court shall have regard to all the circumstances including—

- (a) the income, earning capacity, property and other financial resources which each person mentioned in subsection (4) has or is likely to have in the foreseeable future;
- (b) the financial needs, obligations and responsibilities which each person mentioned in subsection (4) has or is likely to have in the foreseeable future;
- (c) the financial needs of the child;
- (d) the income, earning capacity, if any, property and other financial resources of the child;
- (e) any physical or mental disability of the child; and

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

(2) In deciding whether to exercise its powers under section 48 against a person who is not the mother or the father of the child, and if so in what manner, the court shall in addition have regard to—

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

(3) Where the court makes an order under section 48 against a person who is not the father of the child, it shall record in the order that the order is made on the basis that the person against whom the order is made is not the child's father.

(4) The persons mentioned in subsection (1) are—

- (a) in relation to a decision whether to exercise its powers under section 48, any parent of the child;
- (b) in relation to a decision whether to exercise its powers under section 49, the mother and father of the child;
- (c) the applicant for the order; and
- (d) any other person in whose favour the court proposes to make the order.

#### **Provisions relating to lump sums.**

52.(1) Without prejudice to the generality of section 48, an order under that section for the payment of a lump sum may be made for the purpose of enabling any liabilities or expenses—

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

to be met.

(2) *Deleted.*

(3) The power of the court under section 48 or 49 to vary or discharge an order for the making or securing of periodical payments by a parent shall include power to make an order under that provision for the payment of a lump sum by that parent.

(4) *Deleted.*

(5) An order made under section 48 or 49 for the payment of a lump sum may provide for the payment of that sum by instalments.

(6) Where the court provides for the payment of a lump sum by instalments the court, on an application made either by the person liable to pay or the person entitled to receive that sum, shall have power to vary that order by varying—

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

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

53.(1) In exercising its powers under 48 or 49 to vary or discharge an order for the making or securing of periodical payments the court shall have regard to all the circumstances of the case, including any change in any of the matters to which the court was required to have regard when making the order.

(2) The power of the court under section 48 or 49 to vary an order for the making or securing of periodical payments shall include power to suspend any provision of the order temporarily and to revive any provision so suspended.

(3) Where on an application under section 48 or 49 for the variation or discharge of an order for the making or securing of periodical payments the court varies the payments required to be made under that order, the court may provide that the payments as so varied shall be made from such date as the court may specify, not being earlier than the date of the making of the application.

(4) An application for the variation of an order made under section 48 for the making or securing of periodical payments to or for the benefit of a child may, if the child has reached the age of sixteen, be made by the child himself.

(5) Where an order for the making or securing of periodical payments made under section 48 ceases to have effect on the date on which the child reaches the age of sixteen, or at any time after that date but before or on the date on which he reaches the age of eighteen, the child may apply to the court which made the order for an order for its revival.

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

- (a) the child is, will be or (if an order were made under this subsection) would be receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation, whether or not while in gainful employment; or
- (b) there are special circumstances which justify the making of an order under this section,

the court shall have power by order to revive the order from such date as the court may specify, not being earlier than the date of the making of the application.

(7) Any order which is revived by an order under subsection (6) may be varied or discharged under that provision, on the application of any person by whom or to whom payments are required to be made under the revived order.

(8) An order for the making or securing of periodical payments made under section 48 may be varied or discharged, after the death of either parent, on the application of a guardian or special guardian of the child concerned.

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

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

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

(3) The personal representatives of a deceased person against whom a secured periodical payments order was made shall not be liable for having distributed any part of the estate of the deceased after the end of the period

of six months referred to in subsection (2) on the ground that they ought to have taken into account the possibility that the court might permit an application for variation to be made after that period by the person entitled to payments under the order.

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

(5) Where an application to vary a secured periodical payments order is made after the death of the parent liable to make payments under the order, the circumstances to which the court is required to have regard under section 53(1) shall include the changed circumstances resulting from the death of the parent.

(6) In considering for the purposes of subsection (2) the question when representation was first taken out, a grant limited to settled land or to trust property shall be left out of account and a grant limited to real estate or to personal estate shall be left out of account unless a grant limited to the remainder of the estate has previously been made or is made at the same time.

(7) In this section “secured periodical payments order” means an order for secured periodical payments under section 48(2)(b).

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

55.(1) This section applies where a residence order is made with respect to a child at a time when there is in force an order made under any other enactment other than this Act requiring a person to contribute to the child’s maintenance.

(2) Where this section applies, the court may, on the application of—

- (a) any person required by the order referred to in subsection (1) above to contribute to the child’s maintenance; or
- (b) any person in whose favour a residence order or special guardianship order with respect to the child is in force,

make an order revoking that order, or varying it by altering the amount of any sum payable under that order or by substituting the applicant for the person to whom any such sum is otherwise payable under that order.

#### **Interim orders.**

56.(1) Where an application is made under section 48 or 49 the court may, at any time before it disposes of the application, make an interim order—

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

(2) An interim order made under this section may provide for payments to be made from such date as the court may specify, not being earlier than the date of the making of the application under section 48 or 49.

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

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

#### **Alteration of maintenance agreements.**

57.(1) In this section “maintenance agreement” means any agreement in writing made with respect to a child, whether before or after the commencement of this Act, which—

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

and any such provisions are in this section, referred to as “financial arrangements”.

(2) Where a maintenance agreement is for the time being subsisting and one of the parties to the agreement is for the time being resident in Gibraltar, then, either party may apply to the court for an order under this section.

(3) If the court to which the application is made is satisfied either—

- (a) that, by reason of a change in the circumstances in the light of which any financial arrangements contained in the agreement were made, including a change foreseen by the parties when making the agreement, the agreement should be altered so as to make different financial arrangements; or

- (b) that the agreement does not contain proper financial arrangements with respect to the child,

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

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

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

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

then, in deciding the term for which under the agreement as altered by the order the payments or the additional payments attributable to the increase are to be made or secured for the benefit of the child, the court shall apply the provisions of subsections (1) and (2) of section 50 as if the order were an order under section 48(2)(a) or (b).

(6) Where a maintenance agreement provides for the continuation, after the death of one of the parties, of payments for the maintenance of a child and that party dies domiciled in Gibraltar, the surviving party or the personal representatives of the deceased party may apply to the court for an order under this section.

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

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

(9) In considering for the purposes of subsection (8) the question when representation was first taken out, a grant limited to settled land or to trust property shall be left out of account and a grant limited to real estate or to

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

(10) The provisions of this section shall not render the personal representatives of the deceased liable for having distributed any part of the estate of the deceased after the expiry of the period of six months referred to in subsection (8) on the ground that they ought to have taken into account the possibility that the court might grant leave for an application by virtue of this section to be made by the surviving party after that period.

(11) Subsection(10) shall not prejudice any power to recover any part of the estate so distributed arising by virtue of the making of an order in pursuance of this section.

**Change of address and enforcement of orders for payment of money.**

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

(2) Any person failing without reasonable excuse to give the notice referred to in subsection (1) shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 2 on the standard scale.

(3) An order for the payment of money made by the court under this Act shall be enforceable as a “maintenance order” within the meaning of section 2(1) of the Magistrates’ Courts Act.

(4) If, on the application of the Agency or a person entitled to receive payments in pursuance of any order for payment of money by the court under this Act, it appears to the court—

- (a) that, at the time when the application was made, there was due under the order and unpaid an amount equal to not less than two of the payments required by the order; and
- (b) that the defendant is a person to whom earnings fall to be paid,

then, the court may, if it thinks fit, make an attachment of earnings order.

(5) Where the court makes an order under subsection (4), the provisions of sections 48 to 56 and the Schedule of the Maintenance Act shall apply as if the order has been made as an attachment of earnings order under that Act.

(6) In the exercise of its powers under this section the Supreme Court may exercise any of the powers exercisable by the magistrates' court under section 57 of the Magistrates' Court Act.

**Financial provision for child resident in country outside Gibraltar.**

59.(1) Where one parent of a child lives in Gibraltar and the child lives outside Gibraltar with—

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

the court shall have power, on an application made by any of the persons mentioned in paragraphs (a) to (c), to make one or both of the orders mentioned in section 48(2)(a) and (b) against the parent living in Gibraltar.

(2) Any reference in this Act to the powers of the court under section 48(2) or to an order made under section 48(2) shall include a reference to the powers which the court has by virtue of subsection (1) or to an order made by virtue of subsection (1).

**Care Agency contribution to child's maintenance.**

60.(1) Where a child lives, or is to live, with a person as the result of a residence order, the Agency may, subject to the availability of the voted funds for that purpose, make contributions to that person towards the cost of the accommodation and maintenance of the child.

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

**Family assistance orders.**

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

- (a) a probation officer to be made available; or
- (b) the Agency to make an officer of it available,

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

(2) The persons who may be named in an order under this section (“a family assistance order”) are—

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

(3) No court may make a family assistance order unless it has obtained the consent of every person to be named in the order other than the child .

(4) A family assistance order may direct—

- (a) the person named in the order; or
- (b) such of the persons named in the order as may be specified in the order,

to take such steps as may be so specified with a view to enabling the officer concerned to be kept informed of the address of any person named in the order and to be allowed to visit any such person.

(5) If the court makes a family assistance order with respect to a child and the order is to be in force at the same time as a contact order made with respect to the child, the family assistance order may direct the officer concerned to give advice and assistance as regards establishing, improving and maintaining contact to such of the persons named in the order as may be specified in the order.

(6) Unless it specifies a shorter period, a family assistance order shall have effect for a period of twelve months beginning with the day on which it is made.

(7) Where—

- (a) a family assistance order is in force with respect to a child; and
- (b) an order under section 25 is also in force with respect to the child,

the officer concerned may refer to the court the question whether the order made under section 25 should be varied or discharged.

(8) If the court makes a family assistance order with respect to a child and the order is to be in force at the same time as an order under section 25 made with respect to the child, the family assistance order may direct the officer concerned to report to the court on such matters relating to the order under section 25 as the court may require (including the question whether the order under section 25 ought to be varied or discharged).

(9) A family assistance order shall not be made so as to require the Agency to make an officer of it available unless it agrees.

**Risk assessments.**

62.(1) This section applies to the following functions of officers of the Agency—

- (a) any function in connection with family proceedings in which the court has power to make an order under this Part with respect to a child or in which a question with respect to such an order arises; and
- (b) any function in connection with an order made by the court in such proceedings.

(2) If, in carrying out any function to which this section applies, an officer of the Agency is given cause to suspect that the child concerned is at risk of harm, he must—

- (a) make a risk assessment in relation to the child; and
- (b) provide the risk assessment to the court.

(3) A risk assessment, in relation to a child who is at risk of suffering harm of a particular sort, is an assessment of the risk of that harm being suffered by the child.

**Interpretations for Part VII.**

63.(1) In this Part “child” includes, in any case where an application is made under section 49 or 53 in relation to a person who has reached the age of eighteen, that person.

(2) In this Part, except paragraph sections 49 and 60, “parent” includes—

- (a) any party to a marriage (whether or not subsisting) in relation to whom the child concerned is a child of the family; and

- (b) any civil partner in a civil partnership (whether or not subsisting) in relation to whom the child concerned is a child of the family;

and for this purpose any reference to either parent or both parents shall read as a reference to any parent of his and to all of his parents.

### **PART VIII**

#### *Protection of Children: General*

#### **Care and supervision orders.**

64.(1) On the application of the Agency, or an authorised person the court may make an order—

- (a) placing the child with respect to whom the application is made in the care of the Agency; or
- (b) putting him under the supervision of the Agency or of any person designated by the Agency for this purpose.

(2) A court may only make a care order or supervision order if it is satisfied—

- (a) that the child concerned is suffering, or is likely to suffer, significant harm; and
- (b) that the harm, or likelihood of harm, is attributable to—
  - (i) the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him; or
  - (ii) the child's being beyond parental control.

(3) No care order or supervision order may be made with respect to a child who has reached the age of seventeen or sixteen, in the case of a child who is married.

(4) No care order may be made with respect to a child until the court has considered a care plan under section 65.

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

(6) The court may—

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

(7) Where an authorised person proposes to make an application under this section he shall—

- (a) if it is reasonably practicable to do so; and
- (b) before making the application,

consult the Agency.

(8) An application made by an authorised person shall not be entertained by the court if, at the time when it is made, the child concerned is—

- (a) the subject of an earlier application for a care order, or supervision order, which has not been disposed of; or
- (b) subject to a care order or supervision order.

(9) In this section—

“authorised person” means any person authorised by order of the Minister to bring proceedings under this section or any officer of the Agency who is so authorised;

“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;

“development” means physical, intellectual, emotional, social or behavioural development;

“health” means physical or mental health; and

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

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

(11) In this Act—

“a care order” means an order under subsection (1)(a) (except where express provision to the contrary is made) includes an interim care order made under section 85; and

“a supervision order” means an order under subsection (1)(b) and (except where express provision to the contrary is made) includes an interim supervision order made under section 85.

**Care orders: care plans.**

65.(1) Where an application is made on which a care order might be made with respect to a child, the Agency shall, within such time as the court may direct, prepare a plan (“a care plan”) for the future care of the child.

(2) While the application is pending, the Agency shall keep any care plan prepared by it under review and, if in its opinion some change is required, revise the plan, or make a new plan, accordingly.

(3) A care plan shall give any prescribed information and do so in the prescribed manner.

(4) In section 64(4) and this section, references to a care order do not include an interim care order.

(5) A plan prepared, or treated as prepared, under this section is referred to in this Act as a “section 65 plan”.

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

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

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

(2) Rules of court may–

- (a) specify periods within which specified steps must be taken in relation to such proceedings; and

- (b) make other provision with respect to such proceedings for the purpose of ensuring, so far as is reasonably practicable, that they are disposed of without delay.

*Care orders*

**Effect of care order.**

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

(2) Where a care order has been made with respect to a child on the application of an authorised person but the Agency was not informed that that person proposed to make the application, the child may be kept in the care of that person until received into the care of the Agency.

(3) While a care order is in force with respect to a child, the Agency shall—

- (a) have parental responsibility for the child; and
- (b) have the power (subject to the following provisions of this section) to determine the extent to which a parent or guardian or special guardian of the child may meet his parental responsibility for him.

(4) The Agency may not exercise the power in subsection (3)(b) unless they are satisfied that it is necessary to do so in order to safeguard or promote the child's welfare.

(5) Nothing in subsection (3)(b) shall prevent a person mentioned in that subsection who has care of the child from doing what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting his welfare.

(6) While a care order is in force with respect to a child, the Agency shall not cause the child to be brought up in any religious persuasion other than that in which he would have been brought up if the order had not been made.

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

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

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

(8) Subsection (7)(b) does not–

- (a) prevent the removal of such a child, for a period of less than one month, by the Agency; or
- (b) apply to arrangements for such a child to live outside Gibraltar.

(9) The power in subsection (3)(b) is subject (in addition to being subject to the provisions of this section) to any right, duty, power, responsibility or authority which–

- (a) a parent, guardian or special guardian of the child; or
- (b) a person who by virtue of section 14 has parental responsibility for the child,

has in relation to the child and his property by virtue of any other enactment.

**Parental contact etc. with children in care.**

68.(1) Where a child is in the care of the Agency, the Agency shall, subject to the provisions of this section, allow the child reasonable contact with–

- (a) his parents or a person who by virtue of section 14 has parental responsibility for the child;
- (b) any guardian or special guardian of his;
- (c) where there was a residence order in force with respect to the child immediately before the care order was made, the person in whose favour the order was made; and
- (d) where, immediately before the care order was made, a person had care of the child by virtue of an order made in the exercise of the Supreme Court's inherent jurisdiction with respect to children, that person.

(2) On an application made by the Agency or the child, the court may make such order as it considers appropriate with respect to the contact which is to be allowed between the child and any named person.

(3) On an application made by–

- (a) any person mentioned in paragraphs (a) to (d) of subsection (1);  
or

- (b) any person who has obtained the leave of the court to make the application,

the court may make such order as it considers appropriate with respect to the contact which is to be allowed between the child and that person.

(4) On an application made by the Agency or the child, the court may make an order authorising the Agency to refuse to allow contact between the child and any person who is mentioned in paragraphs (a) to (d) of subsection (1) and named in the order.

(5) When making a care order with respect to a child, or in any family proceedings in connection with a child who is in the care of the Agency, the court may make an order under this section, even though no application for such an order has been made with respect to the child, if it considers that the order should be made.

(6) The Agency may refuse to allow the contact that would otherwise be required by virtue of subsection (1) or an order under this section if—

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

(7) An order under this section may impose such conditions as the court considers appropriate.

(8) The Minister may by Regulations make provision as to—

- (a) the steps to be taken by the Agency in respect of the exercise of its powers under subsection (6);
- (b) the circumstances in which, and conditions subject to which, the terms of any order under this section may be departed from by agreement between the Agency and the person in relation to whom the order is made; and
- (c) notification by the Agency of any variation or suspension of arrangements made (otherwise than under an order under this section) with a view to affording any person contact with a child to whom this section applies.

(9) The court may vary or discharge any order made under this section on the application of the Agency, the child concerned or the person named in the order.

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

(11) The court shall, before making a care order with respect to any child—

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

#### *Supervision orders*

#### **Supervision orders.**

69. While a supervision order is in force it shall be the duty of the supervisor—

- (a) to advise, assist and befriend the supervised child;
- (b) to take such steps as are reasonably necessary to give effect to the order; and
- (c) where—
  - (i) the order is not wholly complied with; or
  - (ii) the supervisor considers that the order may no longer be necessary,

to consider whether or not to apply to the court for its variation or discharge.

#### **Power of supervisor to give directions to supervised child.**

70.(1) A supervision order may require the supervised child to comply with any directions given from time to time by the supervisor which require him to do all or any of the following things to—

- (a) live at a place or places specified in the directions for a period or periods so specified;

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

(2) It shall be for the supervisor to decide whether, and to what extent, he exercises his power to give directions and to decide the form of any directions which he gives.

(3) Subsection (1) does not confer on a supervisor power to give directions in respect of any medical or psychiatric examination or treatment (which are matters dealt with in sections 72 and 73).

**Imposition of obligations on responsible person.**

71.(1) With the consent of any responsible person, a supervision order may include a requirement-

- (a) that he takes all reasonable steps to ensure that the supervised child complies with any direction given by the supervisor under section 70 ;
- (b) that he takes all reasonable steps to ensure that the supervised child complies with any requirement included in the order under section 72 or 73; or
- (c) that he complies with any directions given by the supervisor requiring him to attend at a place specified in the directions for the purpose of taking part in activities so specified.

(2) A direction given under subsection (1)(c) may specify the time at which the responsible person is to attend and whether or not the supervised child is required to attend with him.

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

(4) In this Part, "the responsible person" in relation to a supervised child means-

- (a) any person who has parental responsibility for the child; and
- (b) any other person with whom the child is living.

**Psychiatric and medical examinations.**

- 72.(1) A supervision order may require the supervised child—
- (a) to submit to a medical or psychiatric examination; or
  - (b) to submit to any such examination from time to time as directed by the supervisor.
- (2) Any such examination shall be required to be conducted—
- (a) by, or under the direction of, such registered medical practitioner as may be specified in the order;
  - (b) at a place specified in the order and at which the supervised child is to attend as a non-resident patient; or
  - (c) at—
    - (i) a health service hospital; or
    - (ii) in the case of a psychiatric examination, a hospital or mental nursing home,in which the supervised child is, or is to attend as, a resident patient.
- (3) A requirement of a kind mentioned in subsection (2)(c) shall not be included unless the court is satisfied, on the evidence of a registered medical practitioner, that—
- (a) the child may be suffering from a physical or mental condition that requires, and may be susceptible to, treatment; and
  - (b) a period as a resident patient is necessary if the examination is to be carried out properly.
- (4) No court shall include a requirement under this section in a supervision order unless it is satisfied that—
- (a) where the child has sufficient understanding to make an informed decision, he consents to its inclusion; and
  - (b) satisfactory arrangements have been, or can be, made for the examination.

**Psychiatric and medical treatment.**

73.(1) Where a court which proposes to make or vary a supervision order is satisfied, on the evidence of a registered medical practitioner approved for the purposes of section 8 of the Mental Health Act, that the mental condition of the supervised child—

- (a) is such as requires, and may be susceptible to, treatment; but
- (b) is not such as to warrant his detention in pursuance of an order under Part II of that Act,

the court may include in the order a requirement that the supervised child shall, for a period specified in the order, submit to such treatment as is so specified.

(2) The treatment specified in accordance with subsection (1) must be—

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

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

(4) The treatment specified in accordance with subsection (3) must be—

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

(5) No court shall include a requirement under this section in a supervision order unless it is satisfied—

- (a) where the child has sufficient understanding to make an informed decision, that he consents to its inclusion; and

- (b) that satisfactory arrangements have been, or can be, made for the treatment.

(6) If a medical practitioner by whom or under whose direction a supervised person is being treated in pursuance of a requirement included in a supervision order by virtue of this section is unwilling to continue to treat or direct the treatment of the supervised child or is of the opinion that—

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

the practitioner shall make a report in writing to that effect to the supervisor.

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

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

74.(1) Subject to subsection (2) and section 145 a supervision order shall cease to have effect at the end of the period of one year beginning with the date on which it was made.

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

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

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

75.(1) A supervision order may require the supervised child—

- (a) to keep the supervisor informed of any change in his address; and
- (b) to allow the supervisor to visit him at the place where he is living.

(2) The responsible person in relation to any child with respect to whom a supervision order is made shall if—

- (a) asked by the supervisor, inform him of the child's address (if it is known to him); and
- (b) he is living with the child, allow the supervisor reasonable contact with the child.

**Effect of supervision order on earlier orders.**

76.(1) The making of a supervision order with respect to any child brings to an end any earlier supervision order which—

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

**Functions and expenditure of the Agency.**

77.(1) The Minister may make Regulations with respect to the exercise by the Agency of its functions where a child has been placed under its supervision by a supervision order, subject to the availability of voted funds.

(2) Where a supervision order requires compliance with directions given by virtue of this Part, any expenditure incurred by the supervisor for the purposes of the directions shall be defrayed by the Agency, subject to the availability of voted funds for that purpose.

**Education supervision orders.**

78.(1) Where it appears to the Director of Education that a parent or guardian or special guardian of any child has been in breach of any school attendance order issued under section 51 of the Education Act, he may, in consultation with the Agency, apply to the court to make an order putting that child under his supervision.

(2) The court may also make an order putting the child under the supervision of the Director of Education where the Agency, in consultation with the Director of Education, makes an application to the court for such an order.

(3) An order made pursuant subsection (1) or (2) shall be known as education supervision order.

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

(5) For the purposes of this section, a child is being properly educated only if he is receiving efficient full time education suitable to his age, ability and aptitude and any special educational needs he may have.

(6) Where a child is—

- (a) the subject of a school attendance order which is in force under section 51 of the Education Act and which has not been complied with; or
- (b) a registered pupil at a school which he is not attending regularly within the meaning of section 52 of that Act,

then, unless it is proved that he is being properly educated, it shall be assumed that he is not.

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

(8) Where the Director of Education proposes to make an application for an education supervision order he shall, before making the application, consult the Agency.

#### **Making of education supervision orders.**

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

- (a) to advise, assist and befriend, and give directions to—
  - (i) the supervised child; and
  - (ii) his parents,

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

- (b) where any such directions given to—
  - (i) the supervised child; or
  - (ii) a parent of his,

have not been complied with, to consider what further steps to take in the exercise of the supervisor's powers under this Part.

(2) The supervisor shall, before giving any directions under subsection (1), so far as is reasonably practicable, ascertain the wishes and feelings of—

- (a) the child; and
- (b) his parents,

including, in particular, their wishes as to the place at which the child should be educated.

(3) When settling the terms of any directions under subsection (1), the supervisor shall give due consideration—

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

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

(5) Where an education supervision order is in force with respect to a child, the duties of the child's parents under sections 50 and 52 of the Education Act shall be superseded by their duty to comply with any directions in force under the education supervision order.

(6) Where an education supervision order is made with respect to a child—

- (a) any school attendance order—
  - (i) made under section 51 of the Education Act with respect to the child; and
  - (ii) in force immediately before the making of the education supervision order,

shall cease to have effect; and

- (b) while the education supervision order remains in force, the provisions of section 51 of that Act (school attendance orders) shall not apply with respect to the child.

- (7) An education supervision order may require the child—
- (a) to keep the supervisor informed of any change in his address; and
  - (b) to allow the supervisor to visit him at the place where he is living.
- (8) A person who is the parent of a child with respect to whom an education supervision order has been made shall if—
- (a) asked by the supervisor, inform him of the child's address (if it is known to him); and
  - (b) he is living with the child, allow the supervisor reasonable contact with the child.
- (9) Where an education supervision order and a supervision order are in force at the same time with respect to the same child, any failure to comply with a direction given by the supervisor under the education supervision order shall be disregarded if it would not have been reasonably practicable to comply with it without failing to comply with a direction given under the other order.

**Duration of education supervision orders.**

- 80.(1) An education supervision order shall have effect for a period of one year, beginning with the date on which it is made.
- (2) An education supervision order shall not expire if, before it would otherwise have expired, the court has (on the application of the Agency) extended the period during which it is in force.
- (3) Such an application may not be made earlier than three months before the date on which the order would otherwise expire.
- (4) The period during which an education supervision order is in force may be extended under subsection (2) on more than one occasion.
- (5) No one extension may be for a period of more than three years.
- (6) An education supervision order shall cease to have effect on—
- (a) the child's ceasing to be of compulsory school age; or
  - (b) the making of a care order with respect to the child;

and subsections (1) to (4) are subject to this subsection.

**Discharge orders.**

81.(1) The court may discharge any education supervision order on the application of—

- (a) the child concerned;
- (b) a parent of his;
- (c) the Agency; or
- (d) the Director of Education.

(2) On discharging an education supervision order, the court may direct the Agency to investigate the circumstances of the child and make a report of it to the court.

**Offences with respect to education supervision orders.**

82.(1) If a parent of a child with respect to whom an education supervision order is in force persistently fails to comply with a direction given under that order he shall be guilty of an offence.

(2) It shall be a defence for any person charged with such an offence to prove that—

- (a) he took all reasonable steps to ensure that the direction was complied with;
- (b) the direction was unreasonable; or
- (c) he had complied with—
  - (i) a requirement included in a supervision order made with respect to the child; or
  - (ii) directions given under such a requirement,

and that it was not reasonably practicable to comply both with the direction and with the requirement or directions mentioned in this section.

(3) A person guilty of an offence under this section shall be liable, on summary conviction, to a fine not exceeding level 2 on the standard scale.

**Persistent failure of child to comply with directions.**

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

(2) Where the Agency has been notified under subsection (1) it shall investigate the circumstances of the child and take whatever actions it considered to be appropriate.

*Powers of court*

**Powers of court in certain family proceedings.**

84.(1) Where, in any family proceedings in which a question arises with respect to the welfare of any child, it appears to the court that it may be appropriate for a care or supervision order to be made with respect to him, the court may direct the Agency to undertake an investigation of the child's circumstances.

(2) Where the court gives a direction under this section the Agency shall, when undertaking the investigation, consider whether they should—

- (a) apply for a care order or for a supervision order with respect to the child; and
- (b) take any other action with respect to the child.

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

- (a) its reasons for so deciding; and
- (b) any other action which they have taken, or propose to take, with respect to the child.

(4) The information shall be given to the court before the end of the period of eight weeks beginning with the date of the direction, unless the court otherwise directs.

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

- (a) it shall consider whether it would be appropriate to review the case at a later date; and

- (b) if it decides that it would be, it shall determine the date on which that review is to begin.

**Interim orders.**

85.(1) Where—

- (a) in any proceedings on an application for a care order or supervision order, the proceedings are adjourned; or
- (b) the court gives a direction under section 84 (1),

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

(2) A court shall not make an interim care order or interim supervision order under this section unless it is satisfied that there are reasonable grounds for believing that the circumstances with respect to the child are as mentioned in section 64(2).

(3) Where, in any proceedings on an application for a care order or supervision order, a court makes a residence order with respect to the child concerned, it shall also make an interim supervision order with respect to him unless satisfied that his welfare will be satisfactorily safeguarded without an interim order being made.

(4) An interim order made under or by virtue of this section shall have effect for such period as may be specified in the order, but shall in any event cease to have effect on whichever of the following events first occurs—

- (a) the expiry of the period of eight weeks beginning with the date on which the order is made;
- (b) if the order is the second or subsequent such order made with respect to the same child in the same proceedings, the expiry of the relevant period;
- (c) in a case which falls within subsection (1)(a), the disposal of the application;
- (d) in a case which falls within subsection (1)(b), the disposal of an application for a care order or supervision order made by the Agency with respect to the child; or
- (e) in a case which falls within subsection (1)(b) and in which—

- (i) the court has given a direction under section 84(4), but
- (ii) no application for a care order or supervision order has been made with respect to the child,

the expiry of the period fixed by that direction.

(5) In subsection (4)(b) “the relevant period” means—

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

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

(7) A direction under subsection (6) may be to the effect that there is to be—

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

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

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

(9) Sections 72 and 73 shall not apply in relation to an interim supervision order.

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

**Power to include exclusion requirement in interim care order.**

86.(1) Where—

- (a) on being satisfied that there are reasonable grounds for believing that the circumstances with respect to a child are as mentioned in section 64(2)(a) and (b)(i), the court makes an interim care order with respect to a child; and
- (b) the conditions mentioned in subsection (2) are satisfied, the court may include an exclusion requirement in the interim care order.

(2) The conditions are—

- (a) that there is reasonable cause to believe that, if a person (“the relevant person” is excluded from a dwelling-house in which the child lives, the child will cease to suffer, or cease to be likely to suffer, significant harm; and
- (b) that another person living in the dwelling-house (whether a parent of the child or some other person)—
  - (i) is able and willing to give to the child the care which it would be reasonable to expect a parent to give him, and
  - (ii) consents to the inclusion of the exclusion requirement.

(3) For the purposes of this section an exclusion requirement is any one or more of the following—

- (a) a provision requiring the relevant person to leave a dwelling-house in which he is living with the child;
- (b) a provision prohibiting the relevant person from entering a dwelling-house in which the child lives; and
- (c) a provision excluding the relevant person from a defined area in which a dwelling-house in which the child lives is situated.

(4) The court may provide that the exclusion requirement is to have effect for a shorter period than the other provisions of the interim care order.

(5) Where the court makes an interim care order containing an exclusion requirement, the court may attach a power of arrest to the exclusion requirement.

(6) Where the court attaches a power of arrest to an exclusion requirement of an interim care order, it may provide that the power of arrest is to have effect for a shorter period than the exclusion requirement.

(7) Any period specified for the purposes of subsection (4) or (6) may be extended by the court (on one or more occasions) on an application to vary or discharge the interim care order.

(8) Where a power of arrest is attached to an exclusion requirement of an interim care order by virtue of subsection (5), a police officer may arrest without warrant any person whom he has reasonable cause to believe to be in breach of the requirement.

(9) If, while an interim care order containing an exclusion requirement is in force, the Agency has removed the child from the dwelling-house from which the relevant person is excluded to other accommodation for a continuous period of more than 24 hours, the interim care order shall cease to have effect in so far as it imposes the exclusion requirement.

#### **Undertakings relating to interim care orders.**

87.(1) In any case where the court has power to include an exclusion requirement in an interim care order, the court may accept an undertaking from the relevant person.

(2) No power of arrest may be attached to any undertaking given under subsection (1).

(3) An undertaking given to a court under subsection (1)–

- (a) shall be enforceable as if it were an order of the court; and
- (b) shall cease to have effect if, while it is in force, the Agency has removed the child from the dwelling-house from which the relevant person is excluded to other accommodation for a continuous period of more than 24 hours.

(4) This section has effect without prejudice to the powers of the Supreme Court apart from this section.

(5) In this section “exclusion requirement” and “relevant person” have the same meaning as in section 86.

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

88.(1) A care order may be discharged by the court on the application of–

- (a) any person who has parental responsibility for the child;
- (b) the child himself; or
- (c) the Agency.

(2) A supervision order may be varied or discharged by the court on the application of—

- (a) any person who has parental responsibility for the child;
- (b) the child himself; or
- (c) the supervisor.

(3) On the application of a person who is not entitled to apply for the order to be discharged, but who is a person with whom the child is living, a supervision order may be varied by the court in so far as it imposes a requirement which affects that person.

(4) On the application of a person who is not entitled to apply for the order to be discharged, but who is a person to whom an exclusion requirement contained in the order applies, an interim care order may be varied or discharged by the court in so far as it imposes the exclusion requirement.

(5) Where a power of arrest has been attached to an exclusion requirement of an interim care order, the court may, on the application of any person entitled to apply for the discharge of the order so far as it imposes the exclusion requirement, vary or discharge the order in so far as it confers a power of arrest (whether or not any application has been made to vary or discharge any other provision of the order).

(6) Where a care order is in force with respect to a child the court may, on the application of any person entitled to apply for the order to be discharged, substitute a supervision order for the care order.

(7) When a court is considering whether to substitute one order for another under subsection (4), any provision of this Act which would otherwise require section 64(2) to be satisfied at the time when the proposed order is substituted or made shall be disregarded.

#### **Orders pending appeals in cases about care or supervision orders.**

89.(1) Where—

- (a) a court dismisses an application for a care order; and

- (b) at the time when the court dismisses the application, the child concerned is the subject of an interim care order,

the court may make a care order with respect to the child to have effect subject to such directions, if any, as the court may see fit to include in the order.

(2) Where—

- (a) a court dismisses an application for a care order, or an application for a supervision order; and
- (b) at the time when the court dismisses the application, the child concerned is the subject of an interim supervision order,

the court may make a supervision order with respect to the child to have effect subject to such directions, if any, as the court may see fit to include in the order.

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

- (a) its decision is not to have effect; or
- (b) the care order, or supervision order, is to continue to have effect,

but subject to such directions as the court sees fit to include in the order.

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

(5) Where—

- (a) an appeal is made against any decision of a court under this section; or
- (b) any application is made to the appellate court in connection with a proposed appeal against that decision,

the appellate court may extend the period for which the order in question is to have effect, but not so as to extend it beyond the end of the appeal period.

(6) In this section “the appeal period” means—

- (a) where an appeal is made against the decision in question, the period between the making of that decision and the determination of the appeal; and
- (b) otherwise, the period during which an appeal may be made against the decision.

**Child assessment orders.**

90.(1) The court may, on an application of the Agency or an authorised person for an order to be made under this section with respect to a child, make an order if it is satisfied that—

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

(2) In this Act “a child assessment order” means an order made under this section.

(3) A court may treat an application under this section as an application for an emergency protection order under section 94.

(4) No court shall make a child assessment order if it is satisfied—

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

(5) A child assessment order shall—

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

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

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

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

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

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

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

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

(11) Any person making an application for a child assessment order shall take such steps as are reasonably practicable to ensure that notice of the application is given to—

- (a) the child's parents;
- (b) any person who is not a parent of his but who has parental responsibility for him;
- (c) any other person caring for the child;
- (d) any person in whose favour a contact order is in force with respect to the child;
- (e) any person who is allowed to have contact with the child by virtue of an order under section 68; and
- (f) the child,

before the hearing of the application.

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

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

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

(13) In this section “authorised person” means a person who is an authorised person for the purposes of section 64.

*Guardian ad litem*

**Representation of child and of his interests in certain proceedings.**

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

(2) The guardian ad litem shall—

- (a) be appointed in accordance with rules of court; and
- (b) be under a duty to safeguard the interests of the child in the manner prescribed by such rules.

(3) Where—

- (a) the child concerned is not represented by a legal counsel; and
- (b) any of the conditions mentioned in subsection (4) is satisfied,

the court may appoint a legal counsel to represent him.

(4) The conditions are that—

- (a) no guardian *ad litem* has been appointed for the child;
- (b) the child has sufficient understanding to instruct a legal counsel and wishes to do so;
- (c) it appears to the court that it would be in the child’s best interests for him to be represented by a legal counsel.

(5) Any legal counsel appointed under or by virtue of this section shall be appointed, and shall represent the child, in accordance with rules of court.

- (6) In this section “specified proceedings” means any proceedings—
- (a) on an application for a care order or supervision order;
  - (b) in which the court has given a direction under section 84(1) and has made, or is considering whether to make, an interim care order;
  - (c) on an application for the discharge of a care order or the variation or discharge of a supervision order;
  - (d) on an application under section 88(6);
  - (e) in which the court is considering whether to make a residence order with respect to a child who is the subject of a care order;
  - (f) with respect to contact between a child who is the subject of a care order and any other person;
  - (g) under Part VII;
  - (h) on an appeal against—
    - (i) the making of, or refusal to make, a care order, supervision order or any order under section 68;
    - (ii) the making of, or refusal to make, a residence order with respect to a child who is the subject of a care order;
    - (iii) the variation or discharge, or refusal of an application to vary or discharge, an order of a kind mentioned in subparagraph (i) or (ii) above;
    - (iv) the refusal of an application under section 88 (6); or
    - (v) the making of, or refusal to make, an order under Part VII; or
  - (i) which are specified for the time being, for the purposes of this section, by rules of court.

(7) The Minister may, with the approval of the Minister for Finance, by Regulations provide for the establishment of panels of persons from whom guardian’s *ad litem* appointed under this section must be selected.

(8) The Regulations made under this section may, in particular, make provision—

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

(9) Rules of court may make provision as to—

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

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

- (a) any statement contained in a report made by a guardian ad litem who is appointed under this section for the purpose of the proceedings in question; and
- (b) any evidence given in respect of the matters referred to in the report,

in so far as the statement or evidence is, in the opinion of the court, relevant to the question which the court is considering.

**Right of guardian ad litem to have access to the Agency records.**

92.(1) Where a person has been appointed as a guardian ad litem under section 91 he shall have the right, at all reasonable times, to examine and take copies of—

- (a) any records of, or held by, the Agency or an authorised person which were compiled in connection with the making, or proposed making, by any person of any application under this Act with respect to the child concerned;
- (b) any records of, or held by, the Agency which were compiled in connection with any functions under the Care Agency Act 2009, so far as those records relate to that child; or
- (c) any records of, or held by, an authorised person which were compiled in connection with the activities of that person so far as those records relate to that child.

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

- (a) report which he makes to the court in the proceedings in question; or
- (b) evidence which he gives in those proceedings.

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

#### **Child Protection Committee.**

93.(1) There is hereby established a Committee to be known as the Child Protection Committee which shall consist of a Chairperson and such members as may be appointed by the Minister by notice in the Gazette.

(2) The purpose of the Child Protection Committee is to provide a joint forum to allow for a close working relationship between the Agency, the police service, medical practitioners, community health workers, the education service and others who share the common aim of protecting children at risk and for developing, monitoring and reviewing child protection policies.

(3) The Agency shall provide secretariat support services for the Child Protection Committee.

(4) The Child Protection Committee shall—

- (a) establish a programme of work to develop and keep under review the working, policies and procedures of the committee;
- (b) establish, maintain and review inter-agency guidelines on procedures to be followed in individual cases;
- (c) monitor the implementation of legal procedures;
- (d) identify significant issues arising from the handling of cases and reports from inquiries;
- (e) scrutinise arrangements to provide treatment, expert advice and inter-agency liaison and make recommendations to the responsible agencies and the Minister;
- (f) scrutinise progress on work to prevent child abuse and make recommendations to the responsible agencies and the Minister;
- (g) scrutinise work related inter-agency training and make recommendations to the responsible agencies and the Minister;
- (h) publish an annual report on child protection matters and other guides or handbooks on its procedures and policies;
- (i) appraise annually the work which has been done to protect children from harm and plan for the year ahead; and
- (j) perform such other functions in respect of children's protection as may be determined by the Minister by Regulations.

### **PART VIII A**

#### *Protection of children: 1996 Hague Convention*

#### **Interpretation for Part VIII A.**

93A. In this Part, unless the context otherwise requires—

“another Contracting State” means a Contracting State other than the United Kingdom;

Article”, in relation to a numbered Article, means the Article so numbered of the Convention and reference to a subdivision of a numbered Article shall be construed accordingly;

“Central Authority” means the authority designated by or pursuant to section 93K;

“child” shall be construed by reference to Article 2;

“Contracting State” means a state party to the Convention;

“Convention” means the Convention on jurisdiction, applicable law, recognition, enforcement and co-operation in respect of parental responsibility and measures for the protection of children, signed at the Hague on the 19th day of October, 1996;

“Council Regulation” means Council Regulation (EC) No. 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility;

“member State” means a member State of the European Union which is bound by the Council Regulation;

“public authority” means a body whose functions are wholly or mainly of a public nature; and

“Registrar” means the Registrar of the Supreme Court.

#### **Application of the Convention.**

93B.(1) For the purposes of the application in Gibraltar of the Convention the provisions set out in subsection (2) shall have effect.

(2) For the purposes of Articles 24, 26 and 28 of the Convention, the references to the authority include the Supreme Court and for the purpose of Article 35.2, the reference to the authority includes the Agency.

(3) The text, in the English language, of the Convention is set out for convenience of reference in the Schedule to this Act.

#### **Exercise of jurisdiction of the Supreme Court.**

93C.(1) The jurisdiction of the Supreme Court under the Convention must be exercised by the Family Judge—

- (a) in proceedings to which Chapter II of the Convention relates; and
- (b) in any application under Chapter IV of the Convention for recognition, enforcement or non-recognition of a measure.

(2) Notwithstanding subsection (1), in any case of urgency the jurisdiction of the Family Judge as respects the proceedings mentioned in that subsection may be exercised by any other judge of the Supreme Court if he or she is of opinion that the best interests of the child concerned require that the jurisdiction be so exercised.

**Power of the Court to remove stay under Article 8.**

93D.(1) This section applies where the Family Judge has exercised his power under Article 8 of the Convention to request an Authority of another Contracting State to assume jurisdiction in relation to an application, and the Judge has stayed the proceedings on the application.

(2) The Family Judge may remove any stay granted on the application in order for him to exercise his powers under Article 8 of the Convention, and withdraw any request made by him under that Article to an Authority in the other Contracting State to assume jurisdiction, if—

- (a) the Authority of the other Contracting State does not assume jurisdiction within the period for which the court granted the stay; or
- (b) the parties do not, within the period specified by the Court, request the Authority in the other Contracting State to assume jurisdiction.

**Agency: application to Court to make request under Article 9.**

93E.(1) This section applies where—

- (a) the Agency wishes to make an application in respect of a child under section 64 of the Children Act 2009; and
- (b) the authorities of another Contracting State have jurisdiction in respect of the child under the Convention.

(2) The Agency may make an application to the Family Judge requesting the Judge to exercise his power under Article 9 of the Convention.

**Agency: application for interim care order or supervision order.**

93F.(1) This section applies where—

- (a) the Agency thinks that the conditions in section 64(2)(a) and (b) of the Children Act 2009 (threshold for care and supervision orders) apply in relation to a child; and

- (b) one of the following applies in relation to the child—
  - (i) Article 11 of the Convention (measures of protection in cases of urgency),
  - (ii) Article 12 of the Convention (measures of a provisional character), or
  - (iii) Article 20 of the Council Regulation (provisional and protective measures).

(2) Where this section applies, section 85 of the Children Act 2009 has effect as if—

- (a) for subsection (1)(a) and (b) of that section there were substituted—

“(a) the Agency makes an application for an interim care order or interim supervision order in relation to a child; and

- (b) one of the following applies in relation to the child—

- (i) Article 11 of the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-Operation in respect of Parental Responsibility and Measures for the Protection of Children that was signed at The Hague on 19 October 1996 (measures of protection in cases of urgency) (“the Convention”),

- (ii) Article 12 of the Convention (measures of a provisional character), or

- (iii) Article 20 of Council Regulation (EC) No. 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility (provisional and protective measures) (“the Council Regulation”),

- (b) subsection (3) of that section were omitted;
- (c) in subsection (4)(b) of that section the words “in the same proceedings” were omitted; and
- (d) for subsection (4)(c) to (e) of that section there were substituted—

- “(c) in a case which falls within subsection (1)(b)(i) or (ii), when–
- (i) the authorities in another Contracting State with jurisdiction under the Convention have taken the measures required by the situation, or
  - (ii) measures taken by the authorities of a non-Contracting State are recognised in Gibraltar;
- (d) in a case which falls within subsection (1)(b)(iii), when the court of the member State with jurisdiction under the Council Regulation has taken the measures it considers appropriate.”.

(3) Where this section applies–

- (a) section 64 of the Children Act 2009 has effect as if, in section 64(4), after “care order” there were inserted the words “,other than an interim care order,”, and
- (b) section 65 has effect as if subsection (4) were omitted.

#### **Application of Article 15.**

93G. The reference to Chapter II of the Convention in Article 15(1) of the Convention is to be read as including a reference to Chapter II of the Council Regulation.

#### **Provision of certain court documents.**

93H.(1) As respects a measure taken by the Family Judge, the Registrar shall, at the request of a person who wishes to make an application under the Convention in another Contracting State and subject to any conditions that may be specified by rules of court, give to the person all or any of the following documents–

- (a) a copy of the measure duly authenticated;
- (b) a certificate signed by the Registrar stating–
  - (i) the nature of the proceedings,
  - (ii) the grounds on which jurisdiction was taken,

- (iii) the date on which the time for lodging an appeal against the measure will expire or, if it has expired, the date on which it expired,
  - (iv) whether notice of appeal against the measure, or (in case the measure was taken in default of appearance) a notice to set it aside, has been entered,
  - (v) whether the measure was taken in a case of urgency,
  - (vi) if the measure was not so taken, that the court has taken such account of the wishes of the child concerned as it thought appropriate and practicable having regard to the child's age and understanding, and
  - (vii) such other particulars, if any, as may be specified by rules of court; and
- (c) in case the measure (other than a measure taken on an application made without notice) was taken in default of appearance, the original or a copy, certified by the Registrar to be a true copy, of a document establishing that notice of the institution of the proceedings was served on the person in default.

### **Evidence in proceedings.**

93I.(1) Any document purporting to be a document forwarded or delivered under the Convention may be admitted as evidence that it is such a document and as evidence of any matter to which it relates, subject to such authentication, if any, as the Court may require.

(2) A document purporting to be—

- (a) a translation of a document mentioned in subsection (1); and
- (b) certified as correct by a person competent to do so,

may be admitted as evidence of the translation.

(3) Where a document is admissible in evidence by virtue of subsection (1) or (2), it may be given in evidence, whether or not the document is still in existence, by producing a copy of the document, or of the material part of it, authenticated in such manner as the Court may approve.

(4) For the purposes of subsection (3) the copy produced may be at more than one removed from the original, and that copy and any intermediate copy may have been made by any means, including facsimile transmission.

(5) Without prejudice to subsections (1) and (3), a document purporting to be a copy of a measure taken by a competent authority of another Contracting State shall, for the purposes of this Part, be regarded as being duly authenticated if it purports—

- (a) to bear the seal of the authority; or
- (b) to be certified by a person in his capacity as an officer of the authority to be a true copy of a measure taken by it.

**Letters of request.**

93J. The Family Judge may, either directly or with the assistance of the Central Authority, address letters of request for the purposes of Article 8 or 9 to the appropriate authority in another Contracting State, provided that any letter issued directly by the Family Judge shall be transmitted to its addressee via the Central Authority.

**Central Authority.**

93K.(1) The functions under the Convention of a Central Authority shall be discharged in Gibraltar by the Minister for Justice, or such other person or entity as the Chief Minister may, from time to time, designate by notice in the Gazette.

(2) Communications relating to the Convention from a person outside Gibraltar shall be addressed to the Central Authority in Gibraltar.

**Provision of reports and information.**

93L.(1) The Central Authority, if requested pursuant to Article 31, 32 or 34 to provide information relating to a child, may, without prejudice to the generality of the powers conferred on him by this Part, request—

- (a) the Agency to make a report to him in writing with respect to any matter relating to the child which appears to him to be relevant;
- (b) the Gibraltar Health Authority to arrange for a suitably qualified person to make such a report to him;
- (c) the Registrar to whom a written report relating to the child has been made to send him a copy of the report; or

- (d) any holder of a public office or body to provide him with any information in the possession or procurement of the holder or body which would assist in discovering the whereabouts of the child.

(2) If the Central Authority receives a request for assistance under Article 31(c) of the Convention, he may request information from the Agency for a report or information.

(3) Where the Agency receives a request for a report or information under subsection (2), it must comply with the request as soon as reasonably practicable (but this is subject to Article 37 of the Convention).

(4) Where the Central Authority thinks it appropriate to provide a report on the situation of a child under Article 32(a) of the Convention, he may—

- (a) request a written report from the Agency; or
- (b) if a written report has been provided to the Court in relation to the child, request a copy of the report from the Registrar.

(5) A public authority may provide information in response to a request communicated to it by the Central Authority under Article 34 of the Convention.

(6) If the Central Authority designated in Gibraltar under Article 53 of the Council Regulation receives a request for information from another member state under Article 55(a)(i) of the Council Regulation, that Authority may request information from—

- (a) the Agency; or
- (b) the Gibraltar Health Authority.

**Agency's requirement to provide a report.**

93M.(1) This regulation applies if the Agency is contemplating—

- (a) placing a child in another Contracting State, within the meaning given by Article 33 of the Convention; or
- (b) placing a child in another member State, within the meaning given by Article 56 of the Council Regulation.

(2) Either the Supreme Court or the Agency, whichever has jurisdiction under Articles 5 to 10 of the Convention or Articles 8 to 14 of the Council Regulation, as the case may be (“the authority”)–

- (a) must provide a report to the Central Authority, or other competent authority, of the other Contracting State in accordance with Article 33(1) of the Convention, if the authority is exercising jurisdiction under the Convention; or
- (b) must consult the Central Authority, or other competent authority, of the other member State in accordance with Article 56 of the Council Regulation, if the authority is exercising jurisdiction under the Council Regulation.

### **Rules of Court.**

93N. The Chief Justice may, by rules of court, make provision for the expeditious hearing of proceedings under the Convention.

### **Services under Article 35.**

93O.(1) The Government may charge a reasonable fee in respect of the provision of a service under Article 35(1) or (2) of the Convention.

(2) A request under Article 35(2) of the Convention must be made to the Agency.

(3) The Agency may charge a reasonable fee for the provision of information or evidence under Article 35(2) of the Convention.

(4) A fee is “reasonable” for the purposes of this section if the income from fees of that kind equates as nearly as possible to the costs of providing the service to which the fees relate (including a reasonable share of expenditure which is referable only partly or only indirectly to the provision of that service).

### **Regulations in relation to the Convention.**

93P. The Government may make Regulations for–

- (a) carrying out the general purpose of this Part;
- (b) giving effect to Gibraltar’s obligations under International or European Union law in relation to the subject matter of this Part; or

- (c) extending the provisions of this Part as between the United Kingdom and Gibraltar.

## PART IX

### *Emergency Protection of children*

#### **Orders for emergency protection of children.**

94.(1) Where any person (“the applicant”) applies to the court for an order to be made under this section with respect to a child, the court may make the order if, it is satisfied that—

- (a) there is reasonable cause to believe that the child is likely to suffer significant harm if—
  - (i) he is not removed to accommodation provided by or on behalf of the applicant; or
  - (ii) he does not remain in the place in which he is then being accommodated;
- (b) in the case of an application made by the Agency—
  - (i) enquiries are being made with respect to the child under section 99(1)(b); and
  - (ii) those enquiries are being frustrated by access to the child being unreasonably refused to a person authorised to seek access and that the applicant has reasonable cause to believe that access to the child is required as a matter of urgency; or
- (c) in the case of an application made by an authorised person—
  - (i) the applicant has reasonable cause to suspect that a child is suffering, or is likely to suffer, significant harm;
  - (ii) the applicant is making enquiries with respect to the child's welfare; and
  - (iii) those enquiries are being frustrated by access to the child being unreasonably refused to a person authorised to seek access and the applicant has reasonable cause to believe that access to the child is required as a matter of urgency.

(2) In this section—

- (a) “authorised person” means a person who is an authorised person for the purposes of section 64; and
- (b) “a person authorised to seek access” means—
  - (i) in the case of an application by the Agency, an officer of the Agency or a person authorised by the Agency to act on its behalf in connection with the enquiries; or
  - (ii) in the case of an application by an authorised person, that person.

(3) Any person—

- (a) seeking access to a child in connection with enquiries of a kind mentioned in subsection (1); and
- (b) purporting to be a person authorised to do so,

shall, on being asked to do so, produce some duly authenticated document as evidence that he is such a person.

(4) While an order under this section (“an emergency protection order”) is in force it—

- (a) operates as a direction to any person who is in a position to do so to comply with any request to produce the child to the applicant;
- (b) authorizes—
  - (i) the removal of the child at any time to accommodation provided by or on behalf of the applicant and his being kept there; or
  - (ii) the prevention of the child’s removal from any hospital, or other place, in which he was being accommodated immediately before the making of the order; and
- (c) gives the applicant parental responsibility for the child.

(5) Where an emergency protection order is in force with respect to a child, the applicant—

- (a) shall only exercise the power given by virtue of subsection (4)(b) in order to safeguard the welfare of the child;

- 
- (b) shall take such action in meeting his parental responsibility for the child as is reasonably required to safeguard or promote the welfare of the child (having regard in particular to the duration of the order); and
- (c) shall comply with the requirements of any Regulations made by the Minister for the purposes of this subsection.
- (6) Where the court makes an emergency protection order, it may give such directions, if any, as it considers appropriate with respect to—
- (a) the contact which is, or is not, to be allowed between the child and any named person; and
- (b) the medical or psychiatric examination or other assessment of the child.
- (7) Where any direction is given under subsection (6)(b), the child may, if he is of sufficient understanding to make an informed decision, refuse to submit to the examination or other assessment.
- (8) A direction under subsection (6)(a) may impose conditions and one under subsection (6)(b) may be to the effect that there is to be—
- (a) no such examination or assessment; or
- (b) no such examination or assessment unless the court directs otherwise.
- (9) A direction under subsection (6) may be—
- (a) given when the emergency protection order is made or at any time while it is in force; and
- (b) varied at any time on the application of any person falling within any class of person prescribed by rules of court for the purposes of this subsection.
- (10) Where an emergency protection order is in force with respect to a child and—
- (a) the applicant has exercised the power given by subsection (4)(b)(i) but it appears to him that it is safe for the child to be returned; or

- (b) the applicant has exercised the power given by subsection (4)(b)(ii) but it appears to him that it is safe for the child to be allowed to be removed from the place in question,

he shall return the child or allow him to be removed.

(11) Where he is required by subsection (10) to return the child the applicant shall—

- (a) return him to the care of the person from whose care he was removed; or
- (b) if that is not reasonably practicable, return him to the care of—
  - (i) a parent of his;
  - (ii) any person who is not a parent of his but who has parental responsibility for him; or
  - (iii) such other person as the applicant (with the agreement of the court) considers appropriate.

(12) Where the applicant has been required by subsection (10) to return the child, or to allow him to be removed, he may again exercise his powers with respect to the child (at any time while the emergency protection order remains in force) if it appears to him that a change in the circumstances of the case makes it necessary for him to do so.

(13) Where an emergency protection order has been made with respect to a child, the applicant shall, subject to any direction given under subsection (6), allow the child reasonable contact with—

- (a) his parents;
- (b) any person who is not a parent of his but who has parental responsibility for him;
- (c) any person with whom he was living immediately before the making of the order;
- (d) any person in whose favour a contact order is in force with respect to him;
- (e) any person who is allowed to have contact with the child by virtue of an order under section 68; and
- (f) any person acting on behalf of any of those persons.

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

(15) A person shall be guilty of an offence if he intentionally obstructs any person exercising the power under subsection (4)(b) to remove, or prevent the removal of, a child.

(16) A person guilty of an offence under subsection (15) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**Power to include exclusion requirement in emergency protection order.**

95.(1) Where—

- (a) on being satisfied as mentioned in section 94(1)(a), (b) or (c), the court makes an emergency protection order with respect to a child; and
- (b) the conditions mentioned in subsection (2) are satisfied,

the court may include an exclusion requirement in the emergency protection order.

(2) The conditions are—

- (a) that there is reasonable cause to believe that, if a person (“the relevant person”) is excluded from a dwelling-house in which the child lives, then—
  - (i) in the case of an order made on the ground mentioned in section 94(1)(a), the child will not be likely to suffer significant harm, even though the child is not removed as mentioned in section 94(1)(a)(i) or does not remain as mentioned in section 94(1)(a)(ii); or
  - (ii) in the case of an order made on the ground mentioned in paragraph (b) or (c) of section 94 (1), the enquiries referred to in that paragraph will cease to be frustrated; and
- (b) that another person living in the dwelling-house (whether a parent of the child or some other person)—
  - (i) is able and willing to give to the child the care which it would be reasonable to expect a parent to give him; and

(ii) consents to the inclusion of the exclusion requirement.

(3) For the purposes of this section an exclusion requirement is any one or more of the following–

- (a) a provision requiring the relevant person to leave a dwelling-house in which he is living with the child;
- (b) a provision prohibiting the relevant person from entering a dwelling-house in which the child lives; and
- (c) a provision excluding the relevant person from a defined area in which a dwelling-house in which the child lives is situated.

(4) The court may provide that the exclusion requirement is to have effect for a shorter period than the other provisions of the order.

(5) Where the court makes an emergency protection order containing an exclusion requirement, the court may attach a power of arrest to the exclusion requirement.

(6) Where the court attaches a power of arrest to an exclusion requirement of an emergency protection order, it may provide that the power of arrest is to have effect for a shorter period than the exclusion requirement.

(7) Any period specified for the purposes of subsection (4) or (6) may be extended by the court (on one or more occasions) on an application to vary or discharge the emergency protection order.

(8) Where a power of arrest is attached to an exclusion requirement of an emergency protection order by virtue of subsection (5), a police officer may arrest without warrant any person whom he has reasonable cause to believe to be in breach of the requirement.

(9) If, while an emergency protection order containing an exclusion requirement is in force, the applicant has removed the child from the dwelling-house from which the relevant person is excluded to other accommodation for a continuous period of more than 24 hours, the order shall cease to have effect in so far as it imposes the exclusion requirement.

#### **Undertakings relating to emergency protection orders.**

96.(1) In any case where the court has power to include an exclusion requirement in an emergency protection order, the court may accept an undertaking from the relevant person.

(2) No power of arrest may be attached to any undertaking given under subsection (1).

(3) An undertaking given to a court under subsection (1)–

- (a) shall be enforceable as if it were an order of the court; and
- (b) shall cease to have effect if, while it is in force, the applicant has removed the child from the dwelling-house from which the relevant person is excluded to other accommodation for a continuous period of more than 24 hours.

(4) This section has effect without prejudice to the powers of the Supreme Court apart from this section.

(5) In this section “exclusion requirement” and “relevant person” have the same meaning as in section 95.

**Duration of emergency protection orders and other supplemental provisions.**

97.(1) An emergency protection order shall have effect for such period, not exceeding eight days, as may be specified in the order.

(2) Where the court making an emergency protection order would, but for this subsection, specify a period of eight days as the period for which the order is to have effect; but the last of those eight days is a public holiday (that is to say, Christmas Day, Good Friday, a bank holiday, Saturday or a Sunday), the court may specify a period which ends at noon on the first later day which is not such a holiday.

(3) Where an emergency protection order is made on an application under section 98(7), the period of eight days mentioned in subsection (1) shall begin with the first day on which the child was taken into police protection under section 98.

(4) Any person who–

- (a) has parental responsibility for a child as the result of an emergency protection order; and
- (b) is entitled to apply for a care order with respect to the child,

may apply to the court for the period during which the emergency protection order is to have effect to be extended.

(5) On an application under subsection (4) the court may extend the period during which the order is to have effect by such period, not exceeding seven days, as it thinks fit, but may do so only if it has reasonable cause to believe that the child concerned is likely to suffer significant harm if the order is not extended.

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

(7) Regardless of any enactment or rule of law which would otherwise prevent it from doing so, a court hearing an application for, or with respect to, an emergency protection order may take account of—

- (a) any statement contained in any report made to the court in the course of, or in connection with, the hearing; or
- (b) any evidence given during the hearing,

which is, in the opinion of the court, relevant to the application.

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

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

(9) On the application of a person who is not entitled to apply for the order to be discharged, but who is a person to whom an exclusion requirement contained in the order applies, an emergency protection order may be varied or discharged by the court in so far as it imposes the exclusion requirement.

(10) Where a power of arrest has been attached to an exclusion requirement of an emergency protection order, the court may, on the application of any person entitled to apply for the discharge of the order so far as it imposes the exclusion requirement, vary or discharge the order in so far as it confers a power of arrest (whether or not any application has been made to vary or discharge any other provision of the order).

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

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

(13) Subsection (8) does not apply–

- (a) where the person who would otherwise be entitled to apply for the emergency protection order to be discharged–
  - (i) was given notice (in accordance with rules of court) of the hearing at which the order was made; and
  - (ii) was present at that hearing; or
- (b) to any emergency protection order the effective period of which has been extended under subsection (5).

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

**Removal and accommodation of children by police in cases of emergency.**

98.(1) Where a police officer has reasonable cause to believe that a child would otherwise be likely to suffer significant harm, he may–

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

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

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

- (a) inform the Agency of the steps that have been, and are proposed to be, taken with respect to the child under this section and the reasons for taking them;

- (b) give details to the Agency of the place at which the child is being accommodated;
- (c) inform the child (if that child appears capable of understanding)–
  - (i) of the steps that have been taken with respect to him under this section and of the reasons for taking them; and
  - (ii) of the further steps that may be taken with respect to him under this section;
- (d) take such steps as are reasonably practicable to discover the wishes and feelings of the child;
- (e) secure that the case is inquired into by an officer designated for the purposes of this section by the Commissioner of Police; and
- (f) where the child was taken into police protection by being removed to accommodation which is not provided–
  - (i) by or on behalf of the Agency; or
  - (ii) as a refuge, in compliance with the requirements of section 103,

secure that he is moved to accommodation which is so provided as soon as reasonably practicable.

(4) As soon as is reasonably practicable after taking a child into police protection, the police officer concerned shall (if in his opinion will not hinder any investigation) take such steps as are reasonably practicable to inform–

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

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

(5) On completing any inquiry under subsection (3)(e), the officer conducting it shall release the child from police protection unless he

---

considers that there is still reasonable cause for believing that the child would be likely to suffer significant harm if released.

(6) No child may be kept in police protection for more than three working days.

(7) While a child is being kept in police protection, the designated officer may apply on behalf of the appropriate Agency for an emergency protection order to be made under section 94 with respect to the child.

(8) An application may be made under subsection (7) whether or not the Agency know of it or agree to its being made.

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

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

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

- (a) the child's parents;
- (b) any person who is not a parent of the child but who has parental responsibility for him;
- (c) any person with whom the child was living immediately before he was taken into police protection;
- (d) any person in whose favour a contact order is in force with respect to the child;
- (e) any person who is allowed to have contact with the child by virtue of an order under section 68; and
- (f) any person acting on behalf of any of those persons,

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

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

**Care Agency's duty to investigate.**

99.(1) Where the Agency—

- (a) is informed that a child who lives, or is found, in Gibraltar—
  - (i) is the subject of an emergency protection order; or
  - (ii) is in police protection; or
- (b) have reasonable cause to suspect that a child who lives, or is found in Gibraltar is suffering, or is likely to suffer, significant harm,

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

(2) Where the Agency has obtained an emergency protection order with respect to a child, it shall make, or cause to be made, such enquiries as it considers necessary to enable it to decide what action it should take to safeguard or promote the child's welfare.

(3) The enquiries shall, in particular, be directed towards establishing—

- (a) whether the Agency should make any application to the court, or exercise any of its other powers under this Act, with respect to the child;
- (b) whether, in the case of a child—
  - (i) with respect to whom an emergency protection order has been made; and
  - (ii) who is not in accommodation provided by or on behalf of the Agency,

it would be in the child's best interests (while an emergency protection order remains in force) for him to be in such accommodation; and

- (c) whether, in the case of a child who has been taken into police protection, it would be in the child's best interests for the Agency to ask for an application to be made under section 98 (7).

(4) Where enquiries are being made under subsection (1) with respect to a child, the Agency shall (with a view to enabling it to determine what action, if any, to take with respect to him) take such steps as are reasonably practicable—

- (a) to obtain access to him; or
- (b) to ensure that access to him is obtained, on its behalf, by a person authorised by it for the purpose,

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

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

(6) Where, in the course of enquiries made under this section—

- (a) any officer of the Agency; or
- (b) any person authorised by the Agency to act on its behalf in connection with those enquiries—
- (i) is refused access to the child concerned; or
- (ii) is denied information as to his whereabouts,

the Agency shall apply for an emergency protection order, a child assessment order, a care order or a supervision order with respect to the child unless it is satisfied that his welfare can be satisfactorily safeguarded without their doing so.

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

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

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

(9) Where the Agency is conducting enquiries under this section, it shall be the duty of any person mentioned in subsection (11) to assist it with those enquiries (in particular by providing relevant information and advice) if called upon by the Agency to do so.

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

(11) The persons referred to in subsection (9) are—

- (a) the Gibraltar Health Authority;
- (b) the Department of Education; or
- (c) any other person authorised by the Government for the purposes of this section.

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

100.(1) Where it appears to the court making an emergency protection order that adequate information as to the child's whereabouts—

- (a) is not available to the applicant for the order; but
- (b) is available to another person,

it may include in the order a provision requiring that other person to disclose, if asked to do so by the applicant, any information that he may have as to the child's whereabouts.

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

(3) An emergency protection order may authorise the applicant to enter premises specified by the order and search for the child with respect to whom the order is made.

(4) Where the court is satisfied that there is reasonable cause to believe that there may be another child on those premises with respect to whom an emergency protection order ought to be made, it may make an order authorising the applicant to search for that other child on those premises.

(5) Where—

- (a) an order has been made under subsection (4);
- (b) the child concerned has been found on the premises; and
- (c) the applicant is satisfied that the grounds for making an emergency protection order exist with respect to him,

the order shall have effect as if it were an emergency protection order.

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

(7) A person shall be guilty of an offence if he intentionally obstructs any person exercising the power of entry and search under subsection (3) or (4).

(8) A person guilty of an offence under subsection (7) shall be liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

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

- (a) that a person attempting to exercise powers under an emergency protection order has been prevented from doing so by being refused entry to the premises concerned or access to the child concerned; or
- (b) that any such person is likely to be so prevented from exercising any such powers,

it may issue a warrant authorising any police officer to assist the person mentioned in paragraph (a) or (b) in the exercise of those powers using reasonable force if necessary.

(10) Every warrant issued under this section shall be addressed to, and executed by, a police officer who shall be accompanied by the person applying for the warrant if—

- (a) that person so desires; and

- (b) the court by whom the warrant is issued does not direct otherwise.

(11) A court granting an application for a warrant under this section may direct that the police officer concerned may, in executing the warrant, be accompanied by a registered medical practitioner, registered nurse or registered health visitor if he so chooses.

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

(13) Wherever it is reasonably practicable to do so, an order under subsection (4), an application for a warrant under this section and any such warrant shall name the child; and where it does not name him it shall describe him as clearly as possible.

**Abduction of children in care, etc.**

101.(1) A person shall be guilty of an offence if, knowingly and without lawful authority or reasonable excuse, he—

- (a) takes a child to whom this section applies away from the responsible person;
- (b) keeps such a child away from the responsible person; or
- (c) induces, assists or incites such a child to run away or stay away from the responsible person.

(2) This section applies in relation to a child who is—

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

and in this section “the responsible person” means any person who for the time being has care of him by virtue of a care order, an emergency protection order, or section 98, as the case may be.

(3) A person guilty of an offence under this section shall be liable, on summary conviction, to imprisonment for a term not exceeding six months, or to a fine not exceeding level 5 on the standard scale, or to both.

**Recovery of abducted children etc.**

102.(1) Where it appears to the court that there is reason to believe that a child to whom this section applies—

- (a) has been unlawfully taken away or is being unlawfully kept away from the responsible person;
- (b) has run away or is staying away from the responsible person; or
- (c) is missing,

the court may make an order under this section (“a recovery order”).

(2) This section applies to the same children to whom section 101 applies and in this section “the responsible person” has the same meaning as in section 101.

(3) A recovery order—

- (a) operates as a direction to any person who is in a position to do so to produce the child on request to any authorised person;
- (b) authorises the removal of the child by any authorised person;
- (c) requires any person who has information as to the child’s whereabouts to disclose that information, if asked to do so, to a police officer or an officer of the court or the Agency; and
- (d) authorises a police officer to enter any premises specified in the order and search for the child using reasonable force if necessary.

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

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

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

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

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

(7) In this section—

“an authorised person” means—

- (a) any person specified by the court;
- (b) any police officer; or
- (c) any person who is authorized—
  - (i) after the recovery order is made; or
  - (ii) by a person who has parental responsibility for the child by virtue of a care order or an emergency protection order,

to exercise any power under a recovery order; and

“the designated officer” means the officer designated for the purposes of section 98 .

(8) Where a person is authorised as mentioned in subsection (7)(c)—

- (a) the authorisation shall identify the recovery order; and
- (b) any person claiming to be so authorised shall, if asked to do so, produce some duly authenticated document showing that he is so authorised.

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

(10) A person guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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

**Refuges for children at risk.**

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

(2) Where the Agency arrange for a foster carer to provide such a refuge, the Minister may issue a certificate under this section with respect to that foster carer.

(3) In subsection (2) "foster carer" means a person who is, or who from time to time is, the Agency foster carer or a foster carer with whom children are placed by a voluntary organisation.

(4) The Minister may by Regulations—

- (a) make provision as to the manner in which certificates may be issued;
- (b) impose requirements which must be complied with while any certificate is in force; and
- (c) provide for the withdrawal of certificates in prescribed circumstances.

(5) Where a certificate is in force with respect to a home, the provisions of section 101 shall not apply in relation to any person providing a refuge for any child in that home.

## PART X

### *Services for children in need*

#### **Services for children in need, their families and others.**

104.(1) The Agency may take such measures as may be necessary to—

- (a) safeguard and promote the welfare of children in need; and
- (b) promote the upbringing of such children by their families,

by providing a range and level of services in accordance with the provisions of this Act and subject to the availability of voted funds to do so.

(2) Any service provided by the Agency in the exercise of powers conferred on it under this section may be provided for the family of a

particular child in need or for any member of his family, if it is provided with a view to safeguard or promote the welfare of the child.

(3) The Agency—

- (a) may, by itself or with the aid of others, facilitate the provision of services which the Agency have power to provide under this Act; and
- (b) may make such arrangements as it may deem fit for any person to act on its behalf in order to provide such services.

(4) The Agency may have regard to the means of the child concerned and of each of his parents before providing any assistance.

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

- (a) he is unlikely to achieve or maintain, or to have the opportunity of development without the provision for him of services by the Agency under this Part;
- (b) his health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services; or
- (c) he is disabled,

and “family” in relation to such a child, includes any person who has parental responsibility for the child and any other person with whom he has been living.

**Welfare of children being looked after by the Agency.**

105.(1) Where a child is being looked after by the Agency, it shall be the paramount duty of the Agency—

- (a) to safeguard and promote the welfare of that child; and
- (b) advise, assist and befriend him with a view to promoting his welfare when he ceases to be so accommodated.

(2) Before making any decision with respect to any child being looked after by the Agency, it shall, so far as is reasonably practicable, ascertain the wishes and feelings of—

- (a) the child;

- (b) his parents;
- (c) any other person who is not a parent of his but who has parental responsibility for him; and
- (d) any person whose wishes and feelings the Agency considers to be relevant,

regarding the matter to be decided.

(3) In making any decision under subsection (2) the Agency shall give due consideration—

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

**Accommodation for children in need.**

106.(1) Where it appears to the Agency that a child in need requires accommodation for the reason that—

- (a) there is no one to discharge parental responsibility for that child;
- (b) the child is lost or abandoned; or
- (c) the person who has been caring for that child is prevented or unable from providing the child with accommodation or care,

it shall provide accommodation to that child by—

- (i) placing the child with a family, relative or any other suitable person, on such terms as it may determine; or
- (ii) making such other arrangements as may be prescribed or as it deems appropriate.

(2) The Agency shall not provide accommodation for any child in need who has reached the age of seventeen unless the Agency considers the welfare of that child to be seriously prejudiced if the Agency does not provide accommodation for that child.

(3) The welfare of a child who is an unaccompanied minor as defined in the Asylum Regulations 2008 shall be presumed to be seriously prejudiced if the Agency does not provide accommodation for that child.

(4) The Agency may not provide accommodation under this section for any child if any person who—

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

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

(6) Subsections (4) and (5) do not apply while any person—

- (a) in whose favour a residence order is in force with respect to the child; or
- (b) who has care of the child by virtue of an order made in the exercise of the Supreme Court's inherent jurisdiction with respect to children,

agrees to the child being looked after in accommodation provided by or on behalf of the Agency.

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

(8) Subsections (4) and (5) do not apply where a child who has reached the age of sixteen agrees to being provided with accommodation under this section.

**Accommodation and maintenance by the Agency for children whom it looks after.**

107.(1) Where a child is taken in the care of the Agency, it shall be the duty of the Agency to provide accommodation and maintenance for that child.

(2) The Agency shall provide accommodation and maintenance for any child as referred to in subsection (1) by—

- (a) placing that child with a family, relative or any other suitable person, on such terms as it may determine;
- (b) maintaining that child in a community home; or
- (c) making such other arrangements as may be prescribed or as it deems appropriate.

(3) Any person with whom a child has been placed under subsection (2)(a) shall be regarded as the Agency foster carer unless that person is—

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

(4) The Agency may allow a child who is in its care, to live with his parents or with a person who is not a parent but has the parental responsibility of that child on such conditions as may be prescribed.

(5) For the purposes of subsection (4) a child shall be regarded as living with a person if he stays with that person for a continuous period of not less than 24 hours.

(6) Where the Agency allows a child to live with a person referred to in subsection (4) or with a relative, friend or other person connected with him, shall make such arrangements to enable him to live with them unless that would not be reasonably practicable or consistent with his welfare.

(7) Where the Agency provides accommodation for a child who is being looked after by the Agency, it shall, subject to the provisions of this Act and so far as is reasonably practicable and consistent with his welfare, provide accommodation for a sibling of that child and accommodate them together.

(8) Where a disabled child is being looked after by the Agency, it shall provide such accommodation for the child as may appear to it reasonably practicable.

#### **Advice and assistance for certain children.**

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

- (2) Where it appears to or it comes to the knowledge of the Agency that—
- (a) there is a person qualifying for advice and assistance;
  - (b) the person concerned is in need of advice and being befriended;
  - (b) even if the person was not being looked after by the Agency, the person by whom he was being looked after does not have the necessary facilities for advising or befriending him; or
  - (c) the person has asked the Agency for help of a kind which it can provide under this section,
- the Agency may advise, assist and befriend him.

**Provision of information.**

109.(1) The Agency may, from time to time, publish information about the services provided by it under this Act and take such steps as are reasonably practicable to ensure that those who might benefit from the services receive the information relevant to them.

(2) Where the Agency considers it appropriate and necessary, it may identify other organisations to be appointed by the Minister for the purposes of this Act to provide services which the Agency has power to provide under this Act.

**Assessment of children's needs.**

110. Where it appears to the Agency that a child is in need, the Agency may assess his needs for the purposes of this Act and at the same time it shall take into account any assessment of his needs that is made under any other enactment.

**Prevention of neglect and abuse.**

111.(1) The Agency shall take reasonable steps, to prevent neglect, ill-treatment or other abuses to children.

(2) Where it appears to the Agency that a child who lives on a particular premises suffers from, or is likely to suffer ill-treatment at the hands of another person who lives on that premises and that other person agrees to move from the premises, the Agency may assist that other person to obtain alternative accommodation.

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

112. The Agency shall take reasonable steps designed—

- (a) to reduce the need to bring—
  - (i) proceedings for care orders with respect to children;
  - (ii) criminal proceedings against such children;
  - (iii) any family or other proceedings with respect to such children which might lead to them being placed in the Agency's care; or
  - (iv) proceedings under the inherent jurisdiction of the Supreme Court with respect to children;
- (b) to encourage children not to commit criminal offences; and
- (c) to avoid the situation which creates the needs for children to be placed in secure accommodation.

**Provision for children living with their families.**

113. The Agency may, subject to the availability of voted funds to do so, make such provision as it considers appropriate for the following services to be available with respect to children in need so long they live with their families—

- (a) advice, guidance and counselling;
- (b) occupational, social, cultural or recreational activities; and
- (c) home help.

**Provision of community homes by the Agency.**

114.(1) The Agency may make arrangements for community homes—

- (a) for the care and accommodation of children looked after by it; and
- (b) for purposes connected with the welfare of children even if such children are not looked after by it.

(2) Where the Agency makes arrangement for community homes it shall have regard to the special needs and such homes may be of different descriptions which are suitable for different purposes and the requirements of different classes of children.

- (3) A community home may be a home—
- (a) provided, managed, equipped and maintained by the Agency; or
  - (b) provided by an organisation but in respect of which the Agency and the organisation—
    - (i) propose that, in accordance with an instrument of management, the management, equipment and maintenance of the home shall be the responsibility of the Agency; or
    - (ii) so propose that the management, equipment and maintenance of the home shall be the responsibility of the organisation.
- (4) The Agency may make arrangements for the management by another person of accommodation provided by the Agency for the purpose of restricting the liberty of children.
- (5) The Minister may appoint, by notice in the Gazette, an organisation for the purpose of this section.

**Family centres.**

115.(1) The Agency may provide such family centres as it considers appropriate in relation to children or designate premises run or owned by any organisation willing to provide such centres as the Agency may deem appropriate.

(2) For the purpose of this section, “family centre” means a centre at which a child, the parents or any other person who is not a parent but has parental responsibility for that child or any other person who looks after that child, may—

- (a) attend for occupational, social, cultural or recreational activities; or
- (b) attend for advice, guidance or counselling.

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

116.(1) Where the Agency looks after a child it shall, unless it is not reasonably practicable or consistent with his welfare, endeavour to promote contact between the child and—

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

(2) Where a child is being looked after by the Agency, it shall take such steps as are reasonably practicable to ensure that his parents and any person who is not a parent but has parental responsibility for him, are kept informed of where the child is accommodated and every such person shall keep the Agency informed of his or her address.

(3) Notwithstanding subsection (2) the Agency shall not be required to inform any person of the whereabouts of a child if—

- (a) the child is in the care of the Agency; and
- (b) the Agency has reasonable cause to believe that informing the person would prejudice the child's welfare.

(4) The Agency shall take such steps as are reasonably practicable, where any child who is in need, and whom it does not look after, lives apart from his family—

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

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

**Provision for disabled children.**

117.(1) The Agency may provide services designed—

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

(2) In order to provide services under this section, the Agency shall have regard to the provisions of the Handicapped Children (Assessment Panel) Regulations (Legal Notice 110 of 1977) as amended from time to time or any other Regulations replacing that Regulations.

**Maintenance of register for disabled children.**

118.(1) The Agency may open and maintain a register for disabled children within Gibraltar.

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

(3) The Minister may by Regulations make provision generally for the opening and maintenance of a register, for the information to be contained in it, and for the manner in which such information shall be collated.

**Appointment of visitors for children.**

119.(1) The Agency may appoint an independent person to visit a child who being looked after by the Agency, where it appears to the Agency that the communication between the child and a parent of that child, or any person who is not a parent but has parental responsibility for that child is not reasonably frequent or that the child is not visited by or has not lived with any such person during the preceding twelve months, and that it would be in the best interest of the child to be visited by such an independent person.

(2) A person who is appointed under subsection (1) shall visit, advise and befriend the child.

(3) The appointment of a person as a visitor under subsection (1) may be determined if—

- (a) he gives a notice in writing to the Agency that he resigns the appointment; or
- (b) the Agency gives him a notice in writing that it has terminated his appointment.

(4) The determination of an appointment under subsection (3) shall not be a bar to make a further appointment of the person to perform a duty under this Act.

(5) Where the Agency proposes to appoint a visitor for a child under this section, the appointment shall not be made if—

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

(6) Where a visitor is appointed for a child under this section, the Agency shall determine the appointment if—

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

*Fostering*

**Fostering of children.**

120.(1) A person fosters a child if he—

- (a) is the Agency foster carer in relation to the child;
- (b) is an Agency foster carer with whom the child has been placed by the Agency; or
- (c) fosters the child privately.

(2) Subject to this section, a person may not foster more than three children (“the usual fostering limit”).

(3) A person may exceed the usual fostering limit if—

- (a) the child concerned are all sibling with respect to each other; or
- (b) the person is exempted from the usual fostering limit by the Agency.

(4) In considering whether to exempt a person under subsection (3) above, the Agency shall have regard, in particular, to—

- (a) the number of the children whom the person proposes to foster;
- (b) the arrangements which the person proposes for the care and accommodation of the fostered children;
- (c) the intended and likely relationship between the person and the fostered children;
- (d) the period of time for which he proposes to foster the children; and
- (e) whether the welfare of the fostered children (and of any other children who are or will be living in the accommodation) will be safeguarded and promoted.

(5) Where the Agency exempt a person, it shall inform him by notice in writing—

- (a) that he is so exempted;
- (b) of the children, described by name, whom he may foster; and
- (c) of any condition to which exemption is subject.

(6) The Agency may at any time by notice in writing—

- (a) vary or cancel an exemption; or
- (b) impose, vary or cancel a condition to which the exemption is subject,

and, in considering whether to do so, it shall have regard in particular to the considerations mentioned in subsection (4).

**Effect of exceeding fostering limit.**

121.(1) A person shall cease to be treated as fostering if that person—

- (a) exceeds the usual fostering limit; or
- (b) is exempted under section 120—
  - (i) he fosters any child not named in the exemption; and
  - (ii) in so doing, he exceeds the usual fostering limit.

(2) Subsection (1) does not apply if the children concerned are all siblings in respect of each other.

**Complaints etc.**

122.(1) The Agency shall establish a procedure for considering any representations (including any complaint) made to it about the discharge of its functions under section 120 by a person exempted or seeking to be exempted under that section..

(2) In carrying out any consideration of representations under subsection (1), the Agency shall comply with any Regulations made by the Minister for the purposes of this section.

**General duties of the Agency in relation to fostering.**

123.(1) The Agency may place a child with a suitable foster carer if it considers it to be in the best interest of the child.

(2) The Agency shall keep under review any placement made under subsection (1).

(3) The Agency shall keep a register of all children placed with foster carers and persons approved as foster carers.

**Continuation of fostering.**

124. The parent of the child in need of care may apply to the court to have the child returned to them when their circumstances have changed and they can show that they are now able and suitable to look after the child.

**Privately fostered children.**

125.(1) For the purpose of this section—

(a) “a privately fostered child” means a child who is under the age of sixteen and who is cared for, and provided with accommodation by, someone other than—

(i) a parent;

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

(iii) a relative

of that child; and

(b) “fostering a child privately” means to look after the child in circumstances in which he is a privately fostered child as defined in this section.

(2) Subsection (1) is subject to—

(a) the provisions of sections 120 to 122; and

(b) the exceptions made by subsections (4) to (11).

(3) In the case of a disabled child, subsection (1)(a) shall have effect as if for the words “under the age of sixteen” there were substituted the words “under the age of eighteen”.

(4) A child is not a privately fostered child if the person caring for and accommodating him has done so for a period of less than 28 days and does not intend to do so for any longer period.

(5) A child is not a privately fostered child while he is being looked after by the Agency.

(6) A child is not a privately fostered child while he is in the care of any person in premises in which any parent or any person who is not a parent of the child but has parental responsibility for that child, or any other person who is a relative of the child and who has assumed responsibility for his care, is for the time being living.

(7) A child is not a privately fostered child while he is being looked after in any—

- (a) community home;
- (b) residential care home, nursing home or mental nursing home; or
- (c) home or institution not specified in this subsection but provided, equipped and maintained by the Agency or the Gibraltar Health Authority.

(8) Subsection (7) does not apply where the person caring for the child does so in his personal capacity and not in the course of carrying out his duties in relation to the establishment mentioned in that subsection and in that case, the child shall be treated as a privately fostered child.

(9) A child is not a privately fostered child while he is liable to be detained, or subject to guardianship under the Mental Health Act.

(10) A child is not a privately fostered child while he is placed in the care of a person who proposes to adopt him under the provisions of the Adoption Act.

(11) The Minister may by Regulations make provisions as to the circumstances in which a person who provides accommodation to a child is, or is not, to be treated as providing him with accommodation in the person's own home.

**Duty to notify the Agency about private fostering.**

126.(1) If, under an arrangement made by the parents or other person or persons having parental responsibility for a child, that child is being looked after by another person or persons, whether for reward or otherwise, that

person or persons shall notify the Agency who shall keep the arrangement under review.

(2) If the person or persons looking after a child as described in subsection (1) do not notify the Agency of the arrangement they shall be guilty of an offence and liable on summary conviction to a fine at level 1 on the standard scale.

**Power of the Agency to impose requirements.**

127.(1) Where a person fosters or proposes to foster any child privately, the Agency may impose on him requirements as to—

- (a) the number, age and sex of the children who may be privately fostered by him;
- (b) the standard of the accommodation and equipment to be provided for them;
- (c) the arrangements to be made with respect to their health and safety; and
- (d) particular arrangements which must be made with respect to the provision of care for them,

and it shall be the duty of that person to comply with any such requirement before the end of such period as the Agency may specify unless, in the case of a proposal, the proposal is not carried out.

(2) A requirement may be limited to a particular child, or a class of child.

(3) A requirement, other than one imposed under subsection (1)(a), may be limited by the Agency so as to apply only when the number of children fostered by the person exceeds a specified number.

(4) A requirement shall be imposed by notice in writing addressed to the person on whom it is imposed and informing him of—

- (a) the reason for imposing the requirement;
- (b) his right under section 142 to appeal against it; and
- (c) the time within which he may do so.

(5) The Agency may at any time vary any requirement, impose any additional requirement or remove any requirement.

**Welfare of privately fostered children.**

128.(1) The Minister may make Regulations—

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

(2) Regulations under subsection (1)(b) may impose requirements as to the action to be taken by the Agency where it has received notification of a proposal that a child be privately fostered.

(3) The Minister may make Regulations requiring the Agency to monitor the way in which the Agency discharges its functions under this Part (and the Regulations may in particular require the Agency to appoint an officer for that purpose).

(4) Where any person who is authorised by the Agency to visit privately fostered children has reasonable cause to believe that—

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

that person may, at any reasonable time, inspect that premises and the children who have been accommodated in that premises.

(5) Any person exercising the power under subsection (1) shall, if so required, produce a relevant document duly authenticated by the Agency in order to justify his authority to do so.

(6) Where it appears to the Agency that the welfare of any privately fostered child is being satisfactorily safeguarded or promoted it shall—

- (a) unless it considers that it would not be in the best interests of the child, take such steps as are reasonably practicable to secure that the care and accommodation of the child is undertaken by a

parent or relative of the child or by any person who is not a parent of the child but has parental responsibility for him; and

- (b) consider the extent to which it should exercise any of its powers or discharge duties under this Act with respect to that child.

**Persons disqualified from being private foster carers.**

129.(1) A person shall not, unless he has disclosed the fact to the Agency and obtained its written consent, foster a child privately if he is disqualified from doing so by Regulations made by the Minister with responsibility for families for the purposes of this section.

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

- (a) an order of a kind specified in the Regulations has been made at any time with respect to him;
- (b) an order of a kind so specified has been made at any time with respect to any child who has been in his care;
- (c) a requirement of a kind so specified has been imposed at any time with respect to any such child, under or by virtue of any enactment;
- (d) he has been convicted of an offence of a kind specified, or discharged absolutely or conditionally for any such offence;
- (e) a prohibition has been imposed on him at any time under section 130 or under any other specified enactment; and
- (f) his rights and powers with respect to a child have at any time been vested in a specified authority under a specified enactment.

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

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

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

- (a) the reason for the refusal;

- (b) the applicant's right under section 142 to appeal against the refusal; and
- (c) the time within which he may do so.

**Power to prohibit private fostering.**

130.(1) Where a person fosters a child privately or proposes to foster a child privately and the Agency is of the opinion that—

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

the Agency may impose a prohibition on him under subsection (2).

(2) The Agency may prohibit any person from fostering privately—

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

(3) Where the Agency imposes a prohibition on any person under subsection (2) may, if it thinks fit, cancel the prohibition—

- (a) of its own motion; or
- (b) on an application made by that person,

if it is satisfied that the prohibition is no longer justified.

(4) Where the Agency imposes requirements upon any person under section 127, it may also impose a prohibition on him under subsection (2) of this section.

(5) Any prohibition imposed by virtue of subsection (4) shall not have effect unless—

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

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

- (a) the reason for imposing the prohibition;
- (b) his right under 142 to appeal against the prohibition; and
- (c) the time within which he may do so.

#### **Advertisements relating to fostering.**

131.(1) No person shall advertise or publish anything indicating that any person shall undertake or arrange for a child to be privately fostered, unless the name and address of the person who wishes to foster a child privately are stated therein.

(2) The Agency may, in a manner it considers appropriate, advertise the fact that a child is available for private fostering if it deems that will be in the best interest of the child.

### **PART XI**

#### *Enforcement, other procedure, etc*

#### **Liability to contribute towards the maintenance.**

132.(1) The Agency shall consider whether the cost of maintenance of the child who is being looked after by it, except where the child is under an interim care order, shall be recovered from any person liable to contribute as a contributor.

(2) Where the Agency considers it reasonable to do so, it may recover any contributions towards the maintenance of a child from a contributor.

(3) Subject to subsection (4), where a child is under the age of sixteen, each of his parents or where the child has reached the age of sixteen, the child himself, is liable to contribute as a contributor.

(4) Notwithstanding the provision of subsection (3), the Agency may recover any contributions towards the maintenance of a child until that child has reached the age of eighteen from—

- (a) his parents, if the child is, or will be receiving instruction at an educational establishment or undergoing training for a trade, profession or vocation; or
- (b) the child himself, if he has been in gainful employment.

(5) A person is not liable to contribute towards the maintenance of a child in the care of the Agency in respect of any period during which the child is allowed under this Act to live with a parent of that child.

(6) A contributor is not obliged to make any contribution towards the maintenance of a child except as agreed or determined in accordance with section 133.

**Agreed contributions.**

133.(1) Where the Agency considers to recover any contributions towards the maintenance of a child, it shall do so by serving a notice in writing to be known as “contribution notice” on the contributor specifying—

- (a) the weekly sum which it considers to be payable by him; and
- (b) arrangements for payment.

(2) Arrangements for payment referred to in subsection (1) shall, in particular, include—

- (a) the date, not earlier than the date of the contribution notice, on which liability to contribute begins;
- (b) the date, if the child has not before that date ceased to be looked after by the Agency, on which liability under the contribution notice ends; and
- (c) the date on which the first payment is to be made.

(3) The Agency may specify in a contribution notice the weekly sum which is a standard contribution determined for all children looked after by it.

(4) The Agency may not specify in a contribution notice a weekly sum greater than that which it considers that—

- (a) it would normally be prepared to pay if it had placed a similar child with Agency fosters; and
- (b) it is reasonably practicable for the contributor, having regard to his means, to pay

(5) The Agency may at any time, without prejudice to its power to serve another notice, withdraw a contribution notice issued under subsection (1).

(6) Where the Agency and the contributor agree with respect to the sum which the contributor is to contribute and the arrangements for payment, whether as specified in the contribution notice or otherwise, and the contributor notifies the Agency in writing that he so agrees, the Agency may, without prejudice to any other method of recovery, recover summarily as a civil debt any contribution which is overdue and unpaid.

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

### **Contribution orders.**

134. (1) Where a contributor has been served with a contribution notice and has—

- (a) failed to reach an agreement with the Agency as referred to in section 133(6) within the period of one month beginning with the day on which the contribution notice was served; or
- (b) served a notice under section 133(7) withdrawing his agreement,

the Agency may apply to the court for an order under this section.

(2) On an application filed under subsection (1), the court may make an order to be known as “contribution order” requiring the contributor to contribute a weekly sum towards the child’s maintenance in accordance with arrangements for payment specified by the court.

(3) A contribution order passed under subsection (2)—

- (a) shall not specify a weekly sum greater than the amount specified in the contribution notice; and
- (b) shall be made with due regard to the contributor's means to pay;
- (c) shall not take effect before the date specified in the contribution notice;
- (d) shall have effect notwithstanding that the contributor is not liable to contribute by virtue of section 133(7); and

(e) remains in force on the person who obtained the order even after the child has ceased to be looked after by the Agency.

(4) The Agency may not apply to the court under subsection (1) in relation to a contribution notice which it has withdrawn.

(5) Where a contribution order is in force and the Agency serves another contribution notice and the contributor and the Agency reach an agreement under section 133(6) in respect of that other contribution notice, the effect of the agreement shall be to discharge the order from the date on which it is agreed that the agreement shall take effect.

(6) Where an agreement is reached under subsection (5) the Agency shall notify the court of the agreement and of the date on which it takes effect.

(7) A contribution order may be varied or revoked on an application by the contributor or the Agency.

(8) In proceedings for the variation of a contribution order, the Agency shall specify—

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

(9) Where a contribution order is varied, the order—

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

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

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

135.(1) A contribution order made by a court shall be enforceable as a maintenance order within the meaning of section 57 of the Magistrates' Courts Act.

(2) In any proceedings under this section, a document which purports to be—

- (a) a copy of an order made by a court under or by virtue of section 134; and
- (b) certified as a true copy by the clerk of the court,

shall be evidence of the order.

(3) In any proceedings under this section, a certificate which—

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

shall be evidence that the sum is overdue and unpaid.

#### **Inquiries and review of cases.**

136.(1) A person qualifying for advice and assistance may file representation to the Agency about the discharge of its functions under this Act in relation to him.

(2) The Agency shall establish a procedure for considering a representation under subsection (1) and in carrying out any consideration of such representation.

(3) The following persons are entitled to file a representation to the Agency regarding the discharge of any of the duties under this Act in relation to a child in need—

- (a) any child who is being looked after by the Agency or who is not being looked after by the Agency but is in need;
- (b) a parent of a child in need;
- (c) any person who is not a parent of a child in need but who has parental responsibility for that child;
- (d) a foster carer; or
- (e) any other person whom the Agency considers that he has sufficient interest in the child's welfare to warrant his representation being considered by it.

(4) The procedure referred to in subsection (2) shall ensure that at least one person who is not a member or officer of the Agency takes part in—

- (a) the consideration; and
- (b) any discussion held in about the action, if any, to be taken in relation to the child in the light of the consideration.

(5) In considering any representation under this section the Agency shall comply with any Regulations as may be prescribed for the purposes of regulating the procedure to be followed for inquiries and review of cases.

(6) Where any representation has been considered by the Agency under this section, the Agency shall—

- (a) have due regard to the contents of the representation and the findings of such consideration; and
- (b) take such steps as are reasonably practicable by notify in writing to—
  - (i) the person making the representation;
  - (ii) the child, if the Agency considers that he has sufficient understanding; and
  - (iii) such other persons, if any, as appear to the Agency to be likely to be affected,

of the Agency's decision in the matter and the reasons for taking that decision and of any action which it has taken, or proposes to take.

(7) The Agency shall give such publicity to its procedure for considering representations under this section as it considers appropriate.

**Recovery of cost of services, etc.**

137.(1) Where the Agency provides any service under this Act, other than giving advice, guidance or counselling, it may recover a charge from a person specified in subsection (3) for the services in such amount as it considers reasonable.

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

(3) A charge under this section shall be recovered from—

- (a) the parents of the child if the service is provided for a child under the age of sixteen;
- (b) the child himself if the service is provided for a child who has reached the age of sixteen; or
- (c) the member of the child's family if the service is provided for a member of the child's family.

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

**Procedure to make decision with respect to a child.**

138.(1) The Agency may, before making any decision with respect to a child who is being looked after or proposed to be looked after by the Agency, so far as is reasonably practicable, ascertain the wishes and feelings of—

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

(2) In making any decision referred to in subsection (1), the Agency shall give due consideration having regard to the age and understanding of the child—

- (a) to such wishes and feelings of the child as it has been able to ascertain;
- (b) to such wishes and feelings of any person referred to in paragraphs (b) to (d) of subsection (1) as it has been able to ascertain; and
- (c) to the child's religious persuasion, racial origin and cultural and linguistic background.

**Protection of public from injury.**

139.(1) Where it appears to the Agency that members of the public may suffer serious injury unless it exercises any power and discharge duty, it may

exercise such powers and discharges any such duties with respect to a child who is being looked after by the Agency as it may consider necessary in a manner that may not be inconsistent with its duties under this Act.

(2) The Minister may for the purpose of protecting members of the public from serious injury give such directions to the Agency in order to exercise its powers with respect to a child who is being looked after by the Agency, as he considers necessary.

(3) Where any direction is given under subsection (2), the Agency shall comply with it even if it may be inconsistent with its general duties under this Act.

#### **Death of children being looked after by the Agency.**

140.(1) If a child who is being looked after by the Agency dies, the Agency—

- (a) shall notify the Minister;
- (b) shall, so far as is reasonably practicable, notify the child's parents and every person who is not a parent but has parental responsibility for that child; and
- (c) may, with the consent, so far as it is reasonably practicable to obtain, of every person who has parental responsibility for the child, arrange for the child's body to be buried or cremated.

(2) Subsection (1) does not authorise cremation of the child's dead body unless such cremation is permitted under the practice of the child's religious persuasion.

(3) Where the Agency arranged for the dead body of a child under the age of sixteen to be buried or cremated under subsection (1)(c) it may recover any expenses incurred in connection therewith from any parent of the child.

(4) Any sums recoverable under subsection (3) shall, without prejudice to any other method of recovery, be recoverable summarily as a civil debt.

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

#### **Limitation.**

141.(1) If any person who is required, under any provision of this Act, to give a notice fails to give the notice within the time specified in that provision, proceedings for any offence committed under this Act may be

brought at any time within six months from the date when evidence of the offence came to the knowledge of the Agency.

(2) Subsection (1) is not affected by section 65 of the Magistrates' Courts Act.

### **Appeals.**

142.(1) A person aggrieved by—

- (a) a requirement imposed under section 127;
- (b) a refusal of consent under section 129;
- (c) a prohibition imposed under section 130; or
- (d) a refusal to cancel a prohibition under section 130 (3),

may appeal to the court.

(2) The appeal referred to in subsection (1) must be made within fourteen days from the date on which the person appealing is notified of the requirement, refusal or prohibition.

(3) Where the appeal is against a requirement imposed under section 127, the requirement shall not have effect while the appeal is pending.

(4) Where it allows an appeal against a requirement or prohibition the court may, instead of cancelling the requirement or prohibition—

- (a) vary the requirement, or allow more time for compliance with it; or
- (b) if an absolute prohibition has been imposed, substitute for it a prohibition on using the premises after such time as the court may specify unless such specified requirements as the Agency had power to impose under section 127 are complied with.

(5) Any requirement or prohibition specified or substituted by a court under this section shall be deemed to have been imposed by the Agency under section 127 or 129.

(6) Subject to any express provisions to the contrary made by or under this Act, an appeal shall lie to the Supreme Court against—

- (a) the making by a magistrates' court of any order under this Act;  
or

(b) any refusal by a magistrates' court to make such an order.

(7) Where a magistrates' court has power, in relation to any proceedings under this Act, to decline jurisdiction because it considers that the case can more conveniently be dealt with by another court, no appeal shall lie against any exercise by that magistrates' court of that power.

(8) Subsection (6) does not apply in relation to an interim order for periodical payments made under Part VII.

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

(10) Where an order is made under subsection (9) the Supreme Court may also make such incidental or consequential orders as appear to it to be just.

(11) *Repealed.*

(12) The date so specified must not be earlier than the earliest date allowed in accordance with rules of court made for the purposes of this section.

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

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

(14) Any order of the Supreme Court made on an appeal under this section (other than one directing that an application be re-heard by a magistrates' court) shall, for the purposes—

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

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

#### **Offences and penalties.**

143.(1) A person shall be guilty of an offence if that person—

- 
- (a) being required, under any provision made by or under this Act, to give any notice or information—
    - (i) fails without reasonable excuse to give the notice within the time specified in that provision; or
    - (ii) fails without reasonable excuse to give the information within a reasonable time; or
    - (iii) makes, or causes or procures another person to make, any statement in the notice or information which he knows to be false or misleading in a material particular;
  - (b) refuses to allow a privately fostered child to be visited by a duly authorised officer of the Agency;
  - (c) intentionally obstructs another person in the exercise of the power conferred by section 128(4);
  - (d) contravenes section 129(1);
  - (e) fails without reasonable excuse to comply with any requirement imposed by the Agency under this Act; or
  - (f) accommodates a privately fostered child in any premises in contravention of a prohibition imposed by the Agency under this Act; or
  - (g) knowingly causes to be published or publishes an advertisement which he knows contravenes section 131(1).

(2) Where a person contravenes section 129(3), he shall not be guilty of an offence under this section if he proves that he did not know, and had no reasonable ground for believing, that any person to whom section 129(1) applied was living or employed in the premises in question.

(3) A person guilty of an offence under subsection (1)(a) shall be liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

(4) A person guilty of an offence under subsection (1)(b) or (c) or (g) shall be liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

(5) A person guilty of an offence under subsection (1)(d) or (f) shall be liable, on summary conviction, to imprisonment for a term not exceeding six months, or to a fine not exceeding level 5 on the standard scale, or to both.

(6) A person guilty of an offence under subsection (1)(e) shall be liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

**Contracts by a child.**

144.(1) All contracts, whether by specialty or by simple contract, entered into by a child for the repayment of money lent or to be lent, or for goods supplied or to be supplied (other than contracts for necessities), and all accounts stated with a child are absolutely void.

(2) Nothing in this Act shall invalidate any contract into which a child may, by any law enter, except such as are voidable.

(3) No action shall be brought whereby to charge any person upon any promise made after full age to pay any debt contracted during minority or upon any ratification made after full age of any promise or contract made during minority whether there is or is not any new consideration for such promise or ratification after full age.

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

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

(2) The making of a care order with respect to a child who is—

- (a) the subject of any order under section 25 discharges that order;
- (b) the subject of a supervision order discharges that other order;
- (c) a ward of court brings that wardship to an end; and
- (d) the subject of a school attendance order under section 51 of the Education Act discharges the school attendance order.

(3) The making of a special guardianship order with respect to a child who is the subject of—

- (a) a care order; or
- (b) an order under section 68,

discharges that order.

(4) Where an emergency protection order is made with respect to a child who is in care, the care order shall have effect subject to the emergency protection order.

(5) Any order made by virtue of section 13(1) or pursuant to section 14(1) or 15(1) shall continue in force until the child reaches the age of eighteen, unless it is brought to an end earlier.

(6) Any—

(a) agreement under section 13 or 14; or

(b) appointment under section 15(3) or (4),

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

(7) An order made under section 25 shall, if it would otherwise still be in force, cease to have effect when the child reaches the age of sixteen, unless it is to have effect beyond that age by virtue of section 26(6) or 29(5).

(8) Where an order made under section 25 has effect with respect to a child who has reached the age of sixteen, it shall, if it would otherwise still be in force, cease to have effect when he reaches the age of eighteen.

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

(10) An order made under Part VII has effect as specified in that Part and any other order made under any other provisions of this Act, other than those referred to in subsections (1) to (9), if it would otherwise still be in force, cease to have effect when the child reaches the age of eighteen.

(11) Where a contact activity direction has been made as regards contact with a child, the making of a care order with respect to the child discharges the direction.

(12) On disposing of any application for an order under this Act, the court may (whether or not it makes any other order in response to the application) order that no application for an order under this Act of any specified kind may be made with respect to the child concerned by any person named in the order without leave of the court.

(13) Where an application (“the previous application”) has been made for—

(a) the discharge of a care order;

- (b) the discharge of a supervision order;
- (c) the discharge of an education supervision order;
- (d) the substitution of a supervision order for a care order; or
- (e) a child assessment order,

no further application of a kind mentioned in paragraphs (a) to (e) may be made with respect to the child concerned, without leave of the court, unless the period between the disposal of the previous application and the making of the further application exceeds six months.

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

(15) Where—

- (a) a person has made an application for an order under section 68;
- (b) the application has been refused; and
- (c) a period of less than six months has elapsed since the refusal,

that person may not make a further application for such an order with respect to the same child, unless he has obtained the leave of the court.

**Attendance of child at hearing under this Act.**

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

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

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

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

(4) The court may make an order authorising a police officer, or such person as may be specified in the order—

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

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

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

**Evidence given by, or with respect to, children.**

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

(2) The child's evidence may be heard by the court if, in its opinion—

- (a) he understands that it is his duty to speak the truth; and
- (b) he has sufficient understanding to justify his evidence being heard.

(3) The Chief Justice may by rules of court make provision for the admissibility of evidence which would otherwise be inadmissible under any rule of law relating to hearsay or the manner in which that evidence will be received by the court.

(4) Any rules made under subsection (3) may only be made with respect to—

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

(5) Any rules made under subsection (3)—

- (a) may, in particular, provide for the admissibility of statements which are made orally or in a prescribed form or which are recorded by any prescribed method of recording; and

- (b) may make different provision for different purposes and in relation to different descriptions of court.

(6) *Repealed.*

(7) In this section—

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

“prescribed” means prescribed by an order under subsection (3).

**Privacy for children involved in certain proceedings.**

148.(1) *Repealed.*

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

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

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

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

(5) For the purposes of this section—

“publish” includes an act of—

- (a) including a programme service for broadcasting; or
- (b) causing a material to be published; and

“material” includes any picture or representation.

(6) Any person who contravenes subsection (2) shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

(7) *Repealed.*

(8) Section 50 of the Magistrates' Court Act shall apply in relation to any proceedings to which this section applies subject to the provisions of this section.

### **Self-incrimination.**

149.(1) In any proceedings in which a court is hearing an application for an order under this Act, no person shall be excused from—

- (a) giving evidence on any matter; or
- (b) answering any question put to him in the course of his giving evidence,

on the ground that doing so might incriminate him or his spouse of an offence.

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

### **Powers to search for children or inspect premises.**

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

- (a) that a person attempting to exercise powers under section 75(1)(b) and (2)(b), 102 or 128 has been prevented from doing so by being refused entry to the premises concerned or refused access to the child concerned; or
- (b) that any such person is likely to be so prevented from exercising any such powers,

it may issue a warrant authorising any police officer to assist that person in the exercise of those powers, using reasonable force if necessary.

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

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

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

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

(5) Where—

- (a) an application for a warrant under this section relates to a particular child; and
- (b) it is reasonably practicable to do so,

the application and any warrant granted on the application shall name the child; and where it does not name him it shall describe him as clearly as possible.

#### **Financial resources.**

151. Notwithstanding any other provision of this Act—

- (a) the exercise by the Agency or any other person of any power, or the discharge of any function or obligation shall be subject to the availability to the Agency or such other person of the necessary human and financial resources to do so; and
- (b) no Rules or Regulations shall be made under this Act without the prior approval of the Minister with responsibility for Finance the effect of which is to impose on the Agency or any other person, a power, function or obligation for the exercise or discharge of which voted funds are not available in the Agency's budget.

## **PART XII**

### *List of individuals unsuitable to work with children*

#### **Duty to maintain a list of individuals unsuitable to work with children.**

152.(1) The Care Agency shall maintain a list of individuals who are considered unsuitable to work with children.

(2) An individual shall not be included in the list unless he has been referred to the Minister in accordance with section 153.

(3) The Minister may at any time remove any individual from the list if he is satisfied that the individual should not have been included in it.

(4) The Minister may by Regulations make provision generally for the maintenance by the Care Agency of the list, for the inclusion and exclusion of persons from it, and creating obligations upon any other person to provide such information and notification as the Minister may specify.

**Inclusion in list on reference to the Minister.**

153.(1) A child care organisation shall, and any other organisation may, refer to the Minister any individual who is or was employed or engaged in a child care position if there is fulfilled—

- (a) any of the conditions mentioned in subsection (2); or
- (b) the condition mentioned in subsection (3).

(2) The conditions referred to in subsection (1)(a) are—

- (a) that the organisation has dismissed the individual on the grounds of misconduct (whether or not in the course of his employment) which harmed a child or placed a child at risk of harm;
- (b) that the individual has resigned or retired in circumstances such that the organisation would have dismissed him, or would have considered dismissing him, on such grounds if he had not resigned or retired;
- (c) that the organisation has, on such grounds, transferred the individual to a position within the organisation which is not a child care position; and
- (d) that the organisation has, on such grounds, suspended the individual or provisionally transferred him to such a position as is mentioned in paragraph (c), but has not yet decided whether to dismiss him or to confirm the transfer.

(3) The condition referred to in subsection (1)(b) is that—

- (a) in circumstances not falling within subsection (2), the organisation has dismissed the individual, he has resigned or retired or the organisation has transferred him to a position within the organisation which is not a child care position;
- (b) information not available to the organisation at the time of the dismissal, resignation, retirement or transfer has since become available;
- (c) the organisation has formed the opinion that, if that information had been available at that time and if (where applicable) the individual had not resigned or retired, the organisation would have dismissed him, or would have considered dismissing him, on such grounds as are mentioned in subsection (2)(a); and
- (d) the individual is convicted of any offence against a child or any such offence whatsoever.

(4) If it appears from the information submitted with a reference under subsection (1) that it may be appropriate for the individual to be included in the list maintained under section 152, the Minister shall—

- (a) determine the reference in accordance with subsections (5) to (7); and
- (b) pending that determination, provisionally include the individual in the list.

(5) The Minister shall—

- (a) invite observations from the individual on the information submitted with the reference and, if he thinks fit, on any observations submitted under paragraph (b); and
- (b) invite observations from the organisation on any observations on the information submitted with the reference and, if he thinks fit, on any other observations under paragraph (a).

(6) Where—

- (a) the Minister has considered the information submitted with the reference, any observations submitted to him and any other information which he considers relevant; and
- (b) in the case of a reference under subsection (2)(d), the organisation has dismissed the individual or has confirmed his transfer on such grounds as are there mentioned,

the Minister shall confirm the individual's inclusion in the list if subsection (7) applies; otherwise the Minister shall remove him from the list.

(7) This subsection applies if the Minister is of the opinion—

- (a) that the organisation reasonably considered the individual to be guilty of misconduct (whether or not in the course of his employment) which harmed a child or placed a child at risk of harm; and
- (b) that the individual is unsuitable to work with children.

(8) The reference in subsection (6)(b) to the organisation dismissing the individual on such grounds as are mentioned in subsection (2)(d) includes—

- (a) a reference to his resigning or retiring in circumstances such that the organisation would have dismissed him, or would have considered dismissing him, on such grounds if he had not resigned or retired; and
- (b) a reference to the organisation transferring him, on such grounds, to a position within the organisation which is not a child care position.

(9) Nothing in this section shall require a child care organisation to refer an individual to the Minister in any case where the dismissal, resignation, retirement, transfer or suspension took place or, as the case may be, the opinion was formed before the commencement of this Act.

#### **Appeals against inclusion in list.**

154.(1) An individual who is included (otherwise than provisionally) in the list maintained by the Minister under section 152 may appeal to the Supreme Court against—

- (a) the decision to include him in the list; or
- (b) with the leave of the Supreme Court, any decision of the Minister not to remove him from the list.

(2) Subject to subsection (5), an individual who has been provisionally included for a period of more than nine months in the list maintained by the Minister under section 152 may, with the leave of the Supreme Court, have the issue of his inclusion in the list determined by the Supreme Court instead of by the Minister.

(4) Where an individual has been convicted of an offence involving misconduct (whether or not in the course of his employment) which harmed a child or placed a child at risk of harm, no finding of fact on which the conviction must be taken to have been based shall be challenged on an appeal or determination under this section.

(5) Where the misconduct of which the individual is alleged to have been guilty is the subject of any civil or criminal proceedings, an application for leave under subsection (2) may not be made before the end of the period of six months immediately following the final determination of the proceedings.

(6) For the purposes of subsection (5), proceedings are finally determined when—

- (a) the proceedings are terminated without a decision being made;
- (b) a decision is made against which no appeal lies;
- (c) in a case where an appeal lies with leave against a decision, the time limited for applications for leave expires without leave being granted; or
- (d) in a case where leave to appeal against a decision is granted or is not required, the time limited for appeal expires without an appeal being brought.

**Effect of inclusion in the list.**

155. Where a child care organisation proposes to offer an individual employment in a child care position, the organisation—

- (a) shall ascertain whether the individual is included in the list maintained under section 152; and
- (b) if he is included in the list, shall not offer him employment in such a position.

**PART XIII**

*Miscellaneous provisions*

**Offences by corporations.**

156.(1) Where a body corporate is guilty of an offence under this Act and it is proved that the offence occurred with the consent or connivance of, or was attributable to any neglect on the part, of any director, manager, secretary or other officer of the body, or any person who was purporting to

act in any such capacity he, as well as the body corporate, shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

**Rules of court.**

157.(1) The Chief Justice may make rules of court for giving effect to the better carrying out of the provisions and purposes of this Act.

(2) The rules of court may, in particular, make provision—

- (a) with respect to the procedure to be followed in any relevant proceedings (including the manner in which any application is to be made or other proceedings commenced);
- (b) as to the persons entitled to participate in any relevant proceedings, whether as parties to the proceedings or by being given the opportunity to make representations to the court;
- (c) with respect to the documents and information to be furnished, and notices to be given, in connection with any relevant proceedings;
- (d) *Deleted.*
- (e) with respect to preliminary hearings;
- (f) for the service outside Gibraltar, in such circumstances and in such manner as may be prescribed, of any notice of proceedings in court;
- (g) *Deleted.*
- (h) enabling the court, in such circumstances as may be prescribed, to proceed on any application even though the respondent has not been given notice of the proceedings.
- (i) *Deleted.*
- (j) *Deleted.*

(3) In subsection (2)—

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

“prescribed” means prescribed by the rules; and

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

(4) This section and any other power in this Act to make rules of court are not to be taken as in any way limiting any other power of the Chief Justice in question to make rules of court.

(5) When making any rules under this section the Chief Justice shall be subject to the same requirements as to consultation, if any, as apply when the Chief Justice makes rules under his general rule making power.

#### **Powers to make Regulations.**

158.(1) The Minister may make Regulations—

- (a) requiring the case of each child who is being looked after by the Agency to be reviewed in accordance with the provisions of such Regulations; and
- (b) generally, for carrying out the purposes of this Act.

(2) The Regulations made under subsection (1) may, in particular, provide for—

- (a) the manner in which each case is to be reviewed;
- (b) the considerations to which the Agency are to have regard in reviewing each case; and
- (c) the time when each case is first to be reviewed and the frequency of subsequent reviews.

(3) The Regulations made under subsection (1) may also provide for requiring the Agency—

- (a) before conducting any review, to seek the views of—
  - (i) the child;

- (ii) his parents;
- (iii) any person who is not a parent but has parental responsibility for him; and
- (iv) any other person whose views the Agency considers to be relevant,

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

- (b) to consider, in the case of a child who is in its care, whether an application should be made to discharge the care order;
- (c) to consider, in the case of a child in accommodation provided by the Agency, whether the accommodation accords with the requirements of this Act;
- (d) to inform the child, so far as is reasonably practicable, of any steps he may take under this Act;
- (e) to make arrangements, including arrangements with such other bodies providing services as it considers appropriate, to implement any decision which the Agency proposes to make in the course, or as a result, of the review;
- (f) to notify details of the result of the review and of any decision taken by it in consequence of the review to—
  - (i) the child;
  - (ii) his parents;
  - (iii) any person who is not a parent but has parental responsibility for him; and
  - (iv) any other person whom it considers ought to be notified; and
- (g) to monitor the arrangements which it has made with a view to ensuring that they comply with the Regulations.

(4) The Minister may make Regulations—

- (a) requiring every child who is privately fostered to be visited by an officer of the Agency—

- (i) in prescribed circumstances; and
  - (ii) on specified occasions or within specified periods; and
- (b) imposing requirements which are to be met by the Agency, or officer of the Agency, in carrying out functions under section 128 of the Act.

(5) The Minister may make Regulations prescribing disqualification for a person from being a private foster carer.

(6) The Regulations made under subsection (5) may, in particular, provide for a person to be so disqualified where—

- (a) an order of a kind specified in the Regulations has been made at any time with respect to him;
- (b) an order of a kind so specified has been made at any time with respect to any child who has been in his care;
- (c) a requirement of a kind so specified has been imposed at any time with respect to any such child, under or by virtue of any enactment;
- (d) he has been convicted of any offence of a kind so specified, or has been placed on probation or discharged absolutely or conditionally for any such offence; and
- (e) a prohibition has been imposed on him at any time under section 130.

(7) The Minister may make Regulations as to placing of children with Agency foster carer.

(8) The Regulations referred to in subsection (7) may, in particular, make provisions—

- (a) with regard to the welfare of children placed with the Agency foster carers;
- (b) as to the arrangements to be made by the Agency in connection with the health and education of such children;
- (c) as to the records to be kept by the Agency;

- 
- (d) for securing that a child is not placed with the Agency foster carer unless that person is for the time being approved as the Agency foster carer by the Agency as may be prescribed;
  - (e) for securing that where possible the Agency foster carer with whom a child is to be placed is-
    - (i) of the same religious persuasion as the child; or
    - (ii) gives an undertaking that the child will be brought up in that religious persuasion;
  - (f) for securing that children placed with the Agency foster carer, and the premises in which they are accommodated, will be supervised and inspected by the Agency and that the children will be removed from those premises if their welfare appears to require it;
  - (g) as to the circumstances in which the Agency may make arrangements for duties imposed on it by the Regulations to be discharged, on its behalf;
  - (h) the persons to be notified of any proposed arrangements;
  - (i) the opportunities such persons are to have to make representations in relation to the arrangements proposed;
  - (j) the persons to be notified of any proposed changes in arrangements;
  - (k) the supervision by the Agency of any arrangements made;
  - (l) the making of any decision by the Agency to allow a child to live with any person falling within section 107(3), including requirements as to those who must be consulted before the decision is made, and those who must be notified when it has been made;
  - (m) the supervision or medical examination of the child concerned; and
  - (n) the removal of the child, in such circumstances as may be prescribed, from the care of the person with whom he has been allowed to live.
- (9) The Minister may make Regulations in respect of—

- (a) the considerations which the Agency must take into account in deciding—
    - (i) whether it is reasonable to recover contributions; and
    - (ii) what the arrangements should be made for payment; and
  - (b) the procedures the Agency must follow in reaching agreements with contributors.
- (10) The Minister may by Regulations make provision regarding—
- (a) the circumstances in which notification is required to be given in connection with children who are, have been or are proposed to be fostered privately; and
  - (b) the manner and form in which such notification is to be given.
- (11) The Regulations made under subsection (10) may, in particular, provide for—
- (a) requiring any person who is, or proposes to be, involved, whether or not directly, in arranging for a child to be fostered privately to notify the Agency;
  - (b) requiring any person who is—
    - (i) a parent of a child; or
    - (ii) a person who is not a parent but has parental responsibility for a child,  
  
and who knows that it is proposed that the child should be fostered privately, to notify the Agency;
  - (c) requiring any parent of a privately fostered child, or person who is not a parent of such a child but who has parental responsibility for him, to notify the Agency of any change in his address;
  - (d) requiring any person who proposes to foster a child privately, to notify the Agency of his proposal;
  - (e) requiring any person who is fostering a child privately, or proposes to do so, to notify the Agency of—
    - (i) any offence of which he has been convicted;

- (ii) any disqualification imposed on him under section 129; or
- (iii) any prohibition imposed on him under section 130;
- (f) requiring any person who is fostering a child privately, to notify the Agency of any change in his address;
- (g) requiring any person who is fostering a child privately to notify the Agency in writing of any person who begins, or ceases, to be part of his household; and
- (h) requiring any person who has been fostering a child privately, but has ceased to do so, to notify the Agency, indicating, where the child has died, that that is the reason.

(12) The Government may by Regulations make provisions in relation to children—

- (a) to give effect to any international measures in respect of Gibraltar; or
- (b) to fulfil any other International or European Union obligations.

(13) The Government may by Regulations extend the provisions of all or parts of this Part, with or without modifications, as between the United Kingdom and Gibraltar.

**Repeals and savings.**

159.(1) The following Acts are repealed—

- (a) the Minors Act; and
- (b) the Fostering Act 2002.

(2) Notwithstanding the repeals of the Acts by subsection (1), any order made or any action taken or proceedings started under a repealed Act shall continue in operation as if this Act has not come into operation.

**SCHEDULE**

Section 93B(3)

Text of the Hague Convention of 19 October, 1996, on jurisdiction, applicable law, recognition, enforcement and co-operation in respect of parental responsibility and measures for the protection of children

The States signatory to the present Convention,

Considering the need to improve the protection of children in international situations,

Wishing to avoid conflicts between their legal systems in respect of jurisdiction, applicable law, recognition and enforcement of measures for the protection of children,

Recalling the importance of international co-operation for the protection of children,

Confirming that the best interests of the child are to be a primary consideration,

Noting that the Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors is in need of revision,

Desiring to establish common provisions to this effect, taking into account the United Nations Convention on the Rights of the Child of 20 November 1989,

Have agreed on the following provisions:

**Chapter I — scope of the convention***Article 1*

1. The objects of the present Convention are—

- a* to determine the State whose authorities have jurisdiction to take measures directed to the protection of the person or property of the child;
- b* to determine which law is to be applied by such authorities in exercising their jurisdiction;

- c* to determine the law applicable to parental responsibility;
- d* to provide for the recognition and enforcement of such measures of protection in all Contracting States;
- e* to establish such co-operation between the authorities of the Contracting States as may be necessary in order to achieve the purposes of this Convention.

2. For the purposes of this Convention, the term ‘parental responsibility’ includes parental authority, or any analogous relationship of authority determining the rights, powers and responsibilities of parents, guardians or other legal representatives in relation to the person or the property of the child.

#### *Article 2*

The Convention applies to children from the moment of their birth until they reach the age of 18 years.

#### *Article 3*

The measures referred to in Article 1 may deal in particular with–

- a* the attribution, exercise, termination or restriction of parental responsibility, as well as its delegation;
- b* rights of custody, including rights relating to the care of the person of the child and, in particular, the right to determine the child’s place of residence, as well as rights of access including the right to take a child for a limited period of time to a place other than the child’s habitual residence;
- c* guardianship, curatorship and analogous institutions;
- d* the designation and functions of any person or body having charge of the child’s person or property, representing or assisting the child;
- e* the placement of the child in a foster family or in institutional care, or the provision of care by *kafala* or an analogous institution;
- f* the supervision by a public authority of the care of a child by any person having charge of the child;

- g* the administration, conservation or disposal of the child's property.

*Article 4*

The Convention does not apply to—

- a* the establishment or contesting of parent-child relationship;
- b* decisions on adoption, measures preparatory to adoption, or the annulment or revocation of adoption;
- c* the name and forenames of the child;
- d* emancipation;
- e* maintenance obligations;
- f* trusts or succession;
- g* social security;
- h* public measures of a general nature in matters of education or health;
- i* measures taken as a result of penal offences committed by children;
- j* decisions on the right of asylum and on immigration.

**Chapter II — jurisdiction**

*Article 5*

1. The judicial or administrative authorities of the Contracting State of the habitual residence of the child have jurisdiction to take measures directed to the protection of the child's person or property.
2. Subject to Article 7, in case of a change of the child's habitual residence to another Contracting State, the authorities of the State of the new habitual residence have jurisdiction.

*Article 6*

1. For refugee children and children who, due to disturbances occurring in their country, are internationally displaced, the authorities of the Contracting

State on the territory of which these children are present as a result of their displacement have the jurisdiction provided for in paragraph 1 of Article 5.

2. The provisions of the preceding paragraph also apply to children whose habitual residence cannot be established.

#### *Article 7*

1. In case of wrongful removal or retention of the child, the authorities of the Contracting State in which the child was habitually resident immediately before the removal or retention keep their jurisdiction until the child has acquired a habitual residence in another State, and

- a* each person, institution or other body having rights of custody has acquiesced in the removal or retention; or
- b* the child has resided in that other State for a period of at least one year after the person, institution or other body having rights of custody has or should have had knowledge of the whereabouts of the child, no request for return lodged within that period is still pending, and the child is settled in his or her new environment.

2. The removal or the retention of a child is to be considered wrongful where—

- a* it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and
- b* at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The rights of custody mentioned in sub-paragraph *a* above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

3. So long as the authorities first mentioned in paragraph 1 keep their jurisdiction, the authorities of the Contracting State to which the child has been removed or in which he or she has been retained can take only such urgent measures under Article 11 as are necessary for the protection of the person or property of the child.

#### *Article 8*

1. By way of exception, the authority of a Contracting State having jurisdiction under Article 5 or 6, if it considers that the authority of another Contracting State would be better placed in the particular case to assess the best interests of the child, may either

- request that other authority, directly or with the assistance of the Central Authority of its State, to assume jurisdiction to take such measures of protection as it considers to be necessary, or
- suspend consideration of the case and invite the parties to introduce such a request before the authority of that other State.

2. The Contracting States whose authorities may be addressed as provided in the preceding paragraph are

- a* a State of which the child is a national,
- b* a State in which property of the child is located,
- c* a State whose authorities are seised of an application for divorce or legal separation of the child's parents, or for annulment of their marriage,
- d* a State with which the child has a substantial connection.

3. The authorities concerned may proceed to an exchange of views.

4. The authority addressed as provided in paragraph 1 may assume jurisdiction, in place of the authority having jurisdiction under Article 5 or 6, if it considers that this is in the child's best interests.

#### *Article 9*

1. If the authorities of a Contracting State referred to in Article 8, paragraph 2, consider that they are better placed in the particular case to assess the child's best interests, they may either

- request the competent authority of the Contracting State of the habitual residence of the child, directly or with the assistance of the Central Authority of that State, that they be authorised to exercise jurisdiction to take the measures of protection which they consider to be necessary, or

- invite the parties to introduce such a request before the authority of the Contracting State of the habitual residence of the child.
2. The authorities concerned may proceed to an exchange of views.
  3. The authority initiating the request may exercise jurisdiction in place of the authority of the Contracting State of the habitual residence of the child only if the latter authority has accepted the request.

*Article 10*

1. Without prejudice to Articles 5 to 9, the authorities of a Contracting State exercising jurisdiction to decide upon an application for divorce or legal separation of the parents of a child habitually resident in another Contracting State, or for annulment of their marriage, may, if the law of their State so provides, take measures directed to the protection of the person or property of such child if
  - a* at the time of commencement of the proceedings, one of his or her parents habitually resides in that State and one of them has parental responsibility in relation to the child, and
  - b* the jurisdiction of these authorities to take such measures has been accepted by the parents, as well as by any other person who has parental responsibility in relation to the child, and is in the best interests of the child.
2. The jurisdiction provided for by paragraph 1 to take measures for the protection of the child ceases as soon as the decision allowing or refusing the application for divorce, legal separation or annulment of the marriage has become final, or the proceedings have come to an end for another reason.

*Article 11*

1. In all cases of urgency, the authorities of any Contracting State in whose territory the child or property belonging to the child is present have jurisdiction to take any necessary measures of protection.
2. The measures taken under the preceding paragraph with regard to a child habitually resident in a Contracting State shall lapse as soon as the authorities which have jurisdiction under Articles 5 to 10 have taken the measures required by the situation.
3. The measures taken under paragraph 1 with regard to a child who is habitually resident in a non-Contracting State shall lapse in each Contracting State as soon as measures required by the situation and taken by the

authorities of another State are recognised in the Contracting State in question.

*Article 12*

1. Subject to Article 7, the authorities of a Contracting State in whose territory the child or property belonging to the child is present have jurisdiction to take measures of a provisional character for the protection of the person or property of the child which have a territorial effect limited to the State in question, in so far as such measures are not incompatible with measures already taken by authorities which have jurisdiction under Articles 5 to 10.

2. The measures taken under the preceding paragraph with regard to a child habitually resident in a Contracting State shall lapse as soon as the authorities which have jurisdiction under Articles 5 to 10 have taken a decision in respect of the measures of protection which may be required by the situation.

3. The measures taken under paragraph 1 with regard to a child who is habitually resident in a non-Contracting State shall lapse in the Contracting State where the measures were taken as soon as measures required by the situation and taken by the authorities of another State are recognised in the Contracting State in question.

*Article 13*

1. The authorities of a Contracting State which have jurisdiction under Article 5 to 10 to take measures for the protection of the person or property of the child must abstain from exercising this jurisdiction if, at the time of the commencement of the proceedings, corresponding measures have been requested from the authorities of another Contracting State having jurisdiction under Articles 5 to 10 at the time of the request and are still under consideration.

2. The provisions of the preceding paragraph shall not apply if the authorities before whom the request for measures was initially introduced have declined jurisdiction.

*Article 14*

The measures taken in application of Articles 5 to 10 remain in force according to their terms, even if a change of circumstances has eliminated the basis upon which jurisdiction was founded, so long as the authorities which have jurisdiction under the Convention have not modified, replaced or terminated such measures.

**Chapter III — applicable law**

*Article 15*

1. In exercising their jurisdiction under the provisions of Chapter II, the authorities of the Contracting States shall apply their own law.
2. However, in so far as the protection of the person or the property of the child requires, they may exceptionally apply or take into consideration the law of another State with which the situation has a substantial connection.
3. If the child's habitual residence changes to another Contracting State, the law of that other State governs, from the time of the change, the conditions of application of the measures taken in the State of the former habitual residence.

*Article 16*

1. The attribution or extinction of parental responsibility by operation of law, without the intervention of a judicial or administrative authority, is governed by the law of the State of the habitual residence of the child.
2. The attribution or extinction of parental responsibility by an agreement or a unilateral act, without intervention of a judicial or administrative authority, is governed by the law of the State of the child's habitual residence at the time when the agreement or unilateral act takes effect.
3. Parental responsibility which exists under the law of the State of the child's habitual residence subsists after a change of that habitual residence to another State.
4. If the child's habitual residence changes, the attribution of parental responsibility by operation of law to a person who does not already have such responsibility is governed by the law of the State of the new habitual residence.

*Article 17*

The exercise of parental responsibility is governed by the law of the State of the child's habitual residence. If the child's habitual residence changes, it is governed by the law of the State of the new habitual residence.

*Article 18*

The parental responsibility referred to in Article 16 may be terminated, or the conditions of its exercise modified, by measures taken under this Convention.

*Article 19*

1. The validity of a transaction entered into between a third party and another person who would be entitled to act as the child's legal representative under the law of the State where the transaction was concluded cannot be contested, and the third party cannot be held liable, on the sole ground that the other person was not entitled to act as the child's legal representative under the law designated by the provisions of this Chapter, unless the third party knew or should have known that the parental responsibility was governed by the latter law.

2. The preceding paragraph applies only if the transaction was entered into between persons present on the territory of the same State.

*Article 20*

The provisions of this Chapter apply even if the law designated by them is the law of a non-Contracting State.

*Article 21*

1. In this Chapter the term 'law' means the law in force in a State other than its choice of law rules.

2. However, if the law applicable according to Article 16 is that of a non-Contracting State and if the choice of law rules of that State designate the law of another non-Contracting State which would apply its own law, the law of the latter State applies. If that other non-Contracting State would not apply its own law, the applicable law is that designated by Article 16.

*Article 22*

The application of the law designated by the provisions of this Chapter can be refused only if this application would be manifestly contrary to public policy, taking into account the best interests of the child.

**Chapter IV — recognition and enforcement**

*Article 23*

1. The measures taken by the authorities of a Contracting State shall be recognised by operation of law in all other Contracting States.

2. Recognition may however be refused—

- a* if the measure was taken by an authority whose jurisdiction was not based on one of the grounds provided for in Chapter II;

- b* if the measure was taken, except in a case of urgency, in the context of a judicial or administrative proceeding, without the child having been provided the opportunity to be heard, in violation of fundamental principles of procedure of the requested State;
- c* on the request of any person claiming that the measure infringes his or her parental responsibility, if such measure was taken, except in a case of urgency, without such person having been given an opportunity to be heard;
- d* if such recognition is manifestly contrary to public policy of the requested State, taking into account the best interests of the child;
- e* if the measure is incompatible with a later measure taken in the non-Contracting State of the habitual residence of the child, where this later measure fulfils the requirements for recognition in the requested State;
- f* if the procedure provided in Article 33 has not been complied with.

#### *Article 24*

Without prejudice to Article 23, paragraph 1, any interested person may request from the competent authorities of a Contracting State that they decide on the recognition or non-recognition of a measure taken in another Contracting State. The procedure is governed by the law of the requested State.

#### *Article 25*

The authority of the requested State is bound by the findings of fact on which the authority of the State where the measure was taken based its jurisdiction.

#### *Article 26*

1. If measures taken in one Contracting State and enforceable there require enforcement in another Contracting State, they shall, upon request by an interested party, be declared enforceable or registered for the purpose of enforcement in that other State according to the procedure provided in the law of the latter State.
2. Each Contracting State shall apply to the declaration of enforceability or registration a simple and rapid procedure.

3. The declaration of enforceability or registration may be refused only for one of the reasons set out in Article 23, paragraph 2.

*Article 27*

Without prejudice to such review as is necessary in the application of the preceding Articles, there shall be no review of the merits of the measure taken.

*Article 28*

Measures taken in one Contracting State and declared enforceable, or registered for the purpose of enforcement, in another Contracting State shall be enforced in the latter State as if they had been taken by the authorities of that State. Enforcement takes place in accordance with the law of the requested State to the extent provided by such law, taking into consideration the best interests of the child.

**Chapter V — co-operation**

*Article 29*

1. A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention on such authorities.

2. Federal States, States with more than one system of law or States having autonomous territorial units shall be free to appoint more than one Central Authority and to specify the territorial or personal extent of their functions. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which any communication may be addressed for transmission to the appropriate Central Authority within that State

*Article 30*

1. Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their States to achieve the purposes of the Convention.

2. They shall, in connection with the application of the Convention, take appropriate steps to provide information as to the laws of, and services available in, their States relating to the protection of children.

*Article 31*

The Central Authority of a Contracting State, either directly or through public authorities or other bodies, shall take all appropriate steps to—

- a* facilitate the communications and offer the assistance provided for in Articles 8 and 9 and in this Chapter;
- b* facilitate, by mediation, conciliation or similar means, agreed solutions for the protection of the person or property of the child in situations to which the Convention applies;
- c* provide, on the request of a competent authority of another Contracting State, assistance in discovering the whereabouts of a child where it appears that the child may be present and in need of protection within the territory of the requested State.

*Article 32*

On a request made with supporting reasons by the Central Authority or other competent authority of any Contracting State with which the child has a substantial connection, the Central Authority of the Contracting State in which the child is habitually resident and present may, directly or through public authorities or other bodies,

- a* provide a report on the situation of the child;
- b* request the competent authority of its State to consider the need to take measures for the protection of the person or property of the child.

*Article 33*

1. If an authority having jurisdiction under Articles 5 to 10 contemplates the placement of the child in a foster family or institutional care, or the provision of care by *kafala* or an analogous institution, and if such placement or such provision of care is to take place in another Contracting State, it shall first consult with the Central Authority or other competent authority of the latter State. To that effect it shall transmit a report on the child together with the reasons for the proposed placement or provision of care

2. The decision on the placement or provision of care may be made in the requesting State only if the Central Authority or other competent authority of the requested State has consented to the placement or provision of care, taking into account the child's best interests

*Article 34*

1. Where a measure of protection is contemplated, the competent authorities under the Convention, if the situation of the child so requires, may request any authority of another Contracting State which has information relevant to the protection of the child to communicate such information.
2. A Contracting State may declare that requests under paragraph 1 shall be communicated to its authorities only through its Central Authority.

*Article 35*

1. The competent authorities of a Contracting State may request the authorities of another Contracting State to assist in the implementation of measures of protection taken under this Convention, especially in securing the effective exercise of rights of access as well as of the right to maintain direct contacts on a regular basis.
2. The authorities of a Contracting State in which the child does not habitually reside may, on the request of a parent residing in that State who is seeking to obtain or to maintain access to the child, gather information or evidence and may make a finding on the suitability of that parent to exercise access and on the conditions under which access is to be exercised. An authority exercising jurisdiction under Articles 5 to 10 to determine an application concerning access to the child, shall admit and consider such information, evidence and finding before reaching its decision.
3. An authority having jurisdiction under Articles 5 to 10 to decide on access may adjourn a proceeding pending the outcome of a request made under paragraph 2, in particular, when it is considering an application to restrict or terminate access rights granted in the State of the child's former habitual residence.
4. Nothing in this Article shall prevent an authority having jurisdiction under Articles 5 to 10 from taking provisional measures pending the outcome of the request made under paragraph 2.

*Article 36*

In any case where the child is exposed to a serious danger, the competent authorities of the Contracting State where measures for the protection of the child have been taken or are under consideration, if they are informed that the child's residence has changed to, or that the child is present in another State, shall inform the authorities of that other State about the danger involved and the measures taken or under consideration.

*Article 37*

---

An authority shall not request or transmit any information under this Chapter if to do so would, in its opinion, be likely to place the child's person or property in danger, or constitute a serious threat to the liberty or life of a member of the child's family.

*Article 38*

1. Without prejudice to the possibility of imposing reasonable charges for the provision of services, Central Authorities and other public authorities of Contracting States shall bear their own costs in applying the provisions of this Chapter.
2. Any Contracting State may enter into agreements with one or more other Contracting States concerning the allocation of charges.

*Article 39*

Any Contracting State may enter into agreements with one or more other Contracting States with a view to improving the application of this Chapter in their mutual relations. The States which have concluded such an agreement shall transmit a copy to the depositary of the Convention.

**Chapter VI — general provisions**

*Article 40*

1. The authorities of the Contracting State of the child's habitual residence, or of the Contracting State where a measure of protection has been taken, may deliver to the person having parental responsibility or to the person entrusted with protection of the child's person or property, at his or her request, a certificate indicating the capacity in which that person is entitled to act and the powers conferred upon him or her.
2. The capacity and powers indicated in the certificate are presumed to be vested in that person, in the absence of proof to the contrary.
3. Each Contracting State shall designate the authorities competent to draw up the certificate.

*Article 41*

Personal data gathered or transmitted under the Convention shall be used only for the purposes for which they were gathered or transmitted.

*Article 42*

## Children

---

The authorities to whom information is transmitted shall ensure its confidentiality, in accordance with the law of their State.

### *Article 43*

All documents forwarded or delivered under this Convention shall be exempt from legalisation or any analogous formality.

### *Article 44*

Each Contracting State may designate the authorities to which requests under Articles 8, 9 and 33 are to be addressed.

### *Article 45*

1. The designations referred to in Articles 29 and 44 shall be communicated to the Permanent Bureau of the Hague Conference on Private International Law.
2. The declaration referred to in Article 34, paragraph 2, shall be made to the depositary of the Convention.

### *Article 46*

A Contracting State in which different systems of law or sets of rules of law apply to the protection of the child and his or her property shall not be bound to apply the rules of the Convention to conflicts solely between such different systems or sets of rules of law.

### *Article 47*

In relation to a State in which two or more systems of law or sets of rules of law with regard to any matter dealt with in this Convention apply in different territorial units—

1. any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit;
2. any reference to the presence of the child in that State shall be construed as referring to presence in a territorial unit;
3. any reference to the location of property of the child in that State shall be construed as referring to location of property of the child in a territorial unit;
4. any reference to the State of which the child is a national shall be construed as referring to the territorial unit designated by the

law of that State or, in the absence of relevant rules, to the territorial unit with which the child has the closest connection;

5. any reference to the State whose authorities are seised of an application for divorce or legal separation of the child's parents or for annulment of their marriage shall be construed as referring to the territorial unit whose authorities are seised of such application;
6. any reference to the State with which the child has a substantial connection shall be construed as referring to the territorial unit with which the child has such connection;
7. any reference to the State to which the child has been removed or in which he or she has been retained shall be construed as referring to the relevant territorial unit to which the child has been removed or in which he or she has been retained;
8. any reference to bodies or authorities of that State, other than Central Authorities, shall be construed as referring to those authorised to act in the relevant territorial unit;
9. any reference to the law or procedure or authority of the State in which a measure has been taken shall be construed as referring to the law or procedure or authority of the territorial unit in which such measure was taken;
10. any reference to the law or procedure or authority of the requested State shall be construed as referring to the law or procedure or authority of the territorial unit in which recognition or enforcement is sought.

#### *Article 48*

For the purpose of identifying the applicable law under Chapter III, in relation to a State which comprises two or more territorial units each of which has its own system of law or set of rules of law in respect of matters covered by this Convention, the following rules apply—

- a* if there are rules in force in such a State identifying which territorial unit's law is applicable, the law of that unit applies;
- b* in the absence of such rules, the law of the relevant territorial unit as defined in Article 47 applies.

#### *Article 49*

For the purpose of identifying the applicable law under Chapter III, in relation to a State which has two or more systems of law or sets of rules of law applicable to different categories of persons in respect of matters covered by this Convention, the following rules apply—

- a* if there are rules in force in such a State identifying which among such laws applies, that law applies;
- b* in the absence of such rules, the law of the system or the set of rules of law with which the child has the closest connection applies.

*Article 50*

This Convention shall not affect the application of the *Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*, as between Parties to both Conventions. Nothing, however, precludes provisions of this Convention from being invoked for the purposes of obtaining the return of a child who has been wrongfully removed or retained or of organising access rights.

*Article 51*

In relations between the Contracting States this Convention replaces the Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors, and the Convention governing the guardianship of minors, signed at The Hague 12 June 1902, without prejudice to the recognition of measures taken under the Convention of 5 October 1961 mentioned above.

*Article 52*

1. This Convention does not affect any international instrument to which Contracting States are Parties and which contains provisions on matters governed by the Convention, unless a contrary declaration is made by the States Parties to such instrument.
2. This Convention does not affect the possibility for one or more Contracting States to conclude agreements which contain, in respect of children habitually resident in any of the States Parties to such agreements, provisions on matters governed by this Convention.
3. Agreements to be concluded by one or more Contracting States on matters within the scope of this Convention do not affect, in the relationship of such States with other Contracting States, the application of the provisions of this Convention.

4. The preceding paragraphs also apply to uniform laws based on special ties of a regional or other nature between the States concerned.

*Article 53*

1. The Convention shall apply to measures only if they are taken in a State after the Convention has entered into force for that State
2. The Convention shall apply to the recognition and enforcement of measures taken after its entry into force as between the State where the measures have been taken and the requested State.

*Article 54*

1. Any communication sent to the Central Authority or to another authority of a Contracting State shall be in the original language, and shall be accompanied by a translation into the official language or one of the official languages of the other State or, where that is not feasible, a translation into French or English.
2. However, a Contracting State may, by making a reservation in accordance with Article 60, object to the use of either French or English, but not both.

*Article 55*

1. A Contracting State may, in accordance with Article 60,
  - a* reserve the jurisdiction of its authorities to take measures directed to the protection of property of a child situated on its territory;
  - b* reserve the right not to recognise any parental responsibility or measure in so far as it is incompatible with any measure taken by its authorities in relation to that property.
2. The reservation may be restricted to certain categories of property.

*Article 56*

The Secretary General of the Hague Conference on Private International Law shall at regular intervals convoke a Special Commission in order to review the practical operation of the Convention.

**Chapter VII — final clauses**

*Article 57*

1. The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Eighteenth Session.

2. It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention.

*Article 58*

1. Any other State may accede to the Convention after it has entered into force in accordance with Article 61, paragraph 1.

2. The instrument of accession shall be deposited with the depositary.

3. Such accession shall have effect only as regards the relations between the acceding State and those Contracting States which have not raised an objection to its accession in the six months after the receipt of the notification referred to in sub-paragraph *b* of Article 63. Such an objection may also be raised by States at the time when they ratify, accept or approve the Convention after an accession. Any such objection shall be notified to the depositary.

*Article 59*

1. If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that the Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

2. Any such declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.

3. If a State makes no declaration under this Article, the Convention is to extend to all territorial units of that State.

*Article 60*

1. Any State may, not later than the time of ratification, acceptance, approval or accession, or at the time of making a declaration in terms of Article 59, make one or both of the reservations provided for in Articles 54, paragraph 2, and 55. No other reservation shall be permitted.

2. Any State may at any time withdraw a reservation it has made. The withdrawal shall be notified to the depositary.
3. The reservation shall cease to have effect on the first day of the third calendar month after the notification referred to in the preceding paragraph.

*Article 61*

1. The Convention shall enter into force on the first day of the month following the expiration of three months after the deposit of the third instrument of ratification, acceptance or approval referred to in Article 57.
2. Thereafter the Convention shall enter into force—
  - a* for each State ratifying, accepting or approving it subsequently, on the first day of the month following the expiration of three months after the deposit of its instrument of ratification, acceptance, approval or accession;
  - b* for each State acceding, on the first day of the month following the expiration of three months after the expiration of the period of six months provided in Article 58, paragraph 3;
  - c* for a territorial unit to which the Convention has been extended in conformity with Article 59, on the first day of the month following the expiration of three months after the notification referred to in that Article.

*Article 62*

1. A State Party to the Convention may denounce it by a notification in writing addressed to the depositary. The denunciation may be limited to certain territorial units to which the Convention applies.
2. The denunciation takes effect on the first day of the month following the expiration of twelve months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period.

*Article 63*

The depositary shall notify the States Members of the Hague Conference on Private International Law and the States which have acceded in accordance with Article 58 of the following—

- a* the signatures, ratifications, acceptances and approvals referred to in Article 57;
- b* the accessions and objections raised to accessions referred to in Article 58;
- c* the date on which the Convention enters into force in accordance with Article 61;
- d* the declarations referred to in Articles 34, paragraph 2, and 59;
- e* the agreements referred to in Article 39;
- f* the reservations referred to in Articles 54, paragraph 2, and 55 and the withdrawals referred to in Article 60, paragraph 2;
- g* the denunciations referred to in Article 62.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at The Hague, on the 19th day of October 1996, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Eighteenth Session.