



BERMUDA

PARENTAL RESPONSIBILITY ACT 2010

2010 : 42

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WHEREAS it is expedient to make provisions to prevent youth crime and disorder and to make provision to hold parents liable for the wilful misconduct of their children in relation to the property of others;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

PART 1

YOUTH CRIME AND DISORDER

Short title

1 This Act may be cited as the Parental Responsibility Act 2010.

Interpretation

2 In this Act—

“anti-social behaviour” means behaviour by a person which causes or is likely to cause harassment, alarm or distress to one or more persons not of the same household;

“child” means a person below 18 years of age unless the person is married;

“Minister” means the Minister responsible for Justice;

“parent” in relation to a child includes the father, mother, step-parent, guardian and custodial parent of a child;

“responsible officer” means a police officer who applies for an anti-social behaviour order under section 3 or a parenting order under section 5.

Anti-social behaviour order

3 (1) An application for an order under this section may be made if it appears to the police that —

- (a) a child aged 10 or over has engaged in anti-social behaviour; and
- (b) such order is necessary to protect any member of the public from further anti-social behaviour by the child.

(2) Such an application shall be made by complaint to a Magistrates court by a responsible officer, after consulting the Director of Child and Family Services.

(3) If, on such an application, it is proved that the conditions mentioned in subsection (1) are fulfilled, the court may make an order under this section (an “anti-social behaviour order”) which prohibits the child from doing anything described in the order.

(4) The court shall before making an order under subsection (3), obtain and consider information about the child's social circumstances from the Director of Child and

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Family Services, as well as the likely effect of the order on these circumstances and the possible need for other solutions to the child's problems.

(5) The prohibitions that may be imposed by an anti-social behaviour order are those necessary for the purpose of protecting any member of the public from further anti-social behaviour by the child and may include—

- (a) a requirement not to reside at any place other than a specified address;
- (b) a requirement not to contact (directly or indirectly), communicate or associate with certain persons;
- (c) requirements not to enter certain areas, places, events or buildings; and
- (d) restriction on overseas travel.

(6) An anti-social behaviour order shall have effect for a period of not more than two years specified in the order or until another order is made to vary or discharge the order.

(7) A parent, the police, the responsible officer or the child may apply to court seeking to vary or discharge the anti-social behaviour order by a further order, except that no further order discharging the order shall be made without consulting the responsible officer.

(8) If, without reasonable excuse, a child does anything which he is prohibited from doing by an anti-social behaviour order, he shall be liable on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding \$3,000 or both.

(9) A magistrate passing a sentence under subsection (8), shall take sections 6, 16 and 43 of the Young Offenders Act 1950 into consideration.

Appeal against anti-social behaviour order

4 (1) An appeal shall lie to the Supreme Court against an anti-social behaviour order.

(2) On such an appeal, the Supreme Court —

- (a) may make such orders as may be necessary to give effect to its determination of the appeal; and
- (b) may also make such incidental or consequential orders as appear to it to be just.

(3) Any order of the Supreme Court made on an appeal under this section (other than one directing that the application be reheard by the court of first instance) shall, for the purposes of section 3(5), be treated as if it were an order of the court from which the appeal was brought and not an order of the Supreme Court.

Parenting order

5 (1) This section applies where, in any court proceedings —

- (a) a child safety order is made in respect of a child;

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- (b) an anti-social behaviour order is made in respect of a child;
- (c) a child is convicted of an offence; or
- (d) an offence has been committed pursuant to section 44 of the Education Act 1996.

(2) If in the proceedings, the court is satisfied that the relevant condition in subsection (6) is fulfilled, it may make an order (a "parenting order") in respect of a person who is a parent.

(3) A parenting order is an order made by a responsible officer, after consulting the Director of Child and Family Services, which requires a parent to—

- (a) comply, for a period not exceeding 12 months, with such requirements as are specified in the order; and
- (b) attend, for a concurrent period not exceeding three months and not more than once in any week, such counselling or guidance sessions as may be specified by the responsible officer.

(4) For the purposes of subsection (3), "week" means a period of seven days beginning on a Sunday.

(5) A parenting order may, but need not, include such a requirement as is mentioned in subsection (3)(b) in any case where such an order has been made in respect of a parent on a previous occasion.

(6) The relevant condition is that the parenting order would be desirable in the interest of preventing —

- (a) in a case falling within subsection (1)(a) or (b), any repetition of the kind of behaviour which led to the child safety order or anti-social behaviour order being made;
- (b) in a case falling within subsection (1)(c), the commission of any further offence by the child;
- (c) in a case falling within subsection (1)(d), further truancy by the child.

(7) The requirements that may be specified under subsection (3)(a) are those which the court considers desirable in the interest of preventing any such repetition or, as the case may be, the commission of any such further offence.

(8) Where a child under the age of 16 is convicted of any offence, the court by or before which he is so convicted shall—

- (a) if it is satisfied that the relevant condition is fulfilled, make a parenting order; or
- (b) if it is not satisfied that the relevant condition is fulfilled, state in open court that it is not, and why it is not.

(9) Before making a parenting order, the court shall —

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- (a) obtain and consider information about the person's social circumstances from the Director of Child and Family Services and the likely effect of the order on these circumstances; and
 - (b) explain to the parent in ordinary language—
 - (i) the effect of the order and of the requirements proposed to be included in it;
 - (ii) the consequences which may follow under subsection (13) if he fails to comply with any of those requirements; and
 - (iii) that the court has power under subsection (11) to review the order on the application of either the parent or the responsible officer.
- (10) The requirements specified in, and directions given under, a parenting order shall, as far as practicable, be such as to avoid—
- (a) conflict with the parent's religious beliefs; and
 - (b) any interference with the times, if any, at which he normally works or attends an educational establishment.
- (11) If while a parenting order is in force it appears to the court on the application of the responsible officer or the parent, that it is appropriate to make an order under this subsection, the court may make an order discharging the parenting order or varying it —
- (a) by cancelling any provision included in it; or
 - (b) by inserting in it (either in addition to or in substitution for any of its provisions) any provision that could have been included in the order if the court had then had power to make it and were exercising the power.
- (12) Where an application under subsection (11) for the discharge of a parenting order is dismissed, no further application for its discharge shall be made under that subsection by any person, except with the consent of the court which made the order.
- (13) If while a parenting order is in force the parent fails to comply with any requirement included in the order, or specified in directions given by the responsible officer, he is liable on summary conviction, to a fine not exceeding \$3,000 and may in addition, be asked to undergo counselling.

Appeal against parenting order

- 6 (1) An appeal shall lie to the Supreme Court against the making of a parenting order by virtue of section 5(1)(a) and (b).
- (2) On appeal under subsection (1), the Supreme Court may —
- (a) make such orders as may be necessary to give effect to its determination of the appeal; and
 - (b) make such incidental or consequential orders as appear to it to be just.

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(3) Any order of the Supreme Court made on an appeal under subsection (1) (other than one directing that an application be reheard by the court of first instance) shall, for the purposes of section 5(11), be treated as if it were an order of the court from which the appeal was brought and not an order of the Supreme Court.

(4) A person in respect of whom a parenting order is made by virtue of section 5(1)(c) shall have the same right of appeal against the making of the order as if —

- (a) the offence that led to the making of the order were an offence committed by him; and
- (b) the order were a sentence passed on him for the offence.

(5) A person in respect of whom a parenting order is made by virtue of section 5(1)(d) shall have the same right of appeal against the making of the order as if the order were a sentence passed on him for the offence that led to the making of the order.

Child safety order

7 (1) Subject to subsection (4), if a court is satisfied that one or more of the conditions specified in subsection (2) are fulfilled with respect to a child under the age of 10, it may make an order (a "child safety order") which —

- (a) places the child, for a period specified in the order, under the supervision of the Director of Child and Family Services; and
- (b) requires the child to comply with such requirements as are specified in the order.

(2) The conditions are—

- (a) that the child has committed an act which, if he had been aged 18 or over, would have constituted a crime;
- (b) that a child safety order is necessary for the purpose of preventing the commission by the child of such an act as is mentioned in paragraph (a);
- (c) that the child has contravened a ban imposed by a curfew notice; or
- (d) that the child has engaged in anti-social behaviour.

(3) The maximum period permitted for the purposes of subsection (1)(a) is three months or, where the court is satisfied that the circumstances of the case are exceptional, 12 months.

(4) The requirements that may be specified under subsection (1)(b) are those which the court considers desirable in the interest of —

- (a) ensuring that the child receives appropriate care, protection and support and is subject to proper control; or
- (b) preventing any repetition of the kind of behaviour which led to the child safety order being made.

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(5) The standard of proof applicable to proceedings under this section shall be that which is applicable to civil proceedings.

Child safety order: supplemental provisions

- 8 (1) Before making a child safety order, the court shall —
- (a) obtain and consider information about the child's social circumstances from the Director of Child and Family Services and the likely effect of the order on those circumstances; and
 - (b) explain to the parent of the child in ordinary language —
 - (i) the effect of the order and of the requirements proposed to be included in it;
 - (ii) the consequences which may follow under subsection (5) if the child fails to comply with any of those requirements; and
 - (iii) that the court has power under subsection (3) to review the order, on the application, either of the parent or of the responsible officer.
- (2) The requirements included in a child safety order shall, as far as practicable, be such as to avoid—
- (a) any conflict with the child's parent's religious beliefs; and
 - (b) any interference with the times at which the child normally attends school.
- (3) If while a child safety order is in force in respect of a child, it appears to the court which made it, on the application of the responsible officer or a parent of the child, that it is appropriate to make an order under this subsection, discharging the child safety order or varying it —
- (a) by cancelling any provision included in it; or
 - (b) by inserting in it (either in addition to or in substitution for any of its provisions) any provision that could have been included in the order if the court had then had power to make it and were exercising the power,
- it shall do so.
- (4) Where an application under subsection (3) for the discharge of a child safety order is dismissed, no further application for its discharge shall be made under that subsection by any person except with the consent of the court which made the order.
- (5) Where the child safety order is in force and it is proved to the satisfaction of the court which made it on the application of the responsible officer that the child has failed to comply with any requirement included in the order, the court may—
- (a) discharge the order and make any of the following orders under the Children Act 1998, in respect of him—
 - (i) care and supervision order under section 25;
 - (ii) protective intervention order under section 38; and

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- (iii) emergency protection order under section 39; or
- (b) make an order varying the order—
 - (i) by cancelling the provision the child has failed to comply with; or
 - (ii) by inserting in it (either in addition to or in substitution for any of its provisions) any provision that could have been included in the order if the court had then had power to make it and were exercising the power.

Appeal against child safety order

9 (1) An appeal shall lie to the Supreme Court against the making by a court of a child safety order, and on such an appeal the Supreme Court —

- (a) may make such orders as may be necessary to give effect to its determination of the appeal; and
- (b) may also make such incidental or consequential orders as appear to it to be just.

(2) Any order of the Supreme Court made on an appeal under this section (other than one directing that an application be reheard by the court of first instance) shall, for the purposes of section 8(3) to (5), be treated as if it were an order of the court from which the appeal was brought and not an order of the Supreme Court.

Child curfew scheme

10 (1) The Minister may make a scheme (a "child curfew scheme") enabling him—

- (a) subject to and in accordance with the provisions of the scheme; and
- (b) if, after such consultation as is required by the scheme, the Minister considers it necessary to do so for the purpose of maintaining order,

to give a notice (a "curfew notice") imposing, for a specified period (not exceeding 90 days), a ban to which subsection (2) applies.

(2) This subsection applies to a ban on children of specified ages being in a public place within a specified area —

- (a) during specified hours; and
- (b) otherwise than under the effective control of a responsible person aged 21 or over.

(3) Before making a child curfew scheme the Minister shall consult with—

- (a) the Commissioner of Police; and
- (b) such other persons or bodies as the Minister considers appropriate.

(4) The Minister shall confirm the child curfew scheme and may fix the date on which the scheme is to come into operation, and if no date is so fixed, the scheme shall come into operation at the end of the period of one month beginning with the date of its confirmation.

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(5) A curfew notice may specify different hours in relation to children of different ages.

(6) A curfew notice shall be given —

- (a) by posting the notice in a conspicuous place within the specified area;
- (b) by publishing the notice in the Official Gazette; or
- (c) in such other manner, as appears to the Minister to be desirable for giving publicity to the notice.

Contravention of a child curfew scheme

11 (1) Subsections (2) and (3) shall apply where a police officer has reasonable cause to believe that a child is in contravention of a ban imposed by a curfew notice.

(2) The police officer shall, as soon as practicable, inform the Minister or a person designated by the Minister, that the child has contravened the ban.

(3) The police officer may remove the child to the child's place of residence unless he has reasonable cause to believe that the child would, if removed to that place, be likely to suffer significant harm, in which case the child may be removed to a children's home or a residential home as defined by section 2 of the Children Act 1998.

PART 2

CIVIL LIABILITY

Wilful misconduct resulting in loss and damage to property

12 (1) Any act of wilful misconduct by a child which results in the loss, damage or destruction of the property of another shall be imputed to the parent of the child and the parent shall be liable for the loss suffered by the owner of the property and the owner of the property may commence a civil action under this Act against the parent to recover damages in respect of the owner's loss.

(2) A parent shall be jointly and severally liable with any other parent under this Act for any award of damages under this Act.

(3) The joint and several liability of the parent shall not exceed \$10,000 for each act of wilful misconduct by the child.

Proof of wilful misconduct

13 (1) In an action under this Act, it shall be proof of the wilful misconduct of a child, in the absence of evidence to the contrary, to show—

- (a) a certificate issued by the court showing that the child has been found guilty of an offence in respect of the conduct which caused the property loss or damage; or
- (b) an anti-social behaviour order has been made against the child in respect of the conduct which caused the property loss or damage; or

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- (c) a child safety order has been made against the child in respect of conduct which caused the property loss or damage.

Commencing action for damages

14 An action under this section shall be commenced in the Magistrates' Court in accordance with Part III of the Magistrates Act 1948.

One award of damages, only

15 No more than one award of damages may be made against a parent arising out of the same act or conduct of the child.

Defences to action

16 (1) It is a defence to an action under this Act if the parent establishes to the satisfaction of the court that he or she—

- (a) was exercising reasonable supervision over the child at the time that the child engaged in the activity that caused the property loss or damage; and
- (b) made reasonable efforts in good faith to prevent or discourage the child from engaging in the kind of activity that resulted in the property loss.

(2) The onus of establishing a defence under subsection (1) rests with the parent.

(3) In determining whether a parent exercised reasonable supervision over a child or made reasonable efforts to prevent or discourage the child from engaging in the kind of activity that caused the property loss or damage, the court shall consider—

- (a) the age of the child;
- (b) the prior conduct of the child;
- (c) the potential danger of the activity;
- (d) the physical or mental capacity of the child;
- (e) any psychological or other medical disorders of the child;
- (f) whether the danger arising from the child's conduct was reasonably foreseeable by the parent;
- (g) whether the parent was responsible for the care and control of the child at the time when the child engaged in the conduct that resulted in the property loss or damage;
- (h) if the child was temporarily out of the care and control of the parent when the child engaged in the conduct that caused the property loss or damage, whether the parent made reasonable arrangements for the supervision of the child;
- (i) whether the parent has sought professional assistance for the child designed to discourage conduct of the kind that resulted in the property loss or damage; and

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- (j) any other matter that the court considers relevant to the determination.

Award of damages

17 In awarding damages under this Act, the court may order payment of the damages—

- (a) to be made in full before a fixed date; or
- (b) to be made in instalments by fixed dates, if the court considers that a lump sum payment is beyond the financial resources of the parent or will otherwise impose an unreasonable financial burden on the parent.

Subrogation of rights of insured

18 An insurer who has paid an amount as compensation to a person in connection with the property loss or damage is subrogated to the rights of that person under this Act to the extent of that amount.

Supplemental provisions

19 (1) Subject to subsection (2), the right of action and remedies under this Act are in addition to any other right of action or remedy that may be available, but this section is not to be construed as requiring any damages awarded under this Act to be disregarded in assessing damages in any other proceedings arising out of the same conduct of the child.

(2) In determining the amount of damages under this Act, the court may consider any amount ordered as restitution under section 16 or 26 of the Young Offenders Act 1950.

Regulations

20 The Minister may make regulations as are necessary or expedient, for the purposes of this Act.

[Assent Date: 26 July 2010]

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