

**THIRD SUPPLEMENT TO THE GIBRALTAR  
GAZETTE**

No. 3,712 of 14th May, 2009

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**B. 13/09**

**CHILDREN ACT 2009**

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**B. 13/09**

**BILL**

**FOR**

**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.

**ENACTED** by the Legislature of Gibraltar.

**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 X 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; and
- (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 X 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; and
- (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 the parties to a marriage, means—

- (a) a child of both of those parties;
- (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;

“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 affinity) 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;

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“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 as implemented in Gibraltar by the Civil Jurisdiction and Judgments (Amendment) Act 2005, 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;

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- (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) For the purposes of section 45 of the Magistrates' Court Act, proceedings under this Act in that court shall be treated as family proceedings.

(8) The name "domestic proceedings" given to certain proceedings in magistrates' court is changed to "family proceedings".

(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)—



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- (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.

**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 V.

(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–

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- (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—

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- (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–



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- (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 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.

(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.

(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.

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(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.

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

(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,

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) The amount of any lump sum required to be paid by an order made by the magistrates' court under section 48 or 49 shall not exceed £1000 or such larger amount as the Minister may from time to time by order fix for the purposes of this subsection.

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

(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 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 sections 49 and 60, “parent” includes any party to a marriage, whether or not subsisting, in relation to whom the child concerned is a child of the family; and for this purpose any reference to either parent or both parents shall be construed as references to any parent of 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



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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,

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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















































































































































































