

**ANTIGUA AND BARBUDA**



**CHILDREN (CARE AND ADOPTION) ACT, 2015**

**No. 24 of 2015**

*[Published in the Official Gazette Vol. XXXVI No.18  
dated 17th March, 2016]*

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Printed at the Government Printing Office, Antigua and Barbuda,  
by Ralph George, Government Printer  
— By Authority, 2016.



**ANTIGUA AND BARBUDA**

**CHILDREN (CARE AND ADOPTION) ACT, 2015**

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[ L.S.]



I Assent,

**Rodney Williams,**  
*Governor-General.*

4th March, 2016.

**ANTIGUA AND BARBUDA**

**CHILDREN (CARE AND ADOPTION) BILL, 2015**

**No. 24 of 2015**

**AN ACT** to provide for the care and, protection and adoption of children, operation of adoption services and other related matters and for connected purposes.

**ENACTED** by the Parliament of Antigua and Barbuda.

**PART I**

**PRELIMINARY**

**1. Short title and commencement**

(1) This Act may be cited as the Children (Care and Adoption) Act, 2015.

(2) The Minister may by Notice published in the *Gazette* appoint a date on which this Act comes into force.

**2. Interpretation**

In this Act —

“abuse” includes—

(a) physical abuse;

- (b) sexual abuse;
- (c) verbal abuse;
- (d) emotional harm or abuse referred to in section 12;
- (e) psychological harm referred to in section 12; and
- (f) financial abuse;

“adopted child” means a child adopted pursuant to this Act or a former Act

“Adoption Committee” means the Adoption Committee established pursuant to section 85;

"Adoption list" means the list established and maintained pursuant to section 100;

“adoptive parent” means a person who has adopted a child pursuant to section 120 of this Act, or a former Act;

“alternative action” means any plan —

- (a) that sets out the way in which the needs of the child are proposed to be met having regard to the breakdown in the relationship between the child and his or her parents; and
- (b) that may include proposals concerning the—
  - (i) allocation of parental responsibility or specific aspects of parental responsibility;
  - (ii) residential arrangements;
  - (iii) supervision;
  - (iv) contact arrangements;
  - (v) education and training;
  - (vi) medical care; or
  - (vii) the provision of services;

“approved person” means a person approved by the Minister by Order;

“attorney-at-law” means a person whose name has been entered on the Roll of Attorneys-at-Law;

“care application” means an application for a care order made under section 36;

“care order” means an order made by a Court, to place a child in the care and under the supervision and protection of a person or an authority, pursuant to this Act and includes a contact order made under section 65;

“care plan” means a plan developed by the Director pursuant to section 57;

“care responsibility” means the authority of a person to exercise the functions specified in section 29 in relation to a child;

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

“child care service” includes —

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

approved or licensed by the Minister under section 75 to provide for the care of children;

“couple” means a man and a woman:

- (a) who are married to each other; or
- (b) who are not married to each other, but are cohabiting in a relationship of some permanence;

“Court” means the Magistrate Court except in relation to provisions dealing with adoption in which instance means the High Court;

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

“Director” means the Director of the Directorate of Social Services appointed under Section 6;

“former Act” means the Adoption of Children Act, Cap. 9;

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

“home study assessment” means an assessment conducted by the Adoption Committee on a single person or a couple who makes an application pursuant to section 94;

“Minister” means the Minister with responsibility for Social Services;

“natural father” includes a man who has been adjudged to be the biological father of a child;

“natural mother” means a woman who gave birth to a child;

“natural parent” means a natural mother or a natural father;

“neglect” means the failure of any parent or guardian of a child to provide shelter, safety, educational, emotional and supervisory needs of a child.”

“order” means a care order or a supervision order made by the Court under Part VIII;

“parent” includes —

- (a) a natural or adoptive parent who has the parental responsibility of the child;
- (b) a person, who has stood in loco parentis to a child for a period of not less than one year and who has a continuing relationship with the child; or
- (c) a legal guardian of the child who has custody or guardianship rights of the child,

but does not include a person acting as care giver on behalf of the Director;

“parental responsibility” includes—

- (a) the duties, powers, responsibilities and authority; and
- (b) the rights and obligations,

which by any law in force in Antigua and Barbuda, the parent of a child has in relation to that child;

“permanency plan” means a plan referred to in section 67 that makes provision with respect to permanency planning;

“police officer” means a member of the Royal Police Force of Antigua and Barbuda;

“prescribed” means prescribed by Regulations;

“prospective adoptive parent” means a single person or a couple approved by the Adoption Committee in accordance with section 95;

“Registrar” means the Registrar of the High Court;

“relative” in relation to a child means a grandparent, brother, sister, uncle or aunt of the child, whether the relationship is by blood, affinity or adoption;

“resident” means a person who is ordinarily resident in Antigua and Barbuda;

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

### **3. Primary purpose of this Act**

(1) The primary purpose of this Act is to protect children from abuse and neglect and to ensure that the best interests of the child is given paramount consideration in all matters relating to the child.

(2) In determining what is in the best interest of the child in any particular case the Director or the Court shall have regard to all relevant considerations including-

- (a) the safety of the child;
- (b) the capacity of the parent to properly discharge parental obligations with respect to the child;
- (c) the spiritual, physical mental and emotional needs of the child, and the appropriate care or treatment required to meet those needs;



- (d) the physical, mental, emotional or psychological development of the child;
- (e) where appropriate, the views of the child;
- (f) a secure place for the child and the development of a positive relationship as a member of a family;
- (g) the love, affection and ties between the child and other persons in the life of the child;
- (h) the capacity of persons other than a parent to exercise custody rights and duties respecting a child; and
- (i) the continuity of the care for the child and the possible effect of disruption of that care on the child.

#### **4. Principles to be applied in the administration of this Act**

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

- (a) in all actions and decisions made under this Act, whether by legal or administrative process, concerning a child, the safety, welfare and well-being of the child shall be the paramount consideration, and the safety, welfare and well-being of a child who has been removed from his or her parents are paramount over the rights of the parents;
- (b) whenever a child is able to form his or her own views on a matter concerning his or her safety, welfare or well-being, he or she must be given an opportunity to express those views freely and those views are to be given due weight in accordance with the developmental capacity of the child and the circumstances;
- (c) in deciding what action is necessary to take, whether by administrative or legal process, in order to protect a child from harm, the course to be followed shall be the least intrusive intervention in the life of the child and his or her family, that is consistent with the paramount concern to protect the child from harm and to promote the development of the child;
- (d) if a child is temporarily or permanently deprived of his or her environment, or cannot be allowed to remain in that environment in his or her own best interest, the child shall be entitled to special protection and assistance from the State, and his or her own name and identity shall, where possible, be preserved;

- (e) if a child is placed in an approved child care service, arrangements should be made, in a timely manner, to ensure the provision of a safe, nurturing, stable and secure environment, recognising the child's circumstances and that, the younger the age of the child, the greater the need for early decisions to be made in relation to a permanent placement; and
- (f) where a child is removed from the home of his or her parents pursuant to this Act, whether temporarily or permanently, the child is entitled to a safe, nurturing, stable and secure environment and unless it is contrary to his or her best interests, and taking into account the wishes of the child, this may include the retention by the child of relationships with people significant to the child, including his or her birth or adoptive parents, siblings, extended family, peers, family friends and community.

## **PART II**

### **ADMINISTRATION OF THE ACT**

#### **5. Responsibility of the Minister**

(1) The Minister shall promote a partnership approach between the government, non-government agencies, families, corporations, business agencies and the community in taking responsibility for and dealing with children-

- (a) who are in need of care and protection; and
- (b) who are placed for adoption,

in accordance with this Act.

(2) In giving effect to subsection (1) the Minister shall promote the development of procedures and protocols with government, non-government agencies, families, corporations, business agencies and the community, to promote the care and suitable adoption of children and shall ensure that these procedures and protocols are implemented and reviewed regularly.

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

(4) The Director of Social Services shall have responsibility for development of the protocol.

#### **6. Directorate of Social Services**

(1) There is established, within the Ministry responsible for Social Services, the office of the Director of Social Services

(2) The office of the Director shall consist of a Director of Social Services and such suitable and qualified staff as is necessary for the effective carrying out of the provisions of this Act.

## **7. Functions of the Director**

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

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

- (a) to promote and safeguard the safety, welfare and well-being of a child;
- (b) to assess and investigate or to cause an assessment to be undertaken or reports to be assessed and investigated pursuant to Part V;
- (c) to oversee the operation and delivery of child care services;
- (d) to establish, registration, policies respecting the direction and supervision of such delegation;
- (e) to advise the Minister and other persons on matters relating to child care services, programmes, facilities and resources necessary to carry out the requirements under this Act;
- (f) to determine in association with the Adoption Committee the manner in which a child is selected for adoption;
- (g) to establish guidelines for the conduct of negotiations entered into by the Adoption Committee with a parent who wishes to have the child selected by the Adoption Committee to be placed for adoption in accordance with this Act;
- (h) to receive applications made under section 94;
- (i) to assess, on the advice of the Adoption Committee, the suitability of a person to adopt a child;
- (j) to establish and maintain an Adoption List pursuant to section 100;
- (k) to make arrangements for and in relation to the placement of a child;

- (l) to take appropriate measures to ensure confidentiality of the records of a child, the natural parents of a child and the adoptive parents of a child;
- (m) to issue guidelines to child care services in giving effect to this Act; and
- (n) to perform such other functions as may be necessary to carry out the provisions of this Act or as may be determined by the Minister.

### **8. Director's request for services from other agencies**

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

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

### **9. Director to ensure participation of child**

(1) In order to ensure that a child is able to participate in decisions that are likely to have a significant impact on the life of the child, the Director shall provide the child with the following—

- (a) adequate information, in a manner and language that he or she can understand, concerning the decisions to be made, the reasons for the intervention of the Director, the ways in which the child may participate in the decision making and any relevant complaint mechanisms;
- (b) the opportunity to express his or her views freely, according to his or her abilities, age, maturity and developmental capacity;
- (c) any assistance that is necessary for the child to express his or her views;
- (d) information as to how the views of the child will be recorded and taken into account;
- (e) information with respect to the outcome of any decision concerning the child and an explanation of the reasons for the decision; and
- (f) an opportunity to respond to a decision made concerning the child.

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

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

### **10. Delegation**

(1) The Director may delegate to a staff member of the Directorate or to any other person, his or her functions, other than the power of delegation pursuant to this Act.

(2) The Director or a child care service having care responsibility for a child may delegate that responsibility to a relative of the child or other person approved by the Director.

### **11. Committees**

The Minister shall appoint the Adoption Committee in accordance with section 85.

(2) The Minister may establish—

- (a) an Advisory Committee—
  - (i) to review, every three years, the provisions of this Act and the services performed pursuant to this Act; and
  - (ii) to report to the Minister and Family Division Manager concerning the operation and administration of this Act and whether or not the principles and purposes of this Act are being achieved; and
- (b) such other Committees;

to assist the Director in the exercise of his or her functions under this Act.PART III

## **CARE AND PROTECTION OF CHILDREN**

### **12. Child in need of care and protection**

(1) A child is in need of care and protection where the child —

- (a) has suffered harm caused by—
  - (i) the neglect of the child;
  - (ii) the failure of the parent to adequately supervise or protect the child; or
  - (iii) the failure of the parent to provide for the adequate supervision or protection of the child;
- (b) has been abused by the parent or by another person and the parent knew or ought to have known of the possibility of the abuse of the child and the parent failed to protect the child;
- (c) has been harmed as a result of being sexually exploited for the purposes of prostitution or pornography and the parent has failed or has not been able to protect the child;
- (d) has suffered physical, emotional or psychological harm caused by being exposed to domestic violence by or towards a parent or other person residing with the child;
- (e) requires specific medical, physical, emotional or psychological treatment to cure, prevent or ameliorate the effects of a physical or emotional condition or harm suffered, and the parent does not, or refuses to obtain treatment or is unavailable to consent to services for treatment to remedy or to ameliorate the effects of the *condition*;
- (f) has been abandoned, or the only parent of the child has died or is unavailable to take custody of the child, and adequate provisions have not been made for the care of the child;
- (g) suffers from a mental, emotional, physical or developmental condition, that, if not addressed, could seriously harm the child and the parent does not, or refuses to obtain treatment or is unavailable or unable to consent to services or treatment to remedy or ameliorate the effects of the condition; or
- (h) is in the custody of the Director or another person and the parent of the child refuses or is unable to resume custody of the child.

(2) In this section “neglect of a child” means the failure of the parent of the child to provide the child with adequate care and guidance or other acts or omission by the parent with respect to the child that are inappropriate for the child or likely to be harmful to the child.

(3) For the purposes of this Act emotional abuse exists where a child—

- (a) has suffered, is suffering or is likely to suffer in a way that has caused, is causing or is likely to cause significant harm to his or her well-being or development; or
- (b) is being or is likely to be exposed to conduct that constitutes domestic violence under the law in force in Antigua and Barbuda,

and the exposure causes, is causing or is likely to cause significant harm to the well-being or development of the child.

### **13. Request for assistance from parent or child**

(1) A parent or a child may seek assistance from the Director-

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

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

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

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

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

(5) Where the Court is satisfied that—

- (a) the child cannot be controlled by a parent;
- (b) it is in the best interests of the child; or

- (c) the parent understands the results which will follow from and consents to the making of the order,

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

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

(7) This section applies in addition to section 9.

(8) An order made under subsection (5) may be renewed or varied after its expiry.

## **PART IV**

### **REPORTING**

#### **14. Mandatory reporting**

(1) This section applies to a person who—

- (a) provides health care, welfare, education, child care services or law enforcement wholly or partly to children; and
- (b) holds a management position in an organisation, the duties of which include direct responsibility for, or direct supervision of, the provision of health care, welfare, education, children services or law enforcement, wholly or partly to children.

(2) If a person to whom this section applies has knowledge or has reasonable grounds to suspect that a child is in need of care and protection in any of the circumstances mentioned in section 12 that person shall—

- (a) without delay, report or cause to be reported, the circumstances to the Director, or to a police officer who shall report the information to the Director; and
- (b) provide the Director with such additional information as is known or available to the person.

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

(4) A report made under subsection (2) may be made anonymously.



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

### **15. Records of reports and subsequent action**

(1) The Director shall keep a record of—

- (a) all reports made to or by the Director;
- (b) any action taken under this Act, as a consequence of a report received under section 14; and
- (c) any disposition of and dealings with a child to whom the report and action referred to in paragraph (b) relate.

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

### **16. Protection of persons who make reports**

(1) If a person makes a report under section 14, in good faith to the Director—

- (a) the making of the report shall not constitute a breach of any professional ethics or a departure from any accepted standards of professional conduct;
- (b) no liability shall be incurred for defamation as a consequence of the report;
- (c) the making of the report shall not constitute a ground for civil proceeding for malicious prosecution or for conspiracy;
- (d) the report, or evidence of its contents, is not admissible in any proceedings, other than in proceedings relating to the care and protection of a child in the Court;
- (e) that person cannot be compelled in any proceedings, to produce the report or a copy of, or an extract from it or to disclose or give evidence of any of its contents; and
- (f) the identity of the person who made the report, or information from which the identity of that person could be deduced, shall not be disclosed to any person, except with—
  - (i) the consent of the person who made the report; or
  - (ii) the leave of the Court before which proceedings relating to the report are conducted,

and, unless that consent or leave is granted, a party or witness in any such proceedings shall not be asked, and if asked, shall not be required to answer, any question that cannot be answered without disclosing the identity or leading to the identification of that person.

(2) A report made under section 14 that is certified by the Director is admissible in any proceedings relating to the care and protection of a child.

(3) The Court shall not grant leave under subsection (1) (f) (ii) unless the Court is satisfied that the evidence is of critical importance in the proceedings and that failure to admit it would prejudice the proper administration of justice.

(4) Where leave is granted under this section, the Court shall—

(a) state the reasons; and

(b) direct that the Director be informed that evidence as to the identity of the person who made the report, or from which the identity of that person could be deduced, has been disclosed.

(5) Subsection (1) (f) shall not prevent the disclosure of information from which the identity of the person may be deduced if the prohibition on the disclosure of that information would prevent the proper investigation of the report.

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

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

## **PART V**

### **INVESTIGATION AND ASSESSMENT**

#### **17. Conduct of initial investigation and assessment**

(1) Where—

(a) a report is made under section 14;

(b) it appears to the Director that a child may be in need of care and protection; or

(c) a parent or a child requests assistance under section 13,

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

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

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

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

(4) In conducting an investigation the Director may—

- (a) visit the residence of the child and other places frequented by the child;
- (b) transport the child to a place considered by the Director to be appropriate;
- (c) interview and examine the child;
- (d) interview the parent of the child;
- (e) interview any person who cares for the child or any person who has had an opportunity to observe the child;
- (f) interview any person who provides health, social, educational and other services to the child or to the parent of the child;
- (g) require information to be provided to the Director from medical, social, educational and other service records concerning the child, the parent of the child or both;
- (h) cause an examination to be made of the physical, mental and emotional health and development of the child;
- (i) request the parent of the child to undergo an examination of the physical, mental or emotional health or any other assessment; or

- (j) consult with such other persons and gather such other evidence as may be necessary to complete the investigation.

(5) On an application made by the Director, the Court may order any person-

- (a) to provide such information under subsection (4) to the Director;
- (b) to allow the Director access to a person, place or record; or
- (c) to co-operate with an investigation by the Director.

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

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

(7) A report shall not be provided under subsection (6) if—

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

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

## **18. Matters for consideration**

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

## **19. Action taken by Director**

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

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

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

## **20. Decision against taking action**

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

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

## **21. Principles of intervention**

In deciding the appropriate response to a request for assistance or to a report concerning a child, the Director must have regard to the following principles—

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

## **22. Alternative dispute resolution**

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

- (a) to ensure intervention so as to resolve problems which may exist at an early stage;

- (b) to develop a care plan;
- (c) to reduce the likelihood that an application for an order will need to be made;
- (d) to reduce the incidence of breakdown in child-parent relationships; and
- (e) to work towards the making of decisions that are in the best interests of the child concerned where an application for a care order is made.

(2) Where the Court considers that using an alternative dispute resolution procedure is appropriate the participation by the child or the parent of the child in that alternative dispute resolution procedure shall be mandatory.

### **23. Development and enforcement of care plans**

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

### **24. Application for certain orders**

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

## **PART VI**

### **EMERGENCY PROTECTION**

#### **25. Removal of child**

If the Director has reasonable grounds to believe that-

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

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

**26. Prompt application to Court for a care order**

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

- (a) an emergency care and protection order;
- (b) an assessment order; or
- (c) any other care order.

**27. Emergency protection order**

(1) The Court may make an emergency protection order in relation to a child where a child is removed from a place in accordance with section 25 and it is satisfied that the child is suffering or is likely to suffer significant harm and is in urgent need of care and protection.

(2) An application for an emergency protection order shall be made by the Director at the first available opportunity after the child had been removed in accordance with section 25 and such order, while in force places the child in the care responsibility of the Director or the person specified in the order.

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

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

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

**28. Care responsibility of child removed from parents**

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

- (a) the child shall be kept in an approved child care service; and
- (b) subject to subsection (2), the Director shall have the care responsibility for the child.

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

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

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

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

## **29. Care responsibility**

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

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

## **30. Care responsibility by Director**

(1) If the Director—

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



the Director may, instead of removing the child from the place or premises in accordance with section 25 assume the care responsibility of the child by an order in writing, signed by the Director and served on the person, whether or not a parent of the child, who in the opinion of the Director appears to be in charge of the place or premises.

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

### **31. Discharge of child from care responsibility of Director**

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

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

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

- (a) any views expressed by the child as to whether he or she wishes the power to be exercised;
- (b) any views expressed by the child as to whether he intends to return to the care and under the protection of his or her parents;
- (c) whether the exercise by the Director of that power is likely to protect the safety, welfare and well-being of the child; and
- (d) whether the failure of the Director to exercise that power is likely to endanger the safety, welfare and well-being of the child or any other person.

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

## **PART VII**

### **ASSESSMENT ORDERS**

#### **32. Making of assessment order**

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

- (a) the physical, psychological, psychiatric or other medical examination of a child, or
  - (b) the assessment of a child,
- or both.

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

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

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

### **33. Matters for consideration in making assessment order**

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

- (a) whether the proposed assessment is likely to provide relevant information that is unlikely to be obtained elsewhere;
- (b) whether any distress the assessment is likely to cause the child will be outweighed by the value of the information that may be obtained;
- (c) any distress already caused to the child by any previous assessment undertaken for the same or another purpose; and
- (d) any other matter that the Court considers relevant.

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

(3) The assessment to be carried out under subsection (2), must be carried out only with the consent of the person whose capacity is to be assessed.

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

**34. Information concerning assessment**

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

**35. Report of assessment**

A report of the assessment made under 32 (2) shall be submitted to the Court in the prescribed manner.

**PART VIII****ORDERS FOR THE CARE AND PROTECTION OF A CHILD****36. Application for care order**

- (1) An application for a care order shall be made by the Director under this Part.
- (2) The application for a care order shall specify the particular care order sought and the grounds on which it is sought.
- (3) Except as provided by this Part, a care order may be made as an interim order or a final order.
- (4) A care order may be varied, but only with the leave of the Court.

**37. Evidence of prior alternative actions**

- (1) When making a care application to the Court under section 36, the Director shall furnish details to the Court of—
  - (a) the support and assistance provided for the safety, welfare and well-being of the child; and
  - (b) any alternative action to a care order that were considered prior to the making of the application for the care order and the reasons why the alternative action was rejected.
- (2) The Court shall not—
  - (a) dismiss a care application in relation to a child; or
  - (b) discharge a child who is under the care responsibility of the Director from that care responsibility,

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

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

### **38. Notification of care applications**

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

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

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

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

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

### **39. Leave to withdraw application**

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

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

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

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

### **40. Court not limited by terms of care application**

If all the necessary prerequisites to the making of the order are satisfied, the making of a care application for a particular care order of the Court does not prevent the Court from making a care

order different from, in addition to, or in substitution for, the order for which the application was made.

#### **41. Interim care orders**

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

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

#### **42. Consideration of necessity for interim care order**

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

#### **43. Supervision and care orders**

If the Director makes an application under section 36 for a care order, the Court may make—

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

#### **44. Grounds for making a care order**

(1) The Court may make a care order in relation to a child if it is satisfied that the child is in need of care and protection for any of the following reasons-

- (a) there is no parent available to care for the child as a result of death or incapacity or for any other reason;
- (b) the parents acknowledge that they have serious difficulties in caring for the child;
- (c) the child has been, or is likely to be abused;

- (d) subject to subsection (2), the basic physical, psychological, emotional or educational needs of the child are not being met, or are not likely to be met by his or her parents;
- (e) the child is suffering or is likely to suffer serious developmental impairment or serious psychological harm, as a consequence of the domestic environment in which the child is living;
- (f) the child has exhibited sexually abusive behaviour and an order of the Court is necessary to ensure his or her access to, or attendance at an appropriate therapeutic service; or
- (g) the child is subject to a care and protection order of another State that is not being enforced.

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

#### **45. Duration of care order**

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

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

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

#### **46. Purpose of the care order**

The purpose of the care order shall be

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

**47. Care orders for child care service**

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

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

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

**48. Duty to enforce care order**

The Director shall enforce a care order made under this Act.

**49. Parental responsibility vested in person in charge of childcare service**

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

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

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

**50. Special duties of Director in relation to care orders**

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

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

(3) Where a child is placed with a foster family, the Director shall communicate with the parent of the child, to inform the parent of the progress of the child and to arrange a trial period for

the child to be reunited with the parent except wherein the opinion of the Director or Court this course of action is not in the best interests of the child.

### **51. Application for supervision order**

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

### **52. Supervision order**

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

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

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

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

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

### **53. Duties of a supervisor while a supervision order is in force**

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

- (a) to mentor, advise and assist the child;



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

#### **54. Requirements of supervision order**

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

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

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

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

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

#### **55. Duration of supervision order**

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

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

(3) Notwithstanding subsection (2), the Court may, on its own motion or on an application made by the Director, and after giving the parties an opportunity to be heard, extend the period of

a supervision order for such further period, not exceeding six months as is considers necessary in the circumstances.

(4) The Court may require the presentation of—

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

(i) the outcome of the supervision;

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

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

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

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

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

#### **56. Director to enforce supervision order**

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

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

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

(b) determine whether the order has been breached; and if the Court finds that the order has been breached, the Court may make any order as it considers appropriate in all the circumstances.

#### **57. Care plans**

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

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

- (a) the allocation of parental responsibility for the duration of the period for which the child is removed from the care of his or her parent;
  - (b) the kind of placement proposed to be sought for the child, including—
    - (i) how it relates to permanency planning for the child;
    - (ii) any interim arrangement that is proposed for the child pending permanent placement and the timetable proposed for achieving a permanent placement;
  - (c) the arrangements for contact between the child and his or her parent, relatives, friends and other persons connected with the child;
  - (d) the child care service designated to supervise the placement of the child; and
  - (e) the services that need to be provided to the child.
- (3) The care plan must be made as far as possible with the agreement of the parent of the child concerned.
- (4) The care plan is only enforceable if it—
- (a) is developed by the Director through an agreement with the parent of the child and the child, where applicable; or
  - (b) represents a set of proposals developed by the Director.

### **58. Requirement to consider care plan**

The Court shall not make a final order for the removal of a child from the care and protection of his or her parent or for the allocation of parental responsibility in respect of the child, unless the Court has considered a care plan presented to it by the Director, pursuant to section 57.

### **59. Social inquiry report**

- (1) The Court shall require a written social inquiry report in respect of a child before it makes an order under this Part.
- (2) The Director shall prepare a social inquiry report and he or she shall comply with the request of the Court whenever required to produce a social inquiry report.
- (3) The Director shall make a home visit to interview the parent of the child concerned and carry out his or her investigations concerning the child before making a social inquiry report.

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

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

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

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

## **60. Other orders which may be made by the Court**

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

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

## **61. Order accepting undertakings**

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

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

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

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

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

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

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

## **62. Order for the provision of support services**

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

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

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

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

## **63. Order to attend therapeutic or treatment programme**

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

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

in accordance with the terms specified in the order.

- (2) The Court shall not make an order under this section—
  - (a) if the child is or has been the subject of criminal proceedings arising from the same abusive behaviour; or
  - (b) unless the Court has been presented with and has considered the provisions of a plan that outlines the therapeutic programme proposed for the child.

#### **64. Compulsory assistance order**

(1) The Director may make an application to the Court for an order for compulsory assistance if the Director is of the opinion that-

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

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

- (a) the child will receive treatment, therapy or other services that will assist the child to deal with the problems that have led the child to be a danger to himself or herself;
- (b) the programme offered to the child is more likely than not to lead to a significant improvement in his or her circumstances; and
- (c) the necessary resources have been allocated by the person who will be required to provide intensive supervision of the child.

(3) A compulsory assistance order must make provision for all of the following matters-

- (a) the person who is to be responsible under the order for the child;
- (b) the place at which the child is to reside;
- (c) a description of the therapeutic programme and other support to be provided to the child;
- (d) the maintenance of twenty-four hour supervision of the child;
- (e) the duration of the order; and

(f) such other matters as the Court may determine.

(4) A compulsory assistance order must not be for a period of more than three months.

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

## **65. Contact order**

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

- (a) stipulating minimum requirements concerning the frequency and duration of contact between the child and his or her parent, relatives or other persons of significance to the child;
- (b) that contact with a specified person be supervised;
- (c) denying contact with a specified person if contact with that person is not in the best interests of the child;
- (d) that contact be supervised by the Director.

(2) An order referred to in—

- (a) subsection (1) (a) shall not prevent more frequent contact with a child with the consent of a person having parental responsibility for the child;
- (b) subsection (1) (b) may be made only with the consent of the person specified in the order and the person who is required to supervise the contact.

## **66. Orders with significant impact on persons**

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

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

## **67. Preparation and requirements of permanency plan**

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

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

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

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

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

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

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

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



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

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

(9) In this section—

"parent", in relation to the child concerned, means—

- (a) if the child has been adopted - the child's adoptive parent, or
- (b) if the child has not been adopted - the child's natural parent.

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

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

### **68. Provision of services to facilitate restoration**

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

### **69. Review of permanency plan**

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

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

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

- (c) whether a care order should be made, varied or revoked.

## **70. Costs**

The Court shall not make an order for costs in any care proceedings unless there are exceptional circumstances that justify the Court doing so.

## **71. Final orders to be given to parties**

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

## **72. Variation and revocation of orders**

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

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

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

- (a) the nature of the application;
- (b) the age and maturity of the child;
- (c) the length of time for which the child has been in the care of the person who has the present parental responsibility for the child; and
- (d) the plans for the child.

(4) An application referred to in subsection (1) may be made by—

- (a) the Director;
- (b) a person having parental responsibility for the child;
- (c) a person from whom parental responsibility has been removed; or
- (d) any person who considers himself or herself to have sufficient interest in the welfare of the child.

## (5) If—

- (a) an application is made to the Court by a person, other than the Director, for the variation or revocation of a care order, other than a contact order, in relation to a child;
- (b) the application seeks to change the parental responsibility for the child, or those aspects of parental responsibility involved in having care and responsibility for the child; and
- (c) the Director is not a party to the proceedings, the applicant must notify the Director of the application and the Director shall be entitled to be a party to the application.

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

## (7) If—

- (a) an application for variation of a care order is made or opposed by the Director; and
- (b) a ground on which the application is made is a ground that has not previously been considered by the Court,

the ground shall be proved as if it were a ground of a fresh application for a care order.

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

- (a) the age and maturity of the child;
- (b) the wishes of the child and the weight to be given to those wishes;
- (c) the length of time the child has been in the care of the present person who has parental responsibility for the child;
- (d) the strength of the bond of the child to his or her parent or the present person who has parental responsibility for the child;
- (e) the capacity of the parent of the child to provide an adequate standard of care for the child; and

- (f) the risk to the child of psychological harm if the present care arrangements are varied or revoked.

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

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

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

## **PART IX**

### **CHILD CARE SERVICES**

#### **73 Principles**

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

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

#### **74. Conditions for foster care placements**

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

(2) An application to foster a child shall be made to the Director, but a relative of a child without a parent or guardian may foster the child without first applying to the Director and, in such a case, this Part shall not apply to the relative.

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

**75. Approved child care services**

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

(2) Any person who establishes manages or operates or participates in the management or operation of a child care service for the purpose of this Act without a licence granted under this Act commits an offence and is liable on conviction to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding two years or both.

**76. Purpose of approved child care service**

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

(2) The staff of the approved child care service and the Director shall assist the child to become reunited with his or her natural parent.

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

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

**77. Parental responsibility at approved child care service**

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

**78. Contact with parents and relatives**

(1) The approved child care service and the Director shall maintain—

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

(b) contact between the child and the parent or relatives of the child.

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

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

### **79. Recovery order**

(1) When a Court has been provided with information on oath that a child has been removed unlawfully from an approved child care service, it may make a recovery order.

(2) A recovery order may—

- (a) direct any person who is in possession of the child to produce the child on demand to any authorised person;
- (b) require the removal of the child by an authorised person;
- (c) require any person who has information leading to the whereabouts of the child to disclose such information;
- (d) authorise a search by a police officer of the premises where the child is believed to be staying; and
- (e) specify the name of the child in question and the person who has parental responsibility for the child.

### **80. Application for recovery order**

Any of the following persons may apply for a recovery order—

- (a) the Director; or
- (b) the person who has parental responsibility for the child.

### **81. Escape from approved child care service**

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

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

(2) As soon as possible, after the circumstance referred to in subsection (1) has occurred, the Director shall interview the person in charge of the child care service or the person in whose care the child has been placed.

(3) The child referred to in subsection (1) may be returned to where he or she had been placed, or if that it is not in the best interests of the child, he or she may be moved by the Director under a care order or otherwise returned to the Court for an application by the Director for a variation order.

## **82. Courts power to order parent to contribute**

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

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

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

## **PART X**

### **ADOPTION OF A CHILD**

## **83. Principles to be applied in relation to adoption**

(1) A person who is involved in the making of a decision with respect to the adoption of a child, shall have regard, as far as practicable or appropriate, to the following principles—

- (a) the best interests of the child, both in childhood and later in life, must be the paramount consideration;
- (b) adoption is to be regarded as a service for the child, not for persons wishing to acquire and care for the child;
- (c) a person does not have the right to adopt a child;
- (d) if a child is able to form his or her own views on a matter concerning his or her adoption, he or she shall be given an opportunity to express those views freely and those views are to be given due weight in accordance with the age, maturity, developmental capacity of the child and the circumstances;

- (e) the given name of a child, identity, religious ties and cultural identity shall as far as possible, be identified and preserved;
- (f) the likely effect on the child throughout his or her life of having ceased to be a member of his or her natural or original family and become an adopted child;
- (g) any harm which the child has suffered or is at risk of suffering; and
- (h) the likely prejudicial effect in the delay in arriving at a decision relating to a child.

(2) In determining the best interests of a child, consideration shall be given by the Court to the following—

- (a) any alternatives to the making of an adoption order and the likely effect on the child in both the short and long term of changes in the circumstances of the child caused by adoption, so that adoption is determined among all alternative forms of care to best meet the needs of the child;
- (b) the child's age, maturity, level of understanding, gender, background and family relationships and other characteristics of the child where this is considered to be relevant;
- (c) the physical, emotional and educational needs of the child, including the child's sense of personal, family and cultural identity;
- (d) any disability which the child may have;
- (e) any wishes expressed by the parent of the child;
- (f) the relationship that the child has with his or her natural parents or siblings, if any, and any significant other persons including relatives where this is considered to be relevant;
- (g) the attitude of a person wishing to adopt the child towards the child and to the responsibilities of parenthood;
- (h) the nature of the relationship of the child with the person wishing to adopt the child;
- (i) the suitability and capacity of the person wishing to adopt the child, to provide for the needs of the child, including the child's emotional and intellectual needs;
- (j) the need to protect the child from abuse; and



- (k) any wishes expressed by the child.

#### **84. Participation of child in decisions**

(1) In order to ensure that a child is able to participate in any decision made under this Act that has a significant impact on his or her life, every person who participates in the process of adoption shall ensure that the child is provided with the following-

- (a) adequate information, in a manner that the child can understand with respect to a decision concerning the child;
- (b) the opportunity to express his or her views freely, according to his or her abilities;
- (c) information about the outcome of a decision concerning the child and an explanation of the reasons for the decision;
- (d) any assistance that is necessary for the child to understand that information and to express his or her views; and
- (e) appropriate counselling where the child's consent is required for his or her adoption.

(2) In the application of the principles established pursuant to subsection (1), due regard shall be had to the age, maturity and the developmental capacity of the child.

### **PART XI**

#### **ADOPTION COMMITTEE**

#### **85. Establishment of Adoption Committee**

- (1) There is hereby established a committee to be called the Adoption Committee.
- (2) The Adoption Committee shall carry out the policy directions issued to it by the Minister and assist the Director in giving effect to the provisions relating to adoption in this Act.
- (3) The Adoption Committee shall be appointed by the Minister and shall comprise—
  - (a) the Director, who shall be the Chairperson;
  - (b) one representative each from the following ministries—
    - (i) the Ministry with responsibility for Social Services;

- (ii) the Ministry responsible for Education;
  - (iii) the Ministry responsible for Health; and
  - (iv) the Attorney General's Chambers;
- (c) Director for Gender Affairs; and
- (d) three representatives drawn from—
- (i) non-governmental organisations whose mandates reflect child care and protection;
  - (ii) individuals who are experts in child care and protection.

(4) A person shall be appointed by the Minister as a member of the Adoption Committee based on his or her experience, expertise and leadership in the field of child care and protection.

(5) The Adoption Committee shall be ultimately accountable to the Minister for the conduct of the business, activities and other affairs of the Adoption Committee.

### **86. Terms of appointment**

(1) A member of the Adoption Committee, other than the Director, shall hold office for a period not exceeding three years and shall be eligible for reappointment.

(2) The Director shall serve on the Adoption Committee for the period stated in his or her instrument of appointment as Director, or for such other period as may be determined by the relevant service commission.

### **87. Conduct of meetings of the Adoption Committee**

(1) The Adoption Committee shall meet at such time and such place as the Director shall decide.

(2) The Director shall preside at all meetings of the Adoption Committee at which he or she is present.

(3) If the Director is unable to preside at a meeting of the Adoption Committee, he or she shall appoint another member of the Committee to preside at that meeting.

(4) Three members of the Adoption Committee shall constitute a quorum, one of which must be the Director.

(5) The Adoption Committee shall establish its own procedure.

### **88. Secretary to the Adoption Committee**

The Adoption Committee shall have a secretary who shall be a public officer.

### **89. Office of the Adoption Committee**

The office of the Adoption Committee shall be at the Ministry of Social Services, and its records shall be kept there securely and confidentially.

### **90. Oath of Secrecy**

A member of the Adoption Committee shall, before assuming office, take the Oath of Secrecy as may be prescribed.

### **91. Functions of the Adoption Committee**

(1) The functions of the Adoption Committee are—

- (a) to determine the manner in which a child is selected for adoption;
- (b) to establish guidelines for the conduct of negotiations entered into by the Adoption Committee with a parent who wishes to have the child selected by the Adoption Committee to be placed for adoption;
- (c) to receive applications made pursuant to section 94;
- (d) to assess the suitability of a person to adopt a child;
- (e) to establish and maintain an Adoption List pursuant to section 100;
- (f) to make arrangements for and in relation to the placement of a child;
- (g) to take appropriate measures, at all times to ensure confidentiality of the records of a child, the natural parents of a child and the adoptive parents of the child; and
- (h) to perform such other functions as may be necessary to carry out the provisions of Parts X to XIII as may be determined by the Minister.

(2) For the purpose of carrying out its functions, the Adoption Committee may-

- (a) conduct such inquiries and carry out such investigations with respect to any matter;

- (b) establish procedures to conduct interviews; and
- (c) solicit, accept and review reports from individuals or organisations concerned or involved in the adoption of children

## **PART XII**

### **PLACEMENT OF A CHILD FOR ADOPTION**

#### **92. Who may place a child for adoption**

(1) A child may be placed for adoption in Antigua and Barbuda only by the Adoption Committee.

(2) A natural parent of a child or other person having the custody of a child may, in a manner which may be determined by the Adoption Committee, select a single person or a couple with whom he or she wishes to have his or her child placed for adoption as a prospective adopter.

(3) The Adoption Committee may only place a child for adoption with a prospective adopter if the Committee is satisfied that the child ought to be placed for adoption.

#### **93. Persons who may apply for adoption order**

(1) A single person may, subject to this Act, make an application to the Adoption Committee under section 94, to have a child placed in his or her home for adoption only if that person is—

- (a) resident or domiciled in Antigua and Barbuda for a period of at least six months prior to the making of the application; and
- (b) at least eighteen years older than the child, except where he or she is the spouse of the parent of the child or a relative of the child.

(2) A couple may, subject to this Act, make an application to the Adoption Committee, under section 94 to have a child placed in their home for adoption only if one of them-

- (a) is resident in Antigua and Barbuda for a period of at least six months prior to the making of the application; and
- (b) has attained the age of twenty five and is at least eighteen years older than the child,

except where he or she is the spouse of the parent of the child or a relative of the child.

(3) The Court may waive the residency and the age requirements under this section if it determines that it is in the best interests of the child to do so and that in the particular circumstances of the case it is desirable to make an adoption order.

#### **94. Application and assessment for placement**

(1) A single person or a couple who is desirous of having a child placed in his, her or their home for adoption shall make an application to the Adoption Committee in the prescribed form accompanied by the prescribed fee.

(2) Where the Adoption Committee receives an application made pursuant to subsection (1), the Adoption Committee shall cause the Director to conduct a home study assessment on the applicant in order to determine the suitability of the applicant to be an adoptive parent and the capability and willingness of the applicant to assume the parental responsibility towards the child.

(3) The Adoption Committee must keep a record of a home study assessment which it conducts in relation to an applicant.

#### **95. Decision by the Adoption Committee**

(1) Where having regard to the home study assessment conducted under subsection (2) of section 94, the Adoption Committee decides that an applicant—

- (a) is suitable and capable of having the child placed in the home of the applicant for the purposes of adoption, the Adoption Committee shall approve the application and, within two weeks after making its decision, issue a notice of approval to the applicant in the prescribed form and shall enter the name of the applicant on the Adoption List; or
- (b) is not suitable or capable of having the child placed in the home of the applicant for the purposes of adoption, the Adoption Committee shall within two weeks after making its decision, issue a notice of refusal to the applicant in the prescribed form and shall attach the reasons for its decision and shall inform the applicant of his or her right to have the decision reviewed by the Minister.

(2) The Adoption Committee shall not grant approval for an applicant who is a single person to have a child placed in the home of that applicant for the purposes of adoption, unless the Adoption Committee is satisfied, having conducted the home study assessment pursuant to subsection (2) of section 94, that there are exceptional circumstances which make it desirable to render such applicant suitable to adopt a child.

(3) Sub-section (2) does not apply to a person who is a spouse of the parent of a child or a relative of the child.

## **96. Review of decision of Adoption Committee**

An applicant who is aggrieved by a decision of the Adoption Committee made pursuant to section 95, may, not later than two weeks after the date of receipt of the written notice of the decision from the Adoption Committee, make an application to the Minister in the prescribed form for review of that decision on the grounds that the assessment of the applicant by the Adoption Committee was incorrect.

## **97. Appointment of review panel**

(1) On receipt of an application for review made under section 96 the Minister shall appoint a review panel which shall consist of—

- (a) a Chairperson who shall be an attorney-at-law of at least [seven] years standing and who has experience in family law matters; and
- (b) two other persons; one of whom shall be a person who is an employee within the Public Service and who, in the opinion of the Minister, are qualified and have relevant experience in the field of social work, psychology or child welfare.

(2) A member of a review panel shall not be a member of the Adoption Committee and shall be appointed by instrument in writing in the prescribed form and in accordance with subsection (1) in respect of a particular application for review and that appointment shall be automatically terminated on the completion of its inquiry in respect of that review.

## **98. Role of review panel**

(1) The review panel appointed under section 97 shall—

- (a) conduct an inquiry to re-assess the suitability of the applicant to have a child placed in the home of the applicant for adoption; and
- (b) on completion of its inquiry, make recommendations to the Minister as to whether or not the decision of the Adoption Committee should be varied.

(2) Subject to this section, the procedure for the conduct of the inquiry by a review panel shall be as determined by the review panel in each case.

(3) In conducting an inquiry, a review panel—

- (a) shall act without regard to technicalities and legal form;
- (b) shall not be bound by rules of evidence; and

- (c) may inform itself on any matter in such manner as it thinks fit, including the interviewing the applicant who applied for the review.

### **99. Adoption Committee to review decision**

The Adoption Committee shall, as soon as practicable after receiving the recommendations of the review panel in respect of an application for review from the Minister —

- (a) review its decision, taking into account the recommendations of the review panel; and
- (b) give written notice to the applicant of the outcome of the review.

### **100. Adoption List**

The Adoption Committee shall prepare and maintain an Adoption List in which it shall record, the name of each prospective adopter, in a form-

- (a) that indicates the chronological order in which applications that were approved under section 95 were received by the Adoption Committee; and
- (b) that shows a record of such particulars, as the Adoption Committee thinks necessary to assist it in the placement of a child for adoption with an applicant.

### **101. Adoption Committee to have regard to Adoption list**

In making arrangements for and in relation to the placement of a child for adoption, the Adoption Committee shall, without prejudice to its duty to consider all other relevant matters, including in particular the welfare and interests of the child and the wishes of the parent or parents of the child and the applicant wishing to adopt, have regard to the Adoption List and to the chronological order of the names of the prospective adopters entered on the Adoption List.

### **102. Duties of Adoption Committee prior to placement**

(1) Before a child is placed for adoption with a prospective adoptive parent, the Adoption Committee shall—

- (a) provide counselling and information on adoption and alternatives to adoption to the natural parent of the child or any other person having care and protection of the child who is requesting a placement of that child for adoption;
- (b) if the natural parent of the child wishes to select the child's prospective parents, provide them with information about prospective adopters;

- (c) obtain as much information as possible about the medical and social history of the birth family of the child and preserve the information for the child;
  - (d) give the prospective adopter information about the medical and social history of the birth family of the child;
  - (e) ensure that the child—
    - (i) if sufficiently mature, has been counselled about the effects of adoption; and
    - (ii) if twelve years of age or older, has given consent to the adoption;
  - (f) make reasonable efforts to obtain such consent as is required pursuant to section 104;
  - (g) enter into a placement agreement with the prospective adopter pursuant to subsection (2).
- (2) A placement agreement referred to in subsection (1) shall—
- (a) be for a period of three months;
  - (b) be made in the prescribed form; and
  - (c) specify the terms and conditions of the placement and the manner and the circumstances under which the placement agreement may be revoked.
- (3) The Adoption Committee may reduce or extend the placement period if in the opinion of the Adoption Committee it is in the best interests of the child to do so.
- (4) The date on which a placement agreement comes into effect shall be the date on which the child is placed in the home of the prospective adoptive parent for adoption.

### **103. Supervision of placement**

- (1) Where a placement agreement has been executed under section 102, and a child is placed in the home of a prospective adoptive parent for adoption, the Adoption Committee shall appoint an approved person to supervise the placement of the child, in the prescribed manner.
- (2) At the end of a placement period, the person appointed under subsection (1) must prepare a post placement report which shall be submitted for the approval of the Adoption Committee.



(3) A report that has been approved under subsection (2) must be submitted to the Court by the Adoption Committee, on the making of an application for an adoption order by the prospective adoptive parent under section 113.

(4) The post placement report required pursuant to subsection (1) shall provide such information and professional assessment concerning the apparent suitability of the placement of the child in the home of the prospective adoptive parent and the likelihood that the welfare of the child will be satisfactorily provided for in the long term, and shall include-

- (a) the relevant circumstances of the placement;
- (b) the relations between the child and the prospective adoptive parents and members of the household;
- (c) the care the child is receiving;
- (d) whether the child understands the meaning of adoption;
- (e) whether the child has any views on the proposed adoption and any proposed change of the name of the child; and
- (f) such further information and professional opinion as may be deemed helpful for the consideration of the Court or as the Court may require for purposes of considering an application for an adoption order made pursuant to section 113.

#### **104. Consent to be obtained prior to adoption**

(1) Subject to section 106, the Court shall not make an adoption order in relation to a child unless the consent of the following is obtained-

- (a) the child, if the child is twelve years of age or over;
- (b) the natural parents of the child; and
- (c) where applicable, the legal guardians of the child who has custody rights of the child

(2) Any consent given by the natural mother to the making of an adoption order shall not be valid if it is given less than six weeks after the birth of the child.

(3) A natural parent who is not married and who is under the age of sixteen years cannot give a valid consent to the adoption of his or her child.

(4) If a parent whose consent to adoption is required has been adjudicated incompetent, then the Court shall appoint a guardian ad litem for that parent and a guardian ad litem for the child.”

(5) Where a child from another State is to be placed for adoption in Antigua and Barbuda the laws of that State shall apply with respect to the consent required for placing the child for adoption.

(6) In this section “consent”, means the permission given unconditionally and with full understanding of what is involved and a person may consent to the adoption without knowing the identity of the person in whose favour the adoption order will be made.

### **105. Form of consent**

(1) A consent to the adoption of a child must be in the prescribed form.

(2) Where consent to the adoption of a child in Antigua and Barbuda is required from a person who resides outside Antigua and Barbuda, the consent is sufficient for the purposes of this Act if it is in a form that meets the requirements for the consent to adoption in the State in which the person resides.

### **106. Dispensing with consent**

(1) On application, the Court may, by order, dispense with a consent required under section 104 if—

- (a) the Court is satisfied that it is in the best interests of the child to do so; (b) the person whose consent is to be dispensed with is not capable of giving an informed consent;
- (c) reasonable but unsuccessful efforts have been made to locate the person whose consent is to be dispensed with;
- (d) the person whose consent is to be dispensed with—
  - (i) has abandoned or deserted the child;
  - (ii) is not capable of caring for the child;
  - (iii) has not made reasonable efforts to meet his or her parental obligations with respect to the child; or
  - (iv) has in a court of law, affidavit or notarized document, denied paternity.

(e) other circumstances exist which in the opinion of the Court justify dispensing with the consent.

(2) Notwithstanding subsection (1), the Court may dispense with the consent of a child only if the child is not capable of giving an informed consent.

(3) Before making an order under this section, the Court may consider any recommendation in a report filed by the Adoption Committee or a parent of the child.

(4) An application pursuant to this section may be made without notice to any other person and may be joined with any other application which may be made under this Act.

### **107. Withdrawal of consent**

(1) Subject to subsection (5), a person who has consented to the adoption of a child may, withdraw his or her consent in the prescribed form or by notice given to the Adoption Committee.

(2) As soon as possible after receipt of the withdrawal, referred to in subsection (1), the Adoption Committee shall make all reasonable efforts to give notice of the withdrawal to each person who consented to the adoption and to the prospective adoptive parent.

(3) Where the person who withdrew his or her consent had custody of the child immediately before the giving of his or her consent, the child shall be returned to that person as soon as possible after the Adoption Committee receives the withdrawal pursuant to subsection (1).

(4) Where a child is required to give his or her consent to an adoption that child may at any time before the adoption order is made by the Court, withdraw his or her consent, by informing the Adoption Committee of his or her intention to withdraw, in the prescribed form.

(5) The withdrawal of any consent to the placement of a child for adoption or of any consent given under section 104 is ineffective if it is given after an application for an adoption order is made.

### **108. Withdrawal of consent given outside Antigua and Barbuda**

(1) A consent to the adoption of a child residing in Antigua and Barbuda where the consent was given under the law of another State shall be withdrawn in accordance with the laws of that State.

(2) Subsection (1) shall not operate to limit the right of a child to withdraw his or her consent pursuant to section 107.

### **109. Withdrawal of consent by the Court**

(1) If an application for an adoption order has been made after a consent to the adoption of a child has been given under this Act, a person who has provided a consent under section 115 may apply to the Court to have his or her consent withdrawn and that consent may only be withdrawn with the approval of the Court in accordance with sections 107 and 108.

(2) An application to the Court pursuant to subsection (1) must be made before an adoption order is granted.

(3) Where a child has not been placed with a prospective adoptive parent, an application to the Court for the withdrawal of consent is not required and the approval of the withdrawal may be given by the Adoption Committee.

(4) A notice of an application to the Court pursuant to subsection (1) must be served on the Adoption Committee and each person who consented to the adoption.

### **110. Transfer of care responsibility or custody to Adoption Committee**

(1) A parent or other person having the care responsibility or custody of a child shall in writing transfer the care responsibility and custody of the child to the Adoption Committee for the purposes of adoption of that child and until an order for adoption is made or a consent to the adoption is withdrawn under this Act.

(2) Subsection (1) shall not apply to an adoption by a relative or a person who makes an application pursuant to section 93 to jointly become a parent of a child with the natural parent of the child.

### **111. Adoption Committee as guardian of child**

When consent to an adoption is given by the natural parents of a child or other person having care responsibility or custody of the child who requested that the child be placed for adoption, the Adoption Committee becomes the guardian of the child until an order for adoption is made or the consent to the adoption is withdrawn under this Act.

### **112. Transfer of care responsibility during placement**

Where a child is placed in the home of a prospective adoptive parent for adoption, the Director shall not transfer the care responsibility of a child to a prospective adoptive parent with whom that child is to be placed for adoption and the care responsibility of the child shall remain with the Adoption Committee until-

- (a) an order for adoption is made;

- (b) the consent to the adoption is withdrawn; or
- (c) the placement agreement is revoked in the manner as may be prescribed pursuant to section 102 (2).

### **PART XIII**

#### **ADOPTION PROCEEDINGS**

##### **113. Application for adoption order**

A prospective adoptive parent with whom a child has been placed for adoption may make an application to the Court for an adoption order in accordance with this Part.

##### **114. Time for making application**

An application under section 113 shall be made within four weeks before the end of the placement agreement.

##### **115. Notice of application to Adoption Committee**

(1) At the time of making an application to the Court under this Part, the prospective adoptive parent shall send a notice of the application in the prescribed manner to the Adoption Committee together with such supporting documents as may be prescribed.

(2) On receipt of the notice of the application made under subsection (1) the Adoption Committee shall submit the following to the Court—

- (a) a copy of the home study assessment on the prospective adoptive parent pursuant to section 94;
- (b) a copy of the post placement report prepared pursuant to section 103;
- (c) certification in the prescribed manner, where applicable, that the prospective adoptive parent has been resident in Antigua and Barbuda for at least six months;
- (d) a copy of the placement agreement pursuant to section 102 and a statement from the Director that all applicable placement requirements as stipulated in the placement agreement set by this Act and regulations have been met;
- (e) a recommendation on any issue relating to adoption which the Adoption Committee considers necessary; and

- (f) such other information which the Adoption Committee considers necessary to enable the Court to determine whether the proposed adoption is in the best interests of the child.

### **116. Documents required to be filed with application**

(1) An application made under section 113 must be accompanied by the following documents—

- (a) all consents required for the adoption or the orders dispensing with the consent or an application to dispense with consent;
- (b) the birth certificate of the child, or if it cannot be obtained, satisfactory evidence of the facts relating to the birth of the child;
- (c) a copy of the approval of the home study assessment conducted pursuant to section 94;
- (d) a copy of the placement agreement and a statement from the Director that all applicable placement requirements as stipulated in the placement agreement set by this Act and regulations have been met; and
- (e) such other information or documentation as may be prescribed or required by the Court.

(2) The Court may dispense with the need to provide any document stipulated under subsection (1).

(3) Where a parent or other person having custody of a child requires that the parentage or the surname of the child be kept secret, the documents referred to in subsection (1) (a) and (b) shall be sealed or masked to prevent the identification of the natural parent of the child or the disclosure of the surname of the child.

(4) The Court may require the Adoption Committee to inquire into any matter respecting an application for an adoption order that the Court considers necessary.

### **117. Confidentiality**

(1) Where the identity of a natural parent having custody of a child and the identity of an applicant are not known to each other, the Court may order that their identities or information that could reveal their identities not be disclosed in a document.

(2) An application for an adoption order made under this Act or a document filed in Court in connection with the application may be searched only by an order of the Court.

**118. Hearing and legal representation**

The hearing of an application made under section 113 shall be held in private, and access to the files of the Court concerning an application for adoption shall be restricted unless the Court determines otherwise, having regard to the best interests of the child.

**119. Interim adoption order**

(1) Subject to this section, the Court may, on any application for an adoption order, postpone the determination of the application made under section 113 and make an interim order giving the custody of the child to the prospective adoptive parent for a period not exceeding two years, by way of a probationary period, on such terms as regards parental responsibility and otherwise as the Court may determine.

(2) All consents required with respect to an adoption order shall be necessary for an interim adoption order subject to the power of the Court to dispense with any such consent.

(3) An interim order shall not be an adoption order within the meaning of this Act.

**120. Adoption order**

(1) Having considered the documents and evidence filed pursuant to sections 115 and 116, the Court may make an order for adoption if it is satisfied that—

- (a) the requirements of the Act have been complied with;
- (b) the prospective adoptive parent is able to fulfil the obligations and exercise parental responsibility in relation the child; and
- (c) the best interests of the child will be served by the granting of the adoption order.

(2) In addition to the matters to be considered by the Court pursuant to subsection (1), the Court shall—

- (a) take into account any wishes or feelings of the child, in light of the age, maturity and understanding of the child, that are expressed by the child; and
- (b) consider whether there is a need for any arrangements to allow any person to have contact with the child and to that effect consider any existing or proposed arrangements and obtain any views of the parties to the proceedings.

(3) Every adoption order shall contain a direction to the Registrar to make in the Adoption Register pursuant to Part XV an entry in the prescribed form and shall specify the particulars to be entered.

(4) Where an adoption order is made by the Court, the Registrar shall cause compliance to be made with the directions contained in the order both in regard to marking any entry in the Register of Births with the word "Adopted" and in regard to making the appropriate entry in the Adoption Register.

(5) An adoption order may be made even if the child to be adopted is already an adopted child.

(6) Where an adoption order is made by the Court in respect of an infant who has previously been the subject of an adoption order made under the provisions of this Act or of the former Act, the order shall contain a direction to the Registrar to cause the previous entry in the Adoption Register to be marked with the word "Re-adopted".

### **121. Effect of adoption order**

(1) If an adoption order is made under section 120 for all purposes of the law—

- (a) the adopted child becomes the child of the adoptive parent and the adoptive parent becomes the parent of the child;
- (b) the adopted child has the same rights in relation to the adoptive parent, as a child born to the adoptive parent;
- (c) the adoptive parent has the same parental responsibility as the parent of a child born to the adoptive parent;
- (d) the adoptive child ceases to be regarded as the child of the natural parent and the natural parent ceases to have parental responsibility with respect to the child, except a natural parent who remains as a parent jointly with the adoptive parent;
- (e) the legal guardians of the child who has custody rights of the child ceases to have that custody; and
- (f) a person whose consent is required under this Act, ceases to have a right or obligation to consent on any matter with respect to that child.

(2) Where a child is adopted for a subsequent time-

- (a) the child becomes the child of the subsequent adoptive parent;
- (b) the subsequent adoptive parent becomes the parent of the child;



- (c) the adoptive parent, immediately before the subsequent adoptive parent, ceases to have parental responsibilities with respect to the child except an adoptive parent who remains as a parent jointly with the subsequent adoptive parent; and
- (d) the legal guardians of the child who has custody rights of the child ceases to have that custody.

(3) An adoption order shall not affect an interest in property or a right of the adopted child that was vested in the child before the date of the adoption order.

(4) For the purposes of laws related to incest and the prohibited degrees of marriage, subsection (1) shall not remove a person from a relationship in consanguinity which, but for this section, would have existed between that person and another person.

(5) In a Will or other document made at any time before or after the commencement of this Act, and whether the maker of the Will or document is alive on that day or not, a reference to a person or group of persons described in terms of relationship by blood or marriage to another person shall be deemed to refer to or include a person who comes within the description as a result of an adoption, unless the contrary is expressed.

(6) Subject to this section, where an adoption order is made in respect of a child any affiliation order in force with respect to the child, and any agreement whereby the natural father of the child has undertaken to make payments specifically for the benefit of the child, shall cease to have effect, but without prejudice to the recovery of any arrears which are due under the order or agreement at the date of the adoption order.

## 122. Change of name

(1) A prospective adoptive parent may request the Court to change the given name or the surname of the child or both.

(2) Where a request is made pursuant to subsection (1), the Court may change the given name or the surname of the child or both, if-

- (a) the child is five years or older and his or her views are considered on the matter; and
- (b) the child is twelve years or older and gives his or her consent.

(3) The consent of a child shall not be required where the Court has dispensed with the consent of the child for adoption.

(4) Before changing the given name or surname of a child the Court must consider factors that it considers relevant, such as, the maturity or level of understanding of the child, in determining the weight that it should give to the views of the child.

### **123. Duties of Court**

(1) Where an adoption order is made, the Court shall send a certified copy of the order to-

- (a) the Registrar; and
- (b) the Adoption Committee.

(2) On receipt of an adoption order pursuant to subsection (1), the Registrar shall register the order pursuant to this Act.

## **PART XIV**

### **INTER-COUNTRY ADOPTIONS**

#### **124. Approval for inter-country adoption**

(1) A person who is not a resident in Antigua and Barbuda may apply to the Adoption Committee for the adoption of a child resident in Antigua and Barbuda as provided for in this Part.

(2) An application pursuant to subsection (1) shall be made by the applicant and presented either by himself or herself or through an attorney-at-law and shall in every case be accompanied by an affidavit duly sworn by the applicant in the prescribed form stating that the applicant-

- (a) does not have a criminal record;
- (b) is a fit and proper person to adopt the child and has adequate means to maintain and look after the child in an appropriate manner;
- (c) has a current recommendation from the competent body responsible for adoption in his or her country of origin; and
- (d) has satisfied the Adoption Committee that his or her country of origin will respect and recognise an adoption order made under this Act.

(3) For the purposes of an application to which this Part applies the Adoption Committee shall seek verification in writing of the recommendation referred to in subsection (2) (c) at the cost to the applicant.

(4) The Adoption Committee may, after receiving such verification pursuant to subsection (3), recommend that the applicant make an application to the Court for an adoption order pursuant to this Act.

(5) Where an applicant has made an application to the Court, in pursuance of a recommendation made by the Adoption Committee under subsection (4), the Court may request the Adoption Committee to transmit all or any of the records relevant to the matter of the adoption and such records shall be admissible as evidence before the Court in the said proceedings and the Court may accept such record of the Adoption Committee without further proof.

(6) The Court may require some other person or authority to submit a report in respect of the application made pursuant to this Part.

(7) Where an application has been made to the Court for the adoption of a child under this Part, the Court shall proceed in accordance with the relevant provisions of this Act.

(8) An adoption order made under this Part shall remain a provisional order for twelve months during which time quarterly reports must be submitted to the Court by the relevant competent authority in the country where the adopted child lives, on the status, and progress of the adopted child.

(9) On the expiration of the twelve-month period, referred to subsection (8), the Court shall grant the adoption order on being satisfied that it is in the best interests of the child to do so.

(10) The Court may, in the matter of adoption of any child by a person who is not ordinarily resident in Antigua and Barbuda for the transfer of the child abroad, make such exceptions or dispense with such requirement or formalities as it may consider necessary, if it is satisfied that the proposed adoption for transfer abroad is in the best interests of the child and that under the circumstances the case should be disposed of expeditiously.

### **125. Exception**

Section 124 shall not apply to a child who is brought into Antigua and Barbuda for adoption by a relative of the child or by a person who will become an adoptive parent jointly with a natural parent of the child.

### **126. Memoranda of Understanding**

The Government may enter into a memorandum of understanding or other arrangement with the Government of another State in order to allow for the—

- (a) collaboration and exchange of information with competent authorities in that State who are responsible for adoption; and

- (b) establishment of safeguards to ensure that inter-country adoptions take place in the best interests of the child and with respect for the fundamental rights of the child as recognised by law.

### **127. Provision and exchange of information**

- (1) The Minister may, in accordance with the requirements, as may be prescribed—
  - (a) furnish a person with information relating to the safety, welfare and well-being of a particular child or class of children;
  - (b) direct a person to furnish the Minister with information relating to the safety, welfare and well-being of a particular child or class of children.
- (2) The person to whom a direction is given under subsection (1) (b) must comply promptly with the requirements of the direction.
- (3) If information is furnished under subsection (1)—
  - (a) the furnishing of the information is not, in any proceedings before a court, tribunal or committee, to be held to constitute a breach of professional etiquette or ethics or a departure from accepted standards of professional conduct;
  - (b) no liability for defamation is incurred because of the furnishing of the information; and
  - (c) the furnishing of the information does not constitute a ground for civil proceedings for malicious prosecution or for conspiracy.
- (4) A reference in subsection (3) to information furnished under subsection (1) extends to any information so furnished in good faith and with reasonable care.
- (5) A provision of any Act or law in force in the State that prohibits or restricts the disclosure of information shall not operate to prevent the furnishing of information, or affect a duty to furnish information under this section and this section does not affect any obligation or power to provide information apart from under this section.

## **REGISTRATION OF ADOPTION ORDERS**

### **128. Adoption Register**

- (1) The Registrar shall maintain a register to be called the Adoption Register, in which shall be made such entries as may be directed to be made therein under an adoption order.

(2) A certified copy of any entry in the Adoption Register, if purporting to be sealed or stamped with the seal or stamp of the Office of the Registrar, shall, without any further or other proof of that entry, be received as evidence of the adoption to which it relates and, where the entry contains a record of the date of the birth or the country of the birth of the adopted child, shall also be received as evidence of that date or country in all respects as if the copy were a certified copy of an entry in the Register of Births.

(3) The Registrar shall cause an index of the Adoption Register to be made and kept in the Office of the Registrar and every person shall be entitled to search the index and to have a certified copy of any entry in such Register in all respects on, and subject to the same terms, conditions and regulations as to payment of fees or otherwise as are applicable under the Registration of Births and Deaths Act in respect of searches in registers kept in the Office of the Registrar, and in respect of the supply from such office of certified copies of entries in the Registers of Births and Deaths.

(4) The Registrar shall, in addition to the Adoption Register and the index thereof, keep such other registers and books, and make such entries therein, as may be necessary to record and make traceable the connection between any entry in the Register of Births which has been marked "Adopted" in pursuance of this Act, and any corresponding entry in the Adoption Register.

(5) The registers and books kept pursuant to subsection (4) shall not be, nor shall any index thereof be, open to public inspection and search, nor, except under an order by a court, shall the Registrar furnish any person with any information contained in or with any copy or extract from such registers or books.

(6) For the purposes of compliance with the requirements of subsection (2)-

- (a) if the precise date of the birth of a child is not proved to the satisfaction of the Court, the Court shall determine the probable date of the birth of the child and the date so determined shall be specified in the order as the date of birth of the child;
- (b) if the given name or surname which the child is to bear after the adoption differs from his or her original given name or surname, the new given name or surname shall be specified in the order instead of the original given name or surname.

### **129. Post adoption register**

(1) The Adoption Committee shall establish and maintain a post adoption register with respect to adoption and all information relating to adoption shall be recorded in the post adoption register.

(2) Except as may be prescribed, all records or copies of records kept and maintained in accordance with subsection (1) shall not be opened to inspection by, or otherwise available to, any person unless this is done in the manner prescribed.

## **PART XVI**

### **OFFENCES**

#### **130. Making of payment prohibited**

(1) A person shall not give or receive, or agree to give or receive any payment or reward, either directly or indirectly, to procure or assist in procuring a child for the purposes of adoption.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$10,000 or to a term of imprisonment for one year.

(3) Subsection (2) shall not apply to—

(a) any fee charged by the Adoption Committee under this Act;

(b) fees charged by an attorney-at-law for legal services,

(c) monies paid to cover the mother's pre-natal care, childbirth or post natal medical care; or

(d) monies paid to cover medical expenses of the child.

#### **131. Contravening placement requirements**

(1) A person shall not—

(a) place or arrange the placement of a child for the purposes of adoption; or

(b) receive a child in his or her home for the purpose of adoption

unless the child has been placed by the Adoption Committee pursuant to this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$10,000 or to a term of imprisonment for one year.

#### **132. Advertising**

(1) A person shall not publish or cause to be published in any form or by any means an advertisement dealing with the placement of a child for adoption.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$10,000 or to a term of imprisonment for one year.

**133. Making a false statement**

(1) A person shall not make a statement that he or she knows to be false or misleading in an application or in connection with an application for a copy of a birth registration or other record pursuant to this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding \$10,000 or to a term of imprisonment for one year.

**134. Confidentiality of information**

(1) A member of the Adoption Committee shall not except in the course of, and for the purpose of the performance of his or her duties, disclose to any other person anything that comes to his or her knowledge related to a matter which is to be, is being or had been determined by the Adoption Committee.

(2) A member of the Adoption Committee who contravenes subsection (1) is liable to be dismissed as a member of the Adoption Committee or may be liable to the penalty stipulated under section 135(2).

**135. Releasing confidential information to unauthorised person**

(1) A person shall not release any information that is deemed confidential under this Act to any unauthorised person.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$5,000 or to a term of imprisonment for three months.

**136. Offences**

A person who—

- (a) having responsibility for the care and protection of a child causes the child to be in need of care and protection;
- (b) with respect to section 14, knowingly makes a report or provides information which he or she knows to be false or misleading;
- (c) reveals the identity of a person who makes a report or provides information in accordance with this Act;
- (d) fails to comply with a Court order relating to the care of a child;

- (e) obstructs the Director or any other person in the performance of their functions or duties under this Act;
- (f) without authority, induces or attempts to induce a child who is in the custody or supervision of the Director or of any other person who is responsible for the care of the child, to change the place of residence of the child;
- (g) unlawfully takes, detains or harbours a child who is in the custody of or under the supervision of the Director or who is the subject of a removal order;
- (h) has unlawful access to or contact or communication with a child who is in the custody of or under the supervision of the Director;
- (i) publishes information that identifies parties to an agreement or proceedings under this Act, other than information respecting the child of that person;
- (j) being a parent, or any other person caring for the child refuses to give up the child or to permit entry to the place or premises where the Director has reason to believe that the child is present; or
- (k) violates any other provision of this Act,

commits an offence and is liable on summary conviction to a fine not exceeding \$20,000 or to a term of imprisonment for three years.

### **137. Limitation of liability**

(1) A member of the Adoption Committee shall not be personally liable for any damage suffered by any person in consequence of any act or thing which was done in good faith or done or omitted to be done in the course of the exercise or performance of a power, duty or function under this Act.

(2) The Director and members of staff of the Directorate of Social Services or any other person acting under the authority of this Act, shall not be personally liable for any damage suffered by any person in consequence of any act or thing done in good faith or omitted to be done in the course of the exercise or performance of a power, duty or function under this Act. PART XVII

## **MISCELLANEOUS**

### **138. Appeals and procedures**

(1) An appeal shall lie to the Court of Appeal from any judgement, order or decision of the Court under this Act.



(2) The notice to appeal must be filed within 14 days after the judgement, order or decision appealed against was given or made.

(3) The rules and procedures with respect to proceedings before the Court relating to children shall be made under the provisions of the Supreme Court Order, Cap. 422A.

### **139. Regulations**

- (1) The Minister may make regulations for giving effect to this Act.
- (2) Without prejudice to the generality of subsection (1) the Minister may make regulations-
  - (a) respecting procedures for and access to, and the disclosure of, information obtained in the administration of this Act;
  - (b) respecting reports of investigations;
  - (c) respecting the establishment and maintenance of a child abuse register;
  - (d) respecting the establishment of an Advisory Committee referred to in section 11, including its composition terms of appointment and the responsibility of its members;
  - (e) providing for or respecting the temporary care arrangements pursuant to this Act;
  - (f) prescribing forms for the purposes of this Act;
  - (g) governing the payment of fees for applications made or other things done pursuant to this Act;
  - (h) prescribing the procedures and the terms and conditions for placement arrangements made pursuant to this Act;
  - (i) respecting the maintenance of records;
  - (j) providing for the establishment and the operation of child care services;
  - (k) prescribing requirements as to the accommodations and equipment to be provided in an approved child care service;
  - (l) prescribing the medical arrangements to be made for protecting the health and well being of the children in an approved child care service;
  - (m) regulating the management and discipline of an approved child care service;

- (n) respecting the regular inspection of an approved child care service;
- (o) to ensure the safety, welfare and well-being of children in child care services;
- (p) to promote certain standards for the delivery of child care services;
- (q) to ensure, as far as possible, that all persons working in child care services are suitable for such work;
- (r) respecting the post adoption register;
- (s) respecting home study assessments and post placement reports;
- (t) governing the review of decisions made by the Adoption Committee;
- (u) providing for the procedure and the manner in which a home study assessment shall be conducted by the Adoption Committee; and
- (v) respecting any other matter the Minister considers necessary or advisable to carry out effectively the purposes of this Act.

## **PART XVIII**

### **REPEAL AND TRANSITIONAL PROVISIONS**

#### **140. Repeal**

The following Acts are repealed—

- (a) The Adoption of Children Act, Cap 9;
- (b) The Guardianship of Infants Act, Cap 197; and
- (c) The Child Care and Protection Act No. 29 of 2003.

#### **141. Effect of repeal of former law on Adoption Order**

If—

- (a) an application for an order was made pursuant to an Act referred to in section 140, that application shall be continued pursuant to and in conformity with this Act; and
- (b) an order has been made in respect of a child pursuant to an Act referred to in section 140 this Act shall apply if that order is brought before the Court for review.

**142. Consent under former Act**

(1) A valid consent given under the former Act shall continue to be valid for the purposes of this Act.

(2) An order dispensing with consent under the former Act shall be valid for the purposes of this Act

Passed by the House of Representatives on the 19th October, 2015.

Passed the Senate on the 17th day of November, 2015.

**Gerald Watt, Q.C.,**  
*Speaker.*

**Alicia Williams Grant,**  
*President.*

**Ramona Small,**  
*Clerk to the House of Representatives.*

**Ramona Small,**  
*Clerk to the Senate.*